

Contract to Commission Artwork
Between
City of Norman, OK,
Kirkpatrick Forest Curtis PC
And
Paul Cocksedge Studio Ltd

THIS CONTRACT, made this _____ day of _____, by and between the City of Norman (hereinafter referred to as the “Owner”), Kirkpatrick Forest Curtis PC (hereinafter referred to as the “Engineer”) and Paul Cocksedge Studio Ltd, London, United Kingdom (hereinafter referred to as the “Artist”) for a work of art (hereinafter referred to as the “Work”) to be placed in the **Plateau** Plaza on the **southwest** side of the Central Norman Library in Norman, Oklahoma (“Project”).

WHEREAS, the City Council of the City of Norman believes the beautification of the Central Norman Library Project will further enhance the quality of life in Norman, Oklahoma;

WHEREAS, all parties wish to promote and maintain the integrity and clarity of the Artist’s ideas and statements as represented by the Work;

WHEREAS, the **Selection Panel Advisory Board**, the Public Arts Board, and the Norman Arts Council Board recommend the retention of the Artist for this Work;

WHEREAS, the parties wish to have the creation of the Work governed by a single contract between two prime contractors, Artist and Engineer, with a single set of obligations, covenants, and conditions when applicable to each provider as assigned herein.

WHEREAS, the Artist is to create the artistic concept and expression of the Work and to appoint a third party contractor (“Contractor”) to manufacture that concept and install it;

WHEREAS, the Engineer is to design the structural requirements of the Work and prepare drawings and written specifications to enable its manufacture and installation;

THEREFORE, in consideration of the foregoing premises and the mutual covenants hereinafter set forth and other valuable considerations, the parties hereto agree as follows:

I. Relationship and Communication

- A. Artist and Engineer are independent prime contractors each with a distinct scope of services and obligations to the Owner. This contract shall not create a partnership or joint venture between Artist and Engineer in any form. Artist and Engineer shall not have joint and several liability for the Project. Each prime contractor shall be obligated to the Owner for its separate Scope of

Services, as specified in Article II, and for coordination of their Services with one another.

- B. Artist and Engineer shall each coordinate their Services with one another to integrate the components of design, manufacture and installation of the Work.
- C. Artist and Engineer shall communicate and coordinate directly with one another and need not communicate separately with the Owner; however, the Owner shall be contemporaneously copied with communications between Artist and Engineer. In the event the Owner communicates with either Artist or Engineer, both shall be contemporaneously copied.
- D. Each party shall identify a representative authorized to act on behalf of the party with respect to the Project and shall provide contact information:
 - a. City of Norman
Terry Floyd, Development Coordinator
201 W. Gray
Norman, Oklahoma 73069
405-366-5376
Terry.Floyd@NormanOK.gov
 - b. Paul Cocksedge Studio LTD
Joana Pinho
2A Brenthouse Road, Solomon's Yard
London
E9 6QG M
011 44 779 608 1365
joana@paulcocksedgestudio.com
 - c. Kirkpatrick Forest Curtis PC
Alan Kirkpatrick
525 Central Park Drive, Suite 202
Oklahoma City, OK 73105
405-528-4596
akirkpatrick@kfcengr.com

II. The Project: The Scope of Services

- A. The Artist will be responsible for the following (the "Artist's Portion of the Project"):
 - i. Creation of the artistic concept and expression of the Work represented, as appropriate, by drawings, models and written specifications;
 - ii. Appointing and liaising with a third party Contractor ("Contractor") to manufacture and install the Work;

