

ART PURCHASE CONTRACT
GENERAL SERVICES DEPARTMENT
EV2866- KCI Art Project- Development of "Fountain of Resonance"

This art purchase contract is between KANSAS CITY, MISSOURI, a constitutionally chartered municipal corporation ("City"), and Superblue Miami, LLC ("Superblue") ~~as agent for on behalf of~~ Studio INI Ltd. ("Artist").

Comment [CM1]: Need clarification

WHEREAS: Superblue acts as the agent for the Artist, facilitating and managing the commission of the Artwork (defined below); City and Superblue wish to enter into this agreement in connection with such commission of the Artwork; and Superblue will enter into a separate agreement with Artist for the development, fabrication and installation of the Artwork in accordance with the terms of this agreement.

Comment [OHF2]: This is for the purposes of internal accounting.

In consideration of the payments and mutual agreements contained in this contract, City and Superblue (each a "Party" and collectively, the "Parties") agree as follows:

- 1. Services to be Performed.** Superblue shall enter into a contract with Artist for, and ensure that Artist shall perform, the following services in connection with the Artist's work (the "Artwork") (the development, fabrication and installation of the Artwork shall be referred to as the "Project"), as set forth in Attachment A:
 - A. Scope of Services - **Attachment A**
 - B. Schedule of Performance – **Attachment B**
 - C. Submit all documents, including plans, design drawings, specifications, reports, maps, models and renderings in the form requested by City. A list with the specific requirements is included in **Attachment A – Scope of Services**.
 - D. City shall have the right to inspect and review the Artwork being done and to consult with Artist at any reasonable time. Meetings will be held at the request of City or Artist and any such meetings may be held in person or via telephone or electronic conference system, as mutually agreed to by the Parties.
 - E. If City reasonably determines that any project manager, employee subcontractor, supplier or other third party furnishing services in connection with the Artwork has violated any law, regulation or ordinance such that it would damage the reputation of the City, Superblue and/or the Artist, or otherwise to be in the best interest of the Artwork, provided that any such reasoning is not arbitrary, Superblue shall and/or Superblue shall ensure that Artist shall replace any such person or entity upon written request by City.
- 2. Responsibilities of City.**
 - A. City will conduct reviews of plans and respond to Artist with comments and/or approval in the times specified in the approved schedule.
 - B. City acknowledges that any changes in the approved Production Schedule directed or initiated by the City, may cause delays to the remaining Production Schedule and/or affect Artist's ability to comply with the Production Schedule, the Artist and/or Superblue will not be held responsible or Superblue will be deemed in breach of this Agreement.
 - C. City will display the Artist's name, copyright notice, title, and date of the Artwork near or on the Artwork.

D. City recognizes that maintenance of the Artwork on a regular basis is essential to the integrity of the Artwork. City, to the extent allowed by law and subject to appropriation of funds, will maintain and protect the Artwork against the ravages of time, vandalism and the elements, taking into account the instructions of the Artist set forth when the Artwork is completed and installed.

E. Repairs and Restoration.

1. City will have the right to determine, after consultation with the Artist or a professional familiar with art conservation, when and if repairs and restorations to the Artwork will be made. During the Artist's lifetime, the Artist will have the right to approve all repairs and restorations; provided however, that the Artist shall not unreasonably withhold approval for any repair or restoration of the Artwork. If the Artist unreasonably fails to approve any repair or restoration, City shall have the right to make such repair or restoration. For the avoidance of doubt, City will be responsible for the cost and execution of any such repairs or restoration, including if carried out or supervised by the Artist, subject to Section 8.E of Attachment A (Scope of Services), pursuant to which Artist, for a period of one (1) year from the date of final acceptance of the Artwork, will be responsible for the cost of any repairs required solely where such repairs are required to make good any faulty or defective material or workmanship. To the extent practical, the Artist, during the Artist's lifetime, will be given the opportunity to make or personally supervise significant repairs and restorations.

Comment [CM3]: Add reference to 1-year period

Comment [OHF4]: Noted – please see addition.

2. All repairs and restorations will be made in accordance with recognized principles of conservation.

F. Alterations of the Artwork or of the Artwork site (the "Site"). City agrees:

1. Not to intentionally damage, alter, modify, change, or relocate the Artwork without written approval of the Artist.
2. To notify the Artist of any proposed alteration of the Site that would affect the intended character and appearance of the Artwork and will consult with the Artist in the planning and execution of any Site alteration and will make a reasonable effort to maintain the integrity of the Artwork.
3. Not to remove the Artwork from public display or destroy the Artwork for a period of fifteen (15) years from final acceptance.
4. In the event the City desires to remove the Artwork from the Site after fifteen (15) years, and the removal would result in the destruction, distortion, mutilation or other modification of the Artwork, City will give the Artist written notice as provided herein of the City's intended action. The Artist has 90 days after the mailing of such notice either to remove the Artwork or to pay for its removal. If the Artwork is removed at the expense of the Artist, title to the Artwork shall be deemed to be in the Artist. If the Artist fails to remove the Artwork within the 90-day period, City may proceed to remove the Artwork with no further liability to Artist.
5. Not to intentionally use the Artwork in any manner which would reflect discredit on the Artist's name or reputation as an Artist or which would violate the spirit of the Artwork.

3. Term of Contract.

A. Contract shall start upon executed signatures by all Parties. This executed contract will serve as the Notice to Proceed (NTP). The contract shall expire on March 31, 2023. A contract amendment will be needed to extend the expiration date, if applicable. ~~Upon expiration or termination of this Contract, Sections 7, 9B, 17, 18, 20-23, 28, 31, 33-34, 41 shall survive.~~

4. Compensation and Reimbursables.

- A. The fixed amount that City shall pay Superblue under this contract is \$1,175,000 (one million one hundred seventy five thousand US dollars) (the "Contract Price"). City is not liable for any obligation incurred by Superblue or Artist except as approved under the provisions of this contract.

5. Method of Payment.

- A. Method of Payment. Upon completion of each task set forth below Superblue shall invoice City, stating completion of the task and all actual reasonable expenses incurred and allowed under this contract and the amount due. City, upon approving the invoice, shall remit payment to Superblue in accordance with the following schedule: For payment dates, See Attachment B, Production Schedule E (1-11).

1. \$250,000 (two hundred fifty thousand US dollars) upon execution of this contract;
2. \$190,625 (one hundred ninety thousand six hundred twenty five US dollars) upon beginning of the final design concept and issuance of NTP. Subject to the milestone in the preceding sentence being met, payment to be processed no later than 30 Sep 2021;
3. \$587,500 (five hundred eighty seven thousand five hundred US dollars) upon certification by Superblue that fabrication of the Artwork is in-process. Subject to the milestone in the preceding sentence being met, payment to be processed no later than 30 Aug 2022;
4. \$102,813 (one hundred and two thousand eight hundred thirteen US dollars) upon delivery of the Artwork to the Site being in process. Subject to the milestone in the preceding sentence being met, payment to be processed no later than 30 Dec 2022;
5. \$44,062 (forty four thousand sixty two US dollars) within thirty (30) days following final acceptance of the Artwork. Subject to the milestone in the preceding sentence being met, payment to be processed no later than 03 Mar 2023.

- B. Condition Precedent to Payment.

1. Superblue shall submit all invoices in a form provided by the City.
2. It shall be a condition precedent to payment of any invoice from Superblue that Superblue is in compliance with, and not in breach or default of, all terms, covenants and conditions of this contract. If damages are sustained by City as a result of breach or default by Superblue, City may withhold payment(s) to Superblue for the purpose of set off until such time as the exact amount of damages due City from Superblue may be determined.
3. No request for payment will be processed unless the request is in proper form, correctly computed, and is approved as payable under the contract. City is not liable for any obligation incurred by Superblue except as approved under the provisions of this contract.
4. The Artwork shall be developed, fabricated and installed without further compensation than that provided for in this contract.

- C. The Parties specifically recognize that Superblue and Artist shall have a separate agreement between them setting forth, among other things, payments to be made to Artist by Superblue. The Parties acknowledge and agree that City's payment obligations herein shall be only to Superblue. The Parties further agree that the separate agreement shall require Artist to acknowledge and agree that City does not have any payment obligations to Artist and that Artist shall not have any claim or any cause of action against City for Superblue's failure to pay Artist under the aforementioned separate agreement.

6. Warranties and Representations.

A. Superblue represents and warrants that:

1. The Artwork is solely the result of the artistic effort of Artist;
2. The Artwork is unique and original and does not infringe upon any copyright;
3. That the Artwork, or a duplicate has not been accepted for sale elsewhere prior to the effective date of this Agreement. The foregoing notwithstanding, City acknowledges that Artist may develop, create and sell artworks using similar designs and technologies and that in doing so Superblue will not be in breach of this warranty, provided that the overall design of any such additional artwork is not a duplicate of the Artwork;
4. The Artwork is free and clear of any liens from any source whatsoever; and
5. Prior to final payment, Superblue will furnish City with notarized statements from the fabricator, if applicable, and all other suppliers of materials used in the Artwork that all monies due have been paid.
6. Except as otherwise disclosed to the City in writing, when submitting the Final Design, the Final Design is and shall be free of any defects of design.
7. From the Effective Date through a date one (1) year following the City's acceptance of the Artwork, that:
 - a. The execution and fabrication of the Artwork shall be performed in a good and workmanlike manner.
 - b. The Artwork, as fabricated and delivered, shall be free of defects in material and workmanship, including any defects consisting of inherent vice or qualities that may cause or accelerate deterioration of the Artwork.
 - c. Reasonable maintenance of the Artwork shall not require procedures substantially in excess of those described in the Final Maintenance Plan required under Section B(9)(2) of Attachment A.

B. The City will give Notice to Superblue of any observed breach of these warranties and representations. Once notified by the City, Superblue will inform the Artist who shall, at no cost to the City, promptly cure the breach or breaches consistent with professional conservation standards, including but not limited to cure by repairing or refabricating the Artwork or any necessary portion of the Artwork.

C. The separate agreement between Superblue and Artist shall include representations and warranties by Artist that are identical to those contained in this section.

7. Notices. All notices ("Notice") required by this contract shall be in writing and sent to the following:

City:

General Services Department
Cedric Rowan, Manager of Procurement Services
414 E 12th St, 1st Floor
Kansas City, MO 64106
Phone: (816) 513-0804
E-mail address: cedric.rowan@kcmo.org

General Services Department
James Martin, Public Art Administrator

414 E 12th St, 17th Floor
Kansas City, MO 64106
Phone: (816) 315-0504
E-mail address: james.martin@kcmo.org

Artist:

Studio INI
ATTN: Nassia Inglessis
+44 7717848629
nassia@studioini.org

VAULT 7,
SOMERSET HOUSE,
STRAND, LONDON
WC2R 1LA
UK

LOCUS SOLUS,
10 MONIS ASTERIOU
PLAKA, ATHENS
105 68
GREECE

Superblue:

Superblue Miami, LLC
Finance Dept, Att'n: this information needed please
[540 West 25th Street](#)
[New York, NY 10001](#)
[32 E 57th St - 4th Floor](#)
[New York NY 10022](#)
Email address(es) and phone number(s) also needed please legal@superblue.com

With a copy to:

Klaris Law
Att: Ed Klaris
1115 Broadway f11,
New York, NY 10010
Phone: (917) 822-7468
Email address: Edward.klaris@klarislaw.com

All notices are effective (a) when delivered in person, (b) upon confirmation of receipt when transmitted by facsimile transmission or by electronic mail, (c) upon receipt after dispatch by registered or certified mail, postage prepaid, (d) on the next business day if transmitted by overnight courier (with confirmation of delivery), or (e) three (3) business days after the date of mailing, whichever is earlier.

Comment [CM5]: Please confirm correct and insert necessary information

Comment [OHF6]: Please see additions.

Field Code Changed

8. Risk of Loss. The risk of loss or damage to the Artwork shall be borne by Superblue and Superblue shall take such measures as are necessary to protect the Artwork from loss or damage until title transfers to the City as set out in Section 9.

9. Title and Ownership.

A. The Artist will remain the owner of the Artwork until title transfers to the City as follows:

1. Within 10 days of the City's issuance of its Notice of Completion to the Artist accepting the Artwork, the Artist shall execute and provide to the City a valid Transfer of Title document in a form approved by the City.

B. Consistent with Section 2. E.4., and in the case of removal, the Artist is aware of and hereby specifically waives all rights under the Artists Visual Rights Act of 1990, 17 U.S.C. Sections 106A and 113, or as subsequently amended, with regard to the Artwork.

10. Copyright.

1. The Parties agree and acknowledge that the Artist shall retain the ownership of copyrights in and to the Artwork, plans, drawings, schematics, design studies and models prepared by the Artist in connection with this commission, except as limited by this paragraph. Superblue and Artist, through Superblue as its Agent, agree that they will not make any additional exact duplicate reproductions of the exact design dimensions and materials of the Work nor grant others permission to do so, except with the written permission of City. City acknowledges that Artist may develop, create and sell artworks using similar designs and technologies and that in doing so Superblue will not be in breach of this paragraph, provided that the overall design of any such additional artwork is not an exact duplicate of the Artwork.

2. The Artist, through Superblue as its agent, grants to City a license to use photographic reproductions of the Artwork in advertising brochures, media publicity, and promotion of its activities, catalogues, site guides, books and publications ("City Materials") for noncommercial purposes. In addition, if reproductions by either Party where the Artwork is the central focus of the reproductions are made, there shall be included credits listing the Artist as the creator of the Artwork and owner of its copyright, and City as the Party which owns and commissioned the Artwork, and City and Artist agree to use their best efforts to secure credits in any reproduction or public showing of a reproduction or public show of a reproduction by other parties.

11. No Gratuities and Kickbacks. The provisions of City's Code Section 3-303, prohibiting gratuities to city employees, and kickbacks by subcontractors, and Code Sections 3-307, imposing sanctions for violations, shall apply to this contract.

A. **Gratuities.** Superblue certifies that it has not and will not offer or give any city employee or officer a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation or preparation of any part of a contract requirement or purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any contract or subcontract, or to any solicitation or proposal therefore.

B. **Kickbacks.** Superblue certifies that no payment, gratuity, offer of employment or benefit has been or will be made by or on behalf of or solicited from a subcontractor under a contract to Superblue or higher tier subcontractor or any person associated therewith as an inducement for the award of a subcontract or order.

12. Prohibition Against Contingent Fees. The provisions of City’s Code Section 3-305 prohibiting the retention of persons to solicit contracts for contingent fees, and Sections 3-307, imposing sanctions for violations, shall apply to this contract. Superblue certifies that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by Superblue for the purpose of securing business. For breach or violation of this warranty, City shall have the right to annul this contract without liability or, at its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

13. Subcontracting. Superblue will submit to the City a list of subcontractors, which will be added hereto as Attachment C upon approval of the list of the City (such approval not to be unreasonably withheld, conditioned or delayed) (“Subcontractor List”). Upon approval of the Subcontractor List, City authorizes Superblue to subcontract with the individuals, firms or entities identified in **Attachment C**, Subcontractors List. **Attachment C**, and the additional conditions stated therein, shall be incorporated into this contract. Superblue shall not subcontract, assign or transfer any part or all of Superblue’s obligations or interests without City’s prior written approval (such approval not to be unreasonably withheld, conditioned or delayed).

14. Attachments. The following documents are attachments to this contract and are attached hereto and incorporated herein by this reference:

Attachment A – Scope of Services

Attachment B – Schedule of Performance

Attachment C – Non-Construction Subcontractor Listing

Attachment D – Prevailing Wage Requirements

Annual Wage Order No. 27

County Platte

Work Type:

State – Building

Federal – Building

Division of Labor Standards Rules & Regulations

01290.03 Certified Payroll Instructions

01290.04 Certified Payroll Example

01290.05-06 Certified Payroll Report

01290.07 Payroll Certification

01290.08 Wage Rate Verification Questionnaire

01290.11 Daily Labor Force Report

01290.14 Contractor Affidavit for Final Payment

Attachment E – 00560 Missouri Project Exemption Certificate

00560.01 Kansas City Missouri Tax Exempt Certificate

Attachment F – 00620 Insurance Certificate

15. General Indemnification.

A. For purposes of this Section 16 only, the following terms shall have the meanings listed:

1. **Claims** means all claims, damages, liability, losses, costs and expenses, court costs and reasonable attorneys' fees, including attorneys' fees incurred by City in the enforcement of this indemnity obligation.
2. **Superblue's Agents** means Superblue's officers, employees, subcontractors, subconsultants, successors, assigns, invitees, and other agents.
3. **City** means City, its Program Manager/Construction Advisor, if any, and their respective agents, officials, officers and employees.