- iii. Liaising and coordinating with the Engineer and complying with engineering requirements for the design and installation of the Work (including the structural mast, connections to the existing building, cables, and site foundations) and ensuring the Engineers specifications are provided to the Contractor.
 - iv. Directing/Overseeing the Work installation by the Contractor.
- B. The Engineer will be responsible for the following (the “Engineer’s Portion of the Project”):
- i. Design of structural components of the Work including the structural mast, connections to the existing building, cables and site foundations.
 - ii. Preparation of drawings for the structural attachments and reinforcement for support and anchorage of the Work
 - iii. Two visits to the project site to become generally familiar with the progress of the Work and report to the Artist.
 - iv. Coordination with Artist and Contractor during the manufacturing and installation of the Work.
 - v. Assistance with certification of substantial completion in accordance with Article III H of the Project and general compliance with the Engineer’s drawings.
 - vi. Engineer shall not be responsible for barriers, safeguards or procedures to protect the Owner and public from mischief, nuisance or misuse of the Work
 - vii. Engineer shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, for failure of the Contractor to comply with the drawings and specifications, or for safety or security precautions or programs in connection with construction or erection of the Work.
- C. The Contractor shall be responsible for barriers, safeguards or procedures to protect the public from mischief, nuisance or misuse of the Work during construction.
- D. Artist agrees that said Work will be consistent with and substantially similar to the maquette or model presented to the **Selection Panel Advisory** Board, the Public Arts Board, and the Norman Arts Council Board, except for any Changes described and allowed in Article III B
- E. The Owner agrees to purchase the Work, under the terms and conditions of this contract upon final approval and acceptance of the Work by the Owner in accordance with Article III H.
- F. The permanent location for the work shall be in the **Plateau Plaza** on the **southwest** side of the Central Norman Library in Norman, Oklahoma.

- G. The Artist and Engineer shall each perform the services and furnish all supplies, materials and equipment necessary for the design, manufacture, delivery and installation of their respective Portions of the Work as set forth above, except for items identified in Article II C above.
- H. The Owner shall make known its specifications to the Artist and the Engineer prior to the rendering of their services.
- I. The Owner shall review and approve the arrangement and placement of the final Work and notify the Artist within a reasonable time prior to delivery of the Work
- J. The Artist and Engineer shall, with respect to their individual Portions of the Work, be responsible for coordinating the delivery, setting, secure installation **and lighting** of the Work at the prepared site in Norman, Oklahoma. The Engineer shall be responsible for ensuring the base design is appropriately engineered to support the completed Work in a safe and secure manner.
- K. The Artist shall provide the Owner with documentation confirming approval by the Engineer registered in the State of Oklahoma for certification of the Works both complying with the engineering requirements at manufacture stage and on final installation. A building permit and an electrical permit from the City of Norman will be obtained by the Artist or by a contractor on his behalf, and the Owner will assist in the permitting process as needed.

III. Execution of the Work

- A. The Artist shall arrange for the fabrication of the Work in substantial conformity with the design as recommended by the Norman Public Arts Board and the Norman Arts Council Board and approved by the Owner.
- B. Prior to implementation of any significant changes in the Work (“Change”), the Artist shall present to the Owner in writing, for further review and approval, a thorough description of such proposed changes. A Change is any change affecting the scope, intent, design, color, size, material or location of the Work not permitted by, or not in substantial conformity with, the approved design. Owner must approve the proposed Change prior to continued work by the Artist and such approval shall not be unreasonably withheld. The value of all Changes required shall be such amount as is agreed by the Artist and the Owner prior to continued work by the Artist and the total Fee for the services shall be adjusted accordingly. The Owner shall provide additional compensation for any alterations or revisions in the final Work which substantially depart from

the approved preliminary models and specifications and which cause the Artist an unusual and unanticipated expense.

- C. In performance of the Work described herein, the Artist and Engineer shall comply with all applicable State and local laws, rules and regulations.
- D. The Artist shall complete the Work and the installation thereof by no later than **June 14, 2019**, except that any Change in Article III B may require the completion date to be extended whereupon the Artist and the Owner shall agree prior to continued work by the Artist of the length of such extension
- E. The Artist shall notify the Owner in writing when fabrication of the Work is completed and the Artist is ready to deliver the Work and install it at the site.
- F. The Owner shall notify the Artist of construction delays resulting in delays in site preparation prior to the scheduled delivery date or installation date. A new date shall be agreed upon by the Owner and Artist for completion, delivery and installation of the Work.
- G. Within forty-five (45) days after installation of the Work, completion of landscaping, and prior to the final stage payment, the Artist shall furnish the Owner with:
 - a. two high quality CDs with visual images of the completed Work.
 - b. a full written narrative description of the Work.
 - c. written instructions for appropriate maintenance and preservation of the Work.
- H. Final acceptance shall be determined solely by the Owner. A Handover Certificate (Form B, attached) signed by the Owner, Artist and Contractor shall constitute the acknowledgement that the Work has been satisfactorily completed and installed according to the terms of this Agreement.
- I. Ownership of the Work shall pass to the Owner (City of Norman) upon final acceptance.
- J. Artist shall not be responsible for any failure caused by events beyond its reasonable control including force majeure. The Owner shall agree with the Artist to any extension of the completion date and additional fees as a result of such events causing delay to the Artist.