- B. Superblue's obligations under this section ~~contract~~ with respect to ~~\liability for breach of contract or indemnification for acts or omissions, including negligence, of City (other than acts of gross negligence, fraud or willful misconduct)~~ shall be limited to the coverage and limits of General (not Professional) Liability insurance that Superblue is required to procure and maintain under this contract. Superblue affirms that it has had the opportunity to recover the costs of the liability insurance required in this contract in its contract price.
- C. Superblue shall defend, indemnify and hold harmless City from and against all Claims arising out of or resulting from all acts or omissions in connection with this contract caused in whole or in part by Superblue or Superblue's Agents, regardless of whether or not caused in part by an act or omission, including negligence, of City. Superblue is not obligated under this section to indemnify City for the sole ~~sole or contributory~~ negligence of City.
- D. Nothing in this section shall apply to indemnification for professional negligence which is specified in a separate provision of this contract.

16. Indemnification for Professional Negligence. Superblue shall indemnify, and hold harmless City and any of its agencies, officials, officers, or employees from and against all claims, damages, liability, losses, costs, and expenses, including court costs and reasonable attorneys' fees, to the extent caused by any negligent acts, errors, or omissions of Superblue, its officers, employees, subconsultants, subcontractors, successors, assigns, invitees and other agents, in the performance of professional services under this contract. Superblue is not obligated under this section to indemnify City for the negligent acts of City or any of its agencies, officials, officers, or employees.

17. Insurance

- A. Superblue shall procure and maintain in effect throughout the term of this Contract insurance policies with coverage not less than the types and amounts specified in this Section. In the event that additional insurance, not specified herein, is required during the term of this contract, Superblue shall supply such insurance at City's cost. Policies containing a Self-Insured Retention are unacceptable to City unless City approves in writing the Superblue Self-Insured Retention.
 1. **Commercial General Liability Insurance:** Superblue shall maintain a policy or policies that provide coverage for premises operations, acts of independent contractors and completed operations, whether such operations be by Superblue, sub-provider, or anyone directly or indirectly employed by either of them, with the City named as an additional insured with limits of \$1,000,000 per occurrence and \$2,000,000 aggregate, written on an "occurrence" basis. The policy shall be written or endorsed to include the following provisions:
 - a. Severability of Interests Coverage applying to Additional Insureds
 - b. Per Project Aggregate Liability Limit or, where not available, the aggregate limit shall be \$2,000,000.

- c. No Contractual Liability Limitation Endorsement
 - d. Additional Insured Endorsement, ISO form CG20 10, or its equivalent
2. Worker's Compensation Insurance: as required by statute, including Employers Liability with limits of:
- a. Workers Compensation Statutory
 - b. Employers Liability
 - c. \$100,000 accident with limits of:
 - d. \$500,000 disease-policy limit
 - e. \$100,000 disease-each employee
3. Commercial Automobile Liability Insurance at the execution of the contract and throughout the duration of the contract: with a limit of \$1,000,000 written on an "occurrence" basis, covering owned, hired, and non-owned automobiles. If Superblue owns vehicles, coverage shall be provided on an "any auto" basis. If Superblue does not own any vehicles, coverage shall be provided on a "hired autos" and "non-owned autos" basis. The insurance will be written on a Commercial Business Auto form, or an acceptable equivalent, and will protect against claims arising out of the operation of motor vehicles, as to acts done in connection with the contract, by Superblue.
4. If applicable, Professional Liability Insurance with limits Per Claim/Annual Aggregate of \$1,000,000.
- B. The Commercial General Liability Insurance specified above shall provide that City and its agencies, officials, officers, and employees, while acting within the scope of their authority, will be named as additional insureds for the services performed under this contract. Superblue shall provide to City at execution of this contract a certificate of insurance showing all required endorsements and additional insureds. The certificates of insurance will contain a provision stating that should any of the policies described in the certificate be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.
- C. If Superblue provides Commercial General Liability Insurance or Professional Liability Insurance through a Subcontractor, Superblue shall contractually require the Subcontractor to include City as additional insured in the Subcontractor's policy. Superblue shall deliver to City, prior to the start of any work at the project Site, properly completed certificates of insurance or other evidence that the required insurance is in full force and effect, in a form acceptable to City. Superblue shall contractually require its Subcontractor to defend, indemnify and hold harmless City from and against all claims arising out of or resulting from all acts or omissions in connection with this Contract caused in whole or in part by Subcontractor or Subcontractor's agents, regardless of whether or not caused in part by any act or omission, including negligence, of City. Superblue must provide evidence that this requirement has been complied in accordance with the provisions of this contract.
- D. All insurance coverage must be written by companies that have an A.M. Best's rating of "A-V" or better, and are licensed or approved by the State of Missouri to do business in Missouri.
- E. Superblue's failure to maintain the required insurance coverage will not relieve Superblue of its contractual obligation to indemnify City pursuant to Sections 16 and 17. If the coverage afforded is cancelled or changed or its renewal is refused, Superblue shall give at least thirty (30) days prior written notice to City. In the event of Superblue's failure to maintain the required insurance in effect, City may

order Superblue to immediately stop work, and upon ten (10) days' notice and an opportunity to cure, may pursue its remedies for breach of this contract as provided for herein and by law.

- F. In no event shall the language in this section constitute or be construed as a waiver or limitation of City's rights or defenses with regard to sovereign immunity, governmental immunity, or other official immunities and protections as provided by the federal and state constitutions or by law.

18. Defaults and Remedies.

- A. Superblue shall be in default of this contract upon the happening of any of the following events:
1. If Superblue fails to comply with any of the provisions required of Superblue under this contract, and such failure continues for a period of ten (10) days after written notice thereof is given to Superblue by City; or
 2. If, by operation of law or otherwise, the right, title, or interest of Superblue in this contract is transferred to, passes to, or devolves upon any other person, firm or corporation without written consent of City; or
 3. Upon the levy of any attachment or execution of any process of a court of competent jurisdiction which does or will interfere with Superblue's performance under this contract, and which attachment, execution or other process of such court is not enjoined, vacated, dismissed, or set aside within a period of thirty (30) days; or
 4. Upon the suspension, revocation or termination of any power, license, permit, or authority that has the effect of preventing Artist from performing under this contract.
- B. Upon the occurrence of any one or more of the events as set forth in sub-paragraphs A1 through A4 of this Section, or upon any other default or breach of this contract, City may, at City's option, exercise concurrently or successively, any one or more of the following rights and remedies without waiving such default:
1. Suspend City's performance, withhold payment, or invoke any other legal or equitable remedy after giving Superblue notice and opportunity to correct such default or breach.
 2. Interplead funds to a court or pay any sum required to be paid by Superblue to parties other than City, and which Superblue has incurred in connection with this contract and failed to pay. Any amount so paid in good faith by City, together with interest thereon at the maximum rate provided by law from the date of such payment, and all expenses connected therewith shall be repaid by Superblue to City on demand; or
 3. Enjoin any breach or threatened breach by Superblue or Artist of any covenants, agreements, terms, provisions or conditions hereof; or
 4. Bring suit for the performance of any covenant devolving upon Superblue or Artist for performance or damage thereof, all without terminating this contract; or
 5. Terminate this contract upon ten (10) days written notice to Superblue, specifying date of termination.
- C. City Default. If City fails to comply with any provisions required of the City under this contract, including without limitation its payment obligations, and such failure continues for a period of thirty (30) days after written notice thereof is given, then Superblue may at Superblue's option, exercise concurrently or successively, any one or more of the following rights and remedies without waiving such default:

1. Suspend Superblue's performance or invoke any other legal or equitable remedy after giving the City notice and opportunity to correct such default or breach;
2. Enjoin any breach or threatened breach by City of any covenants, agreements, terms, provisions or conditions hereof; or
3. Bring suit for the performance of any covenant devolving upon the City for performance or damage thereof, all without terminating this contract; or
4. Terminate this contract upon ten (10) days written notice to the City, specifying date of and reasons for termination.

19. Rights and Remedies Cumulative and Not Exclusive. All rights and remedies granted to City herein and any other rights and remedies which City may have at law and in equity are hereby declared to be cumulative and not exclusive, and the fact that City may have exercised any remedy without terminating this contract shall not impair City's rights thereafter to terminate or to exercise any other remedy herein granted or to which City may be otherwise entitled. Unless explicitly limited in this agreement, all rights and remedies granted to Superblue herein and any other rights and remedies which Superblue may have at law and in equity are hereby declared to be cumulative and not exclusive, and the fact that Superblue may have exercised any remedy without terminating this contract shall not impair Superblue's rights thereafter to terminate or to exercise any other remedy herein granted or to which Superblue may be otherwise entitled.

20. Americans with Disabilities Act. Superblue agrees to comply, during the course of this contract, with all provisions of the Americans with Disabilities Act, Public Law 101-336 as well as 28 CFR parts 35 and 36 and 29 CFR part 1630, as applicable and as amended from time to time.

21. Merger. This contract, including any referenced Attachments, constitutes the entire agreement between City and Superblue, with respect to this subject matter, and supersedes all prior agreements between City and Superblue with respect to this subject matter, and any such prior agreement shall be void and of no further force or effect as of the date of this contract.

22. Modification.

- A. Unless stated otherwise in this contract, no provision of this contract may be waived, modified or amended except by written amendment signed by City and Superblue.
- B. No act, conversation or communication with any officer, agent or employee of City, either before or after the execution of this contract, shall affect or modify any term or terminology of this contract and any such act, conversation or communication shall not be binding upon City or Superblue.

23. Binding Effect. This Contract shall be binding upon City and Superblue and their successors in interest.

24. Representations and Warranties. City and Superblue each certify that it has the power and authority to execute and deliver this contract, to use the funds as contemplated hereby and to perform this contract in accordance with its terms.

25. Prevailing Wage.

- A. Prevailing Wage.
 1. Superblue shall comply if and as applicable and require its Subcontractors to comply with;
 - a. Sections 290.210 to 290.340, RSMo the State of Missouri Prevailing Wage Law (the "Law"); and
 - b. 8 CSR 30-3.010 to 8 CSR 30-3.060, the Prevailing Wage Law Rules (the "Rules"); and

- c. the Annual Wage Order (Wage Order) issued by the State of Missouri's Department of Labor and Industrial Relations; and
 - d. any applicable Annual Incremental Wage Increase (Wage Increase) to the Annual Wage Order.
2. The Law, Rules, Wage Order and any Wage Increase are incorporated into and made part hereof this Contract and shall be collectively referred to in this Section as the "Prevailing Wage Requirements." In the event this Contract is renewed for an additional term, the Wage Order in effect as of the commencement date of the additional term, as amended by any applicable Wage Increase, shall be deemed incorporated herein and shall apply to and remain in effect for the duration of the additional term. The new Wage Order and any applicable Wage Increase shall govern notwithstanding the fact that the Wage Order being replaced might be physically attached to this Contract.
3. As required by law, Superblue shall pay and require its Subcontractors to pay to all workers performing work under this Contract not less than the prevailing hourly rate of wages for the class or type of work performed by the worker in accordance with the Law, Rules, Wage Order and any applicable Wage Increase. Superblue shall take whatever steps are necessary to insure that the prevailing hourly wage rates are paid and that all workers for Superblue and each of its Subcontractors are paid for the class or type of work performed by the worker in accordance with the Prevailing Wage Requirements.
4. As required by law, Superblue shall keep and require each of its Subcontractors engaged in the construction of public works in performance of the Contract to:
- a. Keep and require each of its Subcontractors engaged in the construction of public works in performance of the Contract to keep full and accurate records on City's "Daily Labor Force Report" Form indicating the worker's name, occupational title or classification group and skill and the workers' hours. City shall furnish blank copies of the Daily Labor Force Report Form to Superblue for its use and for distribution to Subcontractors. Superblue shall submit its and its Subcontractors Daily Labor Force Reports to City each day; and
 - b. Submit, and require each of its Subcontractors engaged in the construction of public works in performance of the Contract to submit, electronically, in a format prescribed by the City, Certified Payroll Report Information indicating the worker's name, address, social security number, occupation(s), craft(s) of every worker employed in connection with the public work together with the number of hours worked by each worker and the actual wages paid in connection with the Project and other pertinent information as requested by the City; and
 - c. Submit, and require each of its Subcontractors engaged in the construction of public works in performance of the Contract to submit, electronically, in format prescribed by the City, a Payroll Certification. The Payroll Certification must be signed by the employee or agent who pays or supervises the payment of the workers employed under the Contract for the Superblue and each Subcontractor.
 - d. The Daily Labor Force Report, documents used to compile information for the Certified Payroll Report, and Payroll Certification are collectively referred to in this Section as the "Records."
5. Superblue shall make all of Superblue's and Subcontractors' Records open to inspection by any authorized representatives of City and the Missouri Department of Labor and Industrial

Relations at any reasonable time and as often as they may be necessary and such Records shall not be destroyed or removed from the State of Missouri for a period of one (1) year following the completion of the public work in connection with which the Records are made. As required by law, Superblue shall have its and its Subcontractors Certified Payroll Reports and Payroll Certifications available at the Superblue's office and shall provide the Records to the City electronically at City's sole discretion. In addition, all Records shall be considered a public record and Superblue shall provide the Records to the City in the format required by the City within three (3) working days of any request by City at the Superblue's cost. City, in its sole discretion, may require Superblue to send any of the Records directly to the person who requested the Record at Superblue's expense.

6. As required by law, Superblue shall post and keep posted a clearly legible statement of all prevailing hourly wage rates to be paid to all workers employed by Superblue and each of its Subcontractors in the performance of this Contract in a prominent and easily accessible place at the Site of the Work by all workers.
7. If the Contract Price exceeds \$250,000.00 and if required by law, Superblue shall and shall require each Subcontractor engaged in any construction of public works to have its name, acceptable abbreviation or recognizable logo and the name of the city and state of the mailing address of the principal office of the company, on each motor vehicle and motorized self-propelled piece of equipment which is used in connection with the Project during the time the Superblue or Subcontractor is engaged on the project. The sign shall be legible from a distance of twenty (20') feet, but the size of the lettering need not be larger than two (2") inches. In cases where equipment is leased or where affixing a legible sign to the equipment is impractical, Superblue may place a temporary stationary sign, with the information required pursuant to this section, at the main entrance of the Project in place of affixing the required information on the equipment so long as such sign is not in violation of any state or federal statute, rule or regulation. Motor vehicles which are required to have similar information affixed thereto pursuant to requirements of a regulatory agency of the state or federal government are exempt from the provisions of this subsection.
8. Superblue must correct any errors in Superblue's or any Subcontractors' Records, or Superblue's or any Subcontractors' violations of the Law, Rules, Annual Wage Order and any Wage Increase within fourteen (14) calendar days after notice from City.
9. As required by law, Superblue shall and shall require its Subcontractors to cooperate with the City and the Department of Labor and Industrial Relations in the enforcement of this Section, the Law, Rules, Annual Wage Order and any Wage Increase. Superblue shall and shall require its Subcontractors to permit City and the Department of Labor and Industrial Relations to interview any and all workers during working hours on the Project at Superblue's sole cost and expense.
10. As required by law, Superblue shall file with City, upon completion of the Project and prior to final payment therefore, affidavits from Superblue and each of its Subcontractors, stating that each has fully complied with the provisions and requirements of the Missouri Prevailing Wage Law. City shall not make final payment until the affidavits, in proper form and order, from Superblue and each of its Subcontractors, are filed by Superblue.
11. Superblue shall forfeit as a statutory penalty to the City one hundred dollars (\$100.00) for each worker employed, for each calendar day, or portion thereof, such worker is paid less than the prevailing hourly rates for any work done under this Contract, by Superblue or by any of

Superblue's Subcontractors. If Superblue or any of its Subcontractors have violated any section(s) of 290.210 to 290.340, RSMo, in the course of the execution of the Contract, City shall when making payments to the Superblue becoming due under this Contract, withhold and retain therefrom all sums and amounts due and owing as a result of any violation of sections 290.210 to 290.340, RSMo.