- K. Artist shall not be responsible for any failure of any materials or items not recommended by it but stipulated by the Owner or the Engineer to be used in relation to the Project or the consequences thereof.
- L. Artist shall not be responsible for the default of any third party contractor, subcontractor, manufacturer or supplier.

IV. Warranties and Copyright

- A. The Artist represents and warrants that to the best of the Artist's knowledge and belief at the time of entering into this contract:
 - i. The Work is solely the result of the artistic and creative efforts of the Artist;
 - ii. The Work is original and does not infringe upon any copyright;
 - iii. The Work has not been accepted for sale elsewhere; and
 - iv. The Work is free and clear of any liens from any source whatsoever.
- B. The Artist represents and warrants that:
 - i. The Work, as fabricated and installed by the Contractor, will be free of defects (that are reasonably known at the time on inspection) in material and workmanship, including any defects of "inherent vice" or qualities which cause or accelerate deterioration of the Work; and
 - ii. Reasonable maintenance of the Work will not require procedures substantially in excess of those described in the maintenance recommendations to be submitted by the Artist; and
 - iii. The warranties described in this section shall survive for a period of two (2) years after the final acceptance of the Work as described in Article III H above. The Owner shall give notice to the Artist of any observed breach with reasonable promptness. The Artist shall, at the request of the Owner, and at no cost to the Owner, reasonably and promptly cure the breach of any such warranty within a reasonable time of being given notice by the Owner, which is curable by the Artist and which cure is consistent with professional conservation standards.
 - iv. The Artist's responsibility for any necessary repairs, including the cost of those repairs, shall be limited to defects caused by and arising within its Portion of the Work.
 - v. The Engineer's responsibility for any necessary repairs, including the cost of those repairs, shall be limited to defects caused by and arising within its Portion of the Work.
- C. The Artist retains all rights under the Copyright Act of 1976 under 17 U.S.C. § 101 *et seq.*, Visual Artists Rights Act of 1990 (VARA) 17 USC §106A, and all other rights in and to the Work except ownership and possession, except as such rights may be limited by this Agreement.

The Artist shall not make any additional exact duplicate reproductions of the final Work but may make variations, nor shall the Artist grant permission to others to do so except with the written permission of the Owner. The Artist grants to the Owner and its assigns an irrevocable license to make photographic or graphic reproductions of the Work for non-commercial purposes, including but not limited to reproductions used in advertising, brochures, media publicity and catalogs or other similar publications, if the Artist is duly credited, except where the Work is merely an incidental feature of a photograph, and only upon having the Artist's written consent before any such publications. A plaque provided by the Owner, identifying the title, date, and Artist, shall be placed on or near the Work. The Artist shall have the right to use photographs of the completed Work as an example of his work and in books or brochures he may publish.

V. Fee for Services

- A. The total purchase price of creation, manufacture, preparation, delivery installation, and completion of the final Work shall be \$230,000. This fee does not include the cost to the Owner for preparation of the site for installation nor does it include costs, if any, to modify existing structural members that will be required to support the Work. Site preparation shall include all site work, including but not limited to cleaning, clearing and providing site access, necessary to allow immediate installation of the Work.
- B. The Artist shall submit invoices to the Owner on achieving each stage and the Owner shall pay the Artist according to the schedule set forth below:
- i. \$ 50,000 upon delivery of signed contract by the Client, Owner and Artist;
 - ii. \$ 59,000 at the beginning of the fabrication of the Work;
 - iii. \$ 75,000 upon documented completion of the fabrication of the Work;
 - iv. \$ 30,000 upon final acceptance of the Work by Owner.