B. **Prevailing Wage Damages.** Superblue acknowledges and agrees that, based on the experience of City, violations of the Missouri Prevailing Wage Act, whether by Superblue or its Subcontractors, commonly result in additional costs to City. Superblue agrees that additional costs to City for any particular violation are difficult to establish and include but are not limited to: costs of construction delays, additional work for City, additional interest expenses, investigations, and the cost of establishing and maintaining a special division working under the City Manager to monitor prevailing wage compliance.

1. In the event of the failure by Superblue or any of its Subcontractors to pay wages as provided in the Missouri Prevailing Wage Act, City shall be entitled to deduct from the Contract Price, and shall retain as liquidated damages, one hundred dollars (\$100.00) per day, per worker who is paid less than the prevailing hourly rate of wages, to approximate the additional costs. The sum shall be deducted, paid or owed whether or not the Contract Times have expired.
2. City shall give written notice to Superblue setting forth the workers who have been underpaid, the amount of the statutory penalty and the amount of the liquidated damages as provided for in this Subparagraph. Superblue shall have fourteen (14) calendar days to respond, which time may be extended by City upon written request. If Superblue fails to respond within the specified time, the City's original notice shall be deemed final. If Superblue responds to City's notice, City will furnish Superblue a final decision in writing within five (5) days of completing any investigation.

26. Workforce. If Superblue is required to pay prevailing wages for the work performed pursuant to this Contract, Superblue agrees to comply with all requirements of City's Construction Employment Program as enacted in City's Code, Sections 3-501 through 3-527 and as hereinafter amended. Superblue shall meet or exceed the construction employment goals unless the same shall have been waived in the manner provided by law. Superblue's compliance with this provision is a material part of this Contract.

27. Professional services certification. Code Section 2-83, prohibiting contracts with certain attorneys, architects, engineers and other professionals thereunder, shall apply to this contract. Superblue certifies that it is not an architect, engineer, or other professional, exclusive of medical doctors or appraisers, who at the time of the issuance of this contract, serves as an expert witness for any litigation against City, and that it will not serve as an expert witness for any litigation against City during the term of this contract.

28. Design Standards and Endorsement.

- A. Except as otherwise directed in writing by City, Superblue will ensure Artist shall use all applicable design standards required by federal, state, local laws or codes or such standards recognized and used in the industry in the performance of services under this contract.
- B. In the development of any design under this contract, Superblue will ensure Artist shall comply with all provisions of the Americans with Disabilities Act, Public Law 101336 as well as 28 CFR parts 35 and 36 and 29 CFR part 1630, as applicable and as amended from time to time, and shall comply with the provisions of the Missouri Domestic Product Procurement Act, Section 34.350 RSMo. Superblue and/or Artist shall notify and explain to City any applicable exceptions under these acts.

- C. Superblue will ensure Artist shall endorse all plans and specifications, or estimates, and engineering data furnished under this contract if prepared by Superblue or Artist, respectively. All subcontractors as appropriate shall endorse their respective plans and specifications, or estimates, and engineering data furnished for the project.
 - D. Superblue will ensure Artist shall monitor quality assurance for their design services and shall revise the design and plans at their own expense in case of error or oversight in design by Artist.
- 29. Governing Law.** This contract shall be construed and governed in accordance with the laws of the State of Missouri without giving effect to Missouri's choice of law provisions. City, Superblue, and Artist: (1) submit to the jurisdiction of the state and federal courts located in Jackson County, Missouri; and no other (2) waive any and all objections to jurisdiction and venue; and (3) will not raise forum non conveniens as an objection to the location of any litigation.
- 30. Compliance with Laws.** Superblue and Artist shall comply with all federal, state and local laws, ordinances and regulations applicable to the work and this contract.
- 31. Termination for Convenience.**
- A. City may, at any time upon ten (10) days' notice to Superblue specifying the effective date of termination, terminate this contract, in whole or in part. If this contract is terminated by City, City shall be liable only for payment for services rendered before the effective date of termination. Superblue shall prepare an accounting of the services performed and money spent by Superblue up to the effective date of termination and shall return to City any remaining sums within thirty (30) days of such date (a) if Superblue holds money that was paid by City and has not been spent Superblue shall return to City any remaining sums within thirty (30) days of such date; and (b) if Superblue owes funds to any subcontractors, suppliers or third parties and has not received funds from City to make such payments, City shall pay to Superblue any funds owed to Superblue prior to the effective date of termination to enable Superblue to pay any subcontractors, suppliers or third parties to which it has an obligation to pay in connection with services or work for the Artwork that have been carried out and/or performed prior and up to the effective date of termination.
 - B. If this contract is terminated prior to Superblue's completion of services, all work or materials prepared or obtained by Superblue pursuant to this contract shall become City's property.
 - C. If this contract is terminated prior to Superblue's completion of the services to be performed hereunder, Superblue shall return to City any sums paid in advance by City for services that would otherwise have had to be rendered between the effective date of termination and the original ending date of the contract. Superblue shall prepare an accounting of the services performed and money spent by Superblue up to the effective date of termination and shall return to City any remaining sums within thirty (30) days of such date.
- 32. Waiver.** Waiver by City of any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or of any term, covenant or condition. No term, covenant, or condition of this contract can be waived except by written consent of City, and forbearance or indulgence by City in any regard whatsoever shall not constitute a waiver of same to be performed by Superblue or Artist to which the same may apply and, until complete performance by Superblue or Artist of the term, covenant or condition, City shall be entitled to invoke any remedy available to it under this contract or by law despite any such forbearance or indulgence. Waiver by Superblue of any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or of any term, covenant or condition. No term, covenant, or condition of this contract can be waived except by written consent of Superblue, and forbearance or indulgence by Superblue in any regard whatsoever shall not constitute a waiver of same to

be performed by City to which the same may apply and, until complete performance by City of the term, covenant of condition, Superblue shall be entitled to invoke any remedy available to it under this contract or by law despite any such forbearance or indulgence.

33. Acceptance. No payment made under this contract shall be proof of satisfactory performance of the contract, either wholly or in part, and no payment shall be construed as acceptance of deficient or unsatisfactory work.

34. Headings; Construction of Contract. The headings of each section of this contract are for reference only. Unless the context of this contract clearly requires otherwise, all terms and words used herein, regardless of the number and gender in which used, shall be construed to include any other number, singular or plural, or any other gender, masculine, feminine or neuter, the same as if such words had been fully and properly written in that number or gender.

35. Severability of Provisions. Except as specifically provided in this contract, all of the provisions of this contract shall be severable. In the event that any provision of this contract is found by a court of competent jurisdiction to be unconstitutional or unlawful, the remaining provisions of this contract shall be valid unless the court finds that the valid provisions of this contract are so essentially and inseparably connected with and so dependent upon the invalid provisions(s) that it cannot be presumed that the parties to this contract could have included the valid provisions without the invalid provision(s); or unless the court finds that the valid provisions, standing alone, are incapable of being performed in accordance with the intentions of the parties.

36. Records.

A. For purposes of this section:

1. "City" shall mean the City Auditor, the City's Internal Auditor, the City's Director of Human Relations, the City Manager, the City department administering this contract and their delegates and agents.
2. "Record" shall mean any document, book, paper, photograph, map, sound recordings or other material, regardless of physical form or characteristics, made or received in connection with this contract and all contract amendments and renewals.

B. Superblue and Artist shall maintain and retain all Records for a term of five (5) years that shall begin after the expiration or termination of this contract and all contract amendments. City shall have a right to examine or audit all Records and Superblue and Artist shall provide access to City of all Records upon ten (10) days written notice from City.

37. Affirmative Action.

A. If this Contract exceeds \$300,000.00 and Superblue employs fifty (50) or more people, Superblue shall comply with City's Affirmative Action requirements in accordance with the provisions of Chapter 3 of City's Code, the rules and regulations relating to those sections, and any additions or amendments thereto; in executing any Contract subject to said provisions, Superblue warrants that it has an affirmative action program in place and will maintain the affirmation action program in place for the duration of the Contract. Superblue shall not discriminate against any employee or applicant for employment because of race, color, sex, religion, national origin or ancestry, disability, sexual orientation, gender identity or age in a manner prohibited by Chapter 38 of City's Code. Superblue shall:

1. Submit, in print or electronic format, a copy of Superblue's current certificate of compliance to the City's Human Relations Department (HRD) prior to receiving the first payment under the Contract,

unless a copy has already been submitted to HRD at any point within the previous two calendar years. If, and only if, Superblue does not possess a current certification of compliance, Superblue shall submit, in print or electronic format, a copy of its affirmative action program to HRD prior to receiving the first payment under the Contract, unless a copy has already been submitted to HRD at any point within the previous two calendar years.

2. Require any Subcontractor awarded a subcontract exceeding \$300,000.00 to affirm that Subcontractor has an affirmative action program in place and will maintain the affirmative action program in place for the duration of the subcontract.
 3. Obtain from any Subcontractor awarded a subcontract exceeding \$300,000.00 a copy of the Subcontractor's current certificate of compliance and tender a copy of the same, in print or electronic format, to HRD within thirty (30) days from the date the subcontract is executed. If, and only if, Subcontractor does not possess a current certificate of compliance, Superblue shall obtain a copy of the Subcontractor's affirmative action program and tender a copy of the same, in print or electronic format, to HRD within thirty (30) days from the date the subcontract is executed.
- B. City has the right to take action as directed by City's Human Relations Department to enforce this provision. If Superblue fails, refuses or neglects to comply with the provisions of Chapter 38 of City's Code, then such failure shall be deemed a total breach of this Contract and this Contract may be terminated, canceled or suspended, in whole or in part, and Superblue may be declared ineligible for any further contracts funded by City for a period of one (1) year. This is a material term of this Contract.
- 38. Tax Compliance.** Superblue shall provide proof of compliance with City's tax ordinances administered by the City's commissioner of revenue as a precondition to City making the first payment under this contract or any contract when the total contract amount exceeds \$160,000.00. If Superblue performs work on a contract that is for a term longer than one year, the Superblue also shall submit to City proof of compliance with City's tax ordinances administered by City's commissioner of revenue as a condition precedent to City making final payment under the contract.
- 39. Assignability or Subcontracting.** Superblue shall not subcontract, assign or transfer any part or all of Superblue's obligations or interests without City's prior approval other than in connection with and to subcontracting to the Artist as expressly set forth in this contract. If Superblue shall subcontract, assign, or transfer any part of Superblue's interests or obligations under this contract without the prior approval of City, it shall constitute a material breach of this contract.
- 40. Conflicts of Interest.** Superblue certifies that no officer or employee of City has, or will have, a direct or indirect financial or personal interest in this contract, and that no officer or employee of City, or member of such officer's or employee's immediate family, either has negotiated, or has or will have an arrangement, concerning employment to perform services on behalf of Artist in this contract.
- 41. Buy American Preference.** It is the policy of City that any manufactured goods or commodities used or supplied in the performance of any City contract or any subcontract hereto shall be manufactured or produced in the United States whenever possible.
- 42. Independent Contractor.** Superblue and Artist are independent contractors and are not City's agent. Superblue has no authority to take any action or execute any documents on behalf of City.
- 43. Employee Eligibility Verification.** If this contract exceeds five thousand dollars (\$5,000.00), Superblue shall execute and submit an affidavit, in a form prescribed by City, affirming that Superblue does not knowingly employ any person in connection with the contracted services who does not have the legal right or authorization under federal law to work in the United States as defined in 8 U.S. C. § 1324a(h)(3). Superblue shall attach to the affidavit documentation sufficient to establish Superblue's enrollment and participation in an electronic verification of work program operated by the United States Department of Homeland Security

(E-Verify) or an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, under the Immigration Reform and Control Act of 1986. Superblue may obtain additional information about E-Verify and enroll at <https://www.e-verify.gov/>. For those Superblues enrolled in E-Verify, the first and last pages of the E-Verify Memorandum of Understanding that Superblue will obtain upon successfully enrolling in the program shall constitute sufficient documentation for purposes of complying with this Section. Superblue shall submit affidavit and attachments to City prior to execution of the contract, or at any point during the term of the contract if requested by City.

44. Missouri Sales Tax Exemption. Pursuant to Section 144.062, RSMo, City is a Missouri exempt entity and tangible personal property to be incorporated or consumed in the construction of this Project may be purchased without sales tax. City shall furnish Superblue a Missouri Project Exemption Certificate for Sales Tax at the time of issuance of the Notice to Proceed.

45. Contract Authorization. Any contract for an amount over \$400,000.00 requires City Council approval.

46. Effectiveness; Date. This contract will become effective when City's Director of Finance has signed it. The date this contract is signed by City's Director of Finance will be deemed the date of this contract.

47. Annual Appropriation of Funds.

A. Multi-year term supply and service contracts and leases and the exercise of options to renew term contracts are subject to annual appropriation of funds by the City Council. Payments made under term contracts and leases are considered items of current expense. Purchase orders are funded when issued, therefore are current expense items and are not subject to any subsequent appropriation of funds.

B. In the event sufficient funds are not appropriated for the payment of lease payments or anticipated term contract payments required to be paid in the next occurring lease or contract term and if no funds are legally available from other sources, the lease or contract may be terminated at the end of the original term or renewal term and the CITY shall not be obligated to make further payments beyond the then current original or renewal term. The CITY will provide notice of its inability to continue the lease or contract at such time as the Manager of Procurement Services is aware of the non-appropriation of funds; however, failure to notify does not renew the term of lease or contract. If a lease is cancelled, the events of default will occur as described in the lease and/or the section titled TERMINATION FOR DEFAULT. The CITY has no monetary obligations in event of termination or reduction of a term contract since such contracts represent estimated quantities and are not funded as a contract, but only to the extent of purchase orders issued.

THIS AGREEMENT CONTAINS INDEMNIFICATION PROVISIONS

Rest of Page Intentionally Left Blank, Signatures on Following Page

SUPERBLUE

I hereby certify that I have the authority to execute

this document on behalf of SUPERBLUE

By: _____

Title: _____

Date: _____

APPROVED AS TO FORM

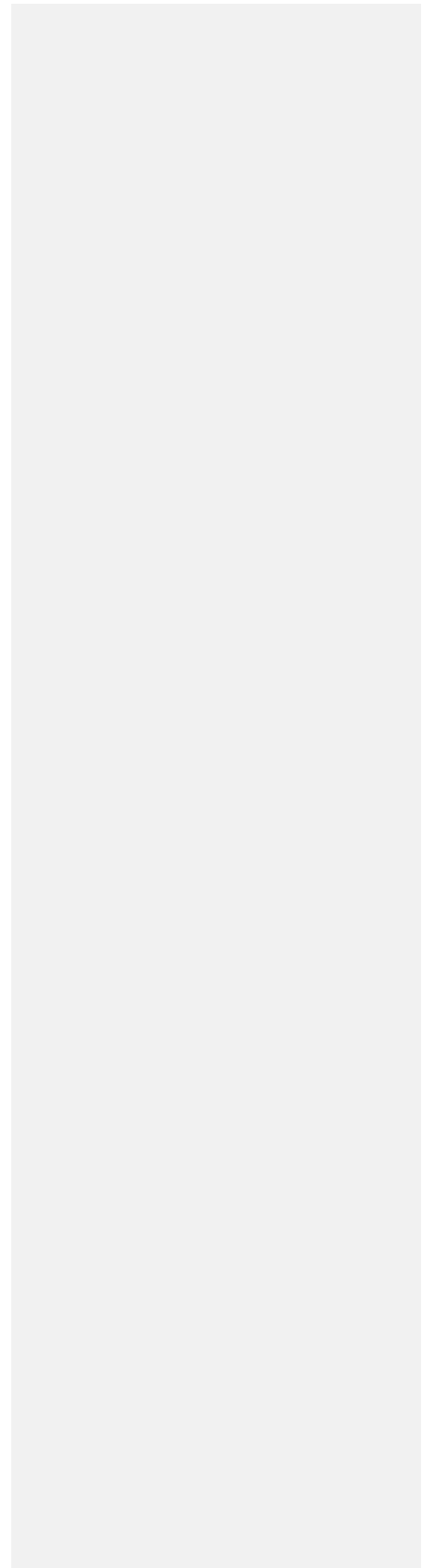
Assistant City Attorney (Date)

KANSAS CITY, MISSOURI

By: _____

Title: _____

Date: _____



ATTACHMENT A- SCOPE OF SERVICES

KCI Art Project- Development of "Fountain of Resonance"

A. Project Understanding

Artist has been selected by the General Services Department of the City of Kansas City and the Kansas City Aviation Department (KCAD) to develop the work of art "Fountain of Resonance" (the "Artwork") for the Node A area in the KCI New Single Terminal in accordance with the Scope of the Artwork set out in Paragraph A.2 below, such scope derived from and reflecting Artist's proposal, while allowing for design refinements due to feedback from the KCI New Single Terminal project team and authorities having jurisdiction including, but not limited to, engineering needs and compliance with building and safety codes.

1. City will provide technical support services, as reasonably requested by the Artist, in order to permit the Artist to prepare and submit the Working Drawings.
 - a. The City shall use its best efforts to facilitate the work of the Artist and to assist the Artist, if necessary, in connection with the Artist's services.
2. Scope of Artwork (subject to any mutually agreed upon design changes in accordance with the terms of this Contract):
 - a. Physical kinetic installation/sculpture to be installed at Node A of KCI Terminal, of overall maximum dimension 34ft in height x 16ft x 16ft.
 - b. The main kinetic function of the sculpture will be actuated by motor(s)
 - c. The Artwork along its vertical axis will be comprised of stacked arms/wings of length of a maximum of 14.4 ft that have the ability to partially rotate about the vertical axis.
 - d. The materials under consideration for the arms/wings are Aluminium, Carbon Fibre, Fiberglass, Stainless steel and Wood. The material will be selected based on best performance in both kinetic and aesthetic criteria and it will determine the number and dimension of the arms.
 - e. An auxiliary lever mechanism will be included that allows a visitor in the space to interact with the movement of the sculpture. The Artist reserves the right to remove this element from the final design if it is considered impractical for technical or safety reasons.
 - f. The Artist confirms to provide along with the sculpture the base, ceiling attachment, safety barrier.
 - g. The Artists confirms to provide all documentation relevant to the Artwork as outlined in Attachment B - Scope of services.
 - h. Artist confirms that the Artwork will comply with all technical requirements that have been communicated and confirmed in writing by the City prior to execution of this contract.

B. Scope of Services

1. Preliminary Phase, Design, Prototyping, Engineering, and Coordination
 - a. Artist will work with the KCI New Single Terminal Design Team to determine the specific location of the Artwork and prepare and submit detailed working drawings and plans and specifications, including but not limited to foundation plans, connection details, special installation details, lighting plans, calculations of foundation design, calculations of structural design, specifications which clearly outline any special materials or installation methods required (collectively "Working

Drawings') for fabrication and installation of the Artwork for approval by the KCMO Municipal Art Commission.

- b. Artist shall provide detailed Working Drawings and Plans and Specifications to KCAD Including but not limited to:
 - (1) Sprinkler coverage analysis may be required and may need to be provided by Artist.
 - (2) Structural loading and construction documents need to be submitted for review.
 - (3) Artist should submit information on transparency levels for lighting evaluation.
- c. Artist shall attend meetings with City and design team for Art approvals and coordination.
- d. Artist will not proceed with the Artwork until the City has approved the Site and Plans and Specifications and issued written authorization to proceed.
- e. Artwork will be completed as set out in **Attachment B – Schedule of Performance**.

2. Changes to the Schedule

- a. Superblue and the Artist may only make modifications to the approved Schedule upon written request to, and Approval of, the City. The City may request from the Artist any information or documentation it deems necessary in order to evaluate any request to amend the approved Schedule.
- b. The City may, on its own initiative and at any time, direct any changes to the approved Schedule it deems necessary or appropriate, provided that any such changes to the approved Schedule are mutually agreed between the Parties.

3. Fabrication

- a. After the City approves of the Site and Plans and Specifications submitted by the Artist, the City will issue Notice to proceed with fabrication to Superblue, which will advise the Superblue and Artist of any required modifications to the Schedule.
- b. After the City provides Notice to proceed, Superblue shall begin fabrication of the Artwork in accordance with the Schedule of Performance.
- c. The City shall have the right, on Notice to Superblue and the Artist, to review the Artwork at reasonable times and locations throughout the fabrication process. Superblue shall submit to the City any progress reports requested by the City or identified in the Schedule of Performance.
- d. Upon completing the fabrication of the Artwork and prior to beginning any transportation or installation, Superblue shall:
 - (1) Give the City Notice that all pre-installation fabrication is complete and that Superblue is ready to begin installation of the Artwork at the Site.
 - (2) Conduct any further Site inspections necessary to verify that installation of the Artwork can proceed according to the final Site and Plans and Specifications. Superblue shall immediately give Notice to the City of any changes to the Site observed since the inspection conducted pursuant to Section B 4.a. of Attachment A, and the Parties will resolve any such changes via the change procedures set out in Section B(7) of Attachment A prior to installation.

(3) At the City's request, attend one or more pre-installation meetings as necessary to allow Superblue and Artist to adequately plan for delivery and installation of the Artwork.

4. Site Inspections

- a. Superblue and Artist shall inspect the Site at least once and shall continue to conduct inspections, as needed, to ensure all information is known by Superblue and Artist about the Site that impacts or could affect the installation of the Artwork. If Superblue or Artist believes any differences, discrepancies, errors, omissions, or inconsistencies exist between Superblue's or Artist's inspections and the information provided by the City or the Project design professionals, Superblue or Artist shall immediately give Notice to the City and cease the installation of the Artwork until the Parties mutually agree on how to address the Site conditions and the City gives the Superblue Notice to proceed.

5. Shipping and Delivery

- a. Superblue shall notify the City for delivery and final preparation of the Site for installation of the Artwork.
- b. Superblue shall oversee the transportation of all components of the Artwork to KCI New Single Terminal.

6. Installation

- a. Superblue, Artist, and their respective teams shall comply with all safety protocols and security access requirements. Completing on site Safety Training will be required.
- b. Artist is responsible for providing hardware, engineering and installation of foundation and any ceiling attachment that will support the Artwork.
- c. Installation and maintenance details to be submitted to The City by Artist.
- d. Superblue shall install the Artwork. Superblue will be responsible for providing any installation equipment (i.e. lifts, scaffolding, etc.) required to install the art and supervise any installation assistance.
- e. Superblue and Artist shall advise, consult, and inspect the completed installation of the Artwork at the Site to ensure that the installation is in conformance with the proposal.
- f. The Artist will provide information for a plaque that the City will have fabricated and installed on Site as specified by the KCMO One Percent for Art program.
- g. Superblue is responsible for contracting with a photographer to document the Artwork and will provide hi-resolution, print quality digital photographs to the Public Art Administrator for its use in accordance with the Artist's copyright in Section 10 of this contract.
- h. After the City has received Superblue's Notice that pre-installation fabrication is complete and any Site issues are resolved, the City will give Notice to Superblue authorizing installation of the Artwork at the Site. Superblue shall only start installation after receiving this Notice. At the City's direction, Superblue and Artist may be required to successfully complete any Site-specific, Project-specific, or general safety training prior to entering the Site.
- i. If the City fails to provide notice to proceed with installation within the timeframe specified in the Schedule, despite the fact that the Superblue is ready and able to begin installation, Superblue shall store the Artwork at Superblue's facility at no cost to the City. If Superblue is unable to do so, and provides a written explanation to the City, the City will either: (1) make arrangements for storage of

the Artwork at a City-controlled or commercial storage facility; or (2) direct Superblue to obtain three quotes for storage at a commercial storage facility, approve one of the quotes, and agree to reimburse Superblue for any direct, out-of-pocket, reasonable transportation and storage costs incurred by Superblue. Any reimbursements to which the City agrees will be reduced to writing in a Contract amendment.

- j. Superblue shall remain responsible for all expenses, labor, and equipment necessary to prepare the Site for installation of the Artwork, as applicable.
- k. Superblue shall take all necessary precautions to protect and preserve the integrity and finish of adjacent surfaces and landscaping features while installing the Artwork. If requested by the City, Superblue shall return adjacent surfaces or landscape features impacted by the installation to the condition that existed prior to installation of the Artwork.
- l. At all times during the installation of the Artwork, Superblue shall ensure that Artist shall comply with all posted safety information signs at the Project, and shall comply with all requirements for use of personal protective equipment. Superblue and Artist shall comply with any directive necessary for the preservation of life, health, or property that is given by the City, the City's project managers, the Project's design professionals, or any law enforcement or administrative officer with jurisdiction over the Project location.

7. Changes to Artwork

- a. At any time prior to closeout as set out in Section 9 of Attachment A, the Artist may make changes to the Final Design or the Artwork, whether for aesthetic, safety, construction, or other reasons, and the City may likewise direct the Artist to make changes to the Final Design or Artwork for any nonaesthetic reason, provided however that (i) if the Artist determines that any such directed changes are not technically and/or financially feasible (to the extent the City is not willing to amend the Contract Price in accordance with Paragraph A(7)(c) below); and (ii) if the Parties cannot agree after good faith discussions to a technically and/or financially feasible alternative, Superblue will not be obligated to ensure that Artist make any such directed changes and Artist shall not be obligated to execute any such changes.
- b. Such changes to the Final Design or Artwork shall be made as follows:
 - (1) Minor changes to the Final Design or Artwork initiated by the Artist require Notice to, but not Approval from, the City. Minor changes are changes that do not impact the overall scope, layout, color, shape, size, material, texture, or structural elements of the Artwork. The City has the sole discretion to determine what constitutes a minor or major change. The Artist may consult with the City Public Art Administrator (as designated by the City and notified to Superblue), as needed, to ensure changes are properly classified as minor and major. The City may also reject, for non-aesthetic reasons, a minor change within 20 days of receipt of the Notice from the Artist of the change.
 - (2) Major changes to the Final Design or Artwork initiated by the Artist require Approval by the City. Major changes include, but are not limited to, changes to the overall scope, layout, imagery, color, shape, size, material, texture, or structural elements of the Artwork. The City may reject any proposed major change for any reason. If the City rejects a major change, the Artist shall either continue with the Final Design as approved by the City, or shall revise and resubmit the proposed major change within 10 days of the City's original rejection. If the City rejects any re-submitted change, the City may terminate this Contract for convenience pursuant to Section

5.5, if the Artist will not revert to the Final Design without the proposed changes. Approval of a major change may be subject to all City processes.

- c. All changes initiated and approved under this Section shall be documented in a Contract amendment, executed by the Parties. The City may, in its sole discretion, determine that any change, whether initiated by the City, Superblue, or the Artist, warrants an adjustment of the Contract Price or the Schedule, or both. Any adjustment to the Contract Price shall be included in a corresponding Contract amendment. Any adjustment to the Schedule must be documented and provided to all Parties. If the City does not change the Contract Price, the Superblue and Artist shall bear the sole risk and cost of any changes to the Final Design or Artwork .

8. Completion.

- a. Superblue shall give Notice to the City when Superblue believes the installation of the Artwork is complete. Superblue and Artist shall attend any inspection of the Artwork by the City.
- b. If the City, in consultation with the Project's general Artist and Aviation Departments' project manager (as designated by the City and notified to Superblue),, determines that the Artwork is unsafe, incomplete, or materially inconsistent with the Final Design, the City may take any of the following actions:
 - (1) Accept the Artwork as constructed and installed, reserving its right to modify the Contract Price to address the unsafe, incomplete, or materially inconsistent conditions;
 - (2) Direct the Superblue to correct any unsafe, incomplete, or materially inconsistent condition in the Artwork, at the Superblue's cost, reserving the City's right to modify the Contract Price in order to account for any delays caused by the deficiencies. Superblue shall bear the sole risk that the time required to comply with the City's directions will exceed the time allotted under the Schedule; or
 - (3) Reject the Artwork and terminate this Contract for cause in the manner set out in Section 5.4, reserving any and all other remedies available to the City under this Contract or applicable law. If the City terminates this Contract for cause under this Section, the opportunity to cure provided in that Section will not apply.
- c. Superblue shall be responsible for any and all clean-up of the Site, including the proper recycling or disposal of any unused, excess, or leftover materials not incorporated into the Artwork. If Superblue fails to do this and the City incurs additional costs to clean up the Site, the City shall be entitled to deduct all such costs from the final milestone payment.
- d. If the City accepts the Artwork, either with or without modifications to the Contract Price, the City will provide Notice of Completion in a form provided by the City. The Notice of Completion does not waive any rights or remedies afforded the City in this Contract or by law, nor does it waive any deficiencies in the Artwork.
- e. Superblue and Artist will guarantee to make good, at its own expense and in accordance with the instructions of City, any and all faulty or defective material or workmanship which may appear in the Artist's Artwork for a period of one (1) year from the date of final acceptance.

9. Closeout

- a. Within 30 days after installation of the Artwork is complete and the City has accepted the Artwork, the Artist shall submit to the City the following:

- (1) A full set of as-builts (updated plans, specifications, and documentation) reflecting the actual installation of the Artwork, and noting any deviations from the Final Design.
 - (2) A Final Maintenance Plan and or Workman's Manual.
 - (3) A Plaque Information Form, in a form provided by the City.
- b. Within 30 days after Superblue and the Artist complete the services set out in this Article, the City will evaluate the Superblue's and Artist's compliance with the terms of this Contract.

ATTACHMENT B- SCHEDULE OF PERFORMANCE

KCI Art Project- Development of "Fountain of Resonance"

Schedule of Performance. The services required of the Artist as set forth in this contract will be completed in accordance with the schedule for completion of the Artwork as outlined by the project schedule, provided by the design/build team and approved in writing by City, but the time limits may be extended or modified by written agreement between the Artist and City.

A. Design and Coordination

1. Artist shall complete City paperwork, licenses, insurances and required documents as outlined in the Contract. (30 days)
2. Artist shall complete the Artwork per the Production Schedule in Section E below.
3. Artist shall provide detailed Working Drawings and Plans and Specifications to City. (to begin in 60 days)
4. Attend meetings with City and design team for Art approvals and coordination. Artist may attend meetings remotely via video calls. (monthly)

B. Fabrication

1. Fabricate the Art in accordance with the proposal, Scope of Services and Production Schedule. See Section E below.
2. Attend monthly check-in meetings with City and design team for fabrication milestones.

C. Shipping and Delivery

1. Artist shall notify City in writing when the Artwork is complete and ready to deliver and install.

D. Installation: See Section E.8 below.

1. Artist &/or Artists team shall comply with all safety protocols and security access requirements and attend on-site safety training as required prior to installation.
2. Installation and maintenance details to be submitted to The City by Artist.
3. City agrees to grant reasonable extensions of time to the Artist in the event that there is a delay caused by conditions beyond the Artist's or Superblue's control or Acts of God render timely performance of Superblue's or the Artist's services impossible. Failure to fulfill contractual obligations due to conditions beyond Superblue's or the Artist's reasonable control will not be considered a breach of contract; but the obligations will be suspended only for the duration of the conditions.
4. City will notify Artist of final acceptance.
5. Final Close-Out and Final Payment
 - a. Within thirty (30) days of final acceptance of the Artwork, Artist shall provide City with a description of the methods of cleaning, preserving and maintaining the Artwork.
 - b. Upon acceptance of preservation submittal by City, Artist shall submit final payment application.
6. Inauguration/Dedication
 - a. The Artist will be available at a mutually agreed to time for the inauguration or dedication ceremonies of the Artwork, if any.

E. Production Schedule

1. August 2021 Agreement execution: contract signed. See Method of Payment 5(A)(1).
2. August 2021 through February 2023: Artist will attend monthly (virtual) check-in meetings with design team, stakeholders and KCMO City Administrator to track project progress.
3. 60 days: Begin design approval to proceed with prototyping and engineering of Artwork. See Method of Payment 5(A)(2).
4. Fall 2021: KCI Site-visit, Artist or Artist's representative meet with design team (*additional Site visits to be scheduled as needed*)
5. by October 31, 2021; hanging connection components fabricated & installed prior to ceiling close in, Node A area.
 - a. Completed Sprinkler Rough-In
 - b. July 2021: Project Electrical Rough-In ([completed](#))
 - c. November 2021: Ceiling work close in final
 - d. December 2021: Flooring installation completed
6. August 2022: Prototyping complete. Final fabrication, manufacturing and production assembly process to begin. See Method of Payment 5(A)(3).
7. December 2022: Artwork fabrication complete. Packing and shipping begins.

8. Delivery of Artwork to Site by January-February 2023
9. Artist on Site January -February 2023 for Artwork installation with Installation Team. See Method of Payment 5(A)(4).
10. February 15, 2023: Last day of install
11. Final walk through with City of Kansas City, Mo. representatives for final approval. See Method of Payment 5(A)(5).
- [12.](#) March 3 2023: New Terminal Opening