Owner, or those authorized by him, will make all payments to the Artist by wire transfer to Artist's designated bank account within thirty (30) days of receipt of an invoice. An invoice will not be required for the first payment set forth herein in subsection i. Subsequent invoices shall include documentation of any payments made by Artist in furtherance of the Work completed or designated herein.

- C. The Engineer shall submit detailed invoices to the Owner every thirty (30) days for work completed as designated herein. The total amount of all payments to the Engineer will not exceed \$16,000.

- D. Artist's lack of performance during any of the four payment stages listed above shall initiate a 30-day period to cure the deficiency and/or lack of performance upon receipt of written notice from the Owner which provides a statement addressing Owner's dissatisfaction with Artist's performance as well as what reasonable steps the Artist may take to cure the inadequate performance. The Artist must cure the deficiency or take reasonable steps towards curing the deficiency within the 30-day period. No additional payments will be made to the Artist during the cure period. Upon failure of the Artist to do so, the Owner may pursue any remedies available to them against the Artist at law and in equity, including, but not limited to, the right to terminate this Agreement and reimbursement from Artist for funds expended, directly arising out of the deficiency, by the Owner thus far including costs to remove the base or foundation.
- E. In the event the Owner fails to make payment to the Artist the Artist may suspend the Work until full payment has been made.
- F. Artist shall provide proof of the Work by submitting at least ten pictures of the Work from various angles which tend to clearly show the Artist's progression with each invoice. Additionally, Artist shall submit Form A along with these documents with each invoice.

VI. Funding

- A. Owner guarantees and warrants that it will produce funds in the amount of \$230,000 as required for completion of the Work. The Owner shall indemnify the Artist for all claims, losses, damages and expenses incurred as a result of pursuing the Owner for non-payment.

VII Alteration and De-accession Right

- A. The Owner agrees that it will not consent to intentional alteration, modification, change, destruction of or damage to the Work by the Owner without consulting with and obtaining the consent of the Artist.
- B. The Artist shall notify the Owner of changes in their address within a reasonable time. The failure to do so, if such failure prevents the Owner from locating the Artist, shall be deemed a waiver by the Artist of the right subsequently to enforce that which requires the express approval of the Artist. The Owner shall make reasonable efforts to locate the Artist when matters arise relating to the Artist's rights.
- C. The Owner may remove the Work from the City of Norman collection if it determines that the Work represents a safety hazard in its present condition or cannot reasonably be restored to its original structural or

aesthetic integrity due to technical difficulties or expense disproportionate to the value of the Work. The Owner shall notify the Artist of such a decision to de-access the Work. Such notification shall be made before the de-accession, whenever possible. The Owner has no responsibility to relocate, restore, or replace the Work if it is misplaced, damaged or stolen.

VIII. Insurance

Each party is responsible for any requirements pertaining to Workers' Compensation insurance and professional liability insurance. The parties further acknowledge that the Contractor shall obtain and maintain insurance satisfactory to covering comprehensive general liability, and all risks of loss, damage to, or theft of the Work while it is being manufactured, transported, or installed and shall name the Owner as an additional insured on such policy. The Artist shall deliver to the Owner a copy of the Contractor's insurance schedule prior to beginning work. In addition, the City of Norman will provide insurance to cover loss, damage to, or theft of the Work once accepted under the City of Norman's current policy covering the construction of the **Central Norman Library**.

IX. Indemnity

Upon execution of this document, but prior to transfer of ownership, Artist agrees to indemnify and hold harmless the Owner, its agents and employees, from and against legal liability for all claims, losses, damages and expenses but only to the extent such claims, losses, damages or expenses are solely caused by Artist, its agents or employees' negligent acts, errors or omissions. Artist shall indemnify, under Article IX, the City of Norman, Oklahoma up to one hundred twenty-five thousand dollars (\$125,000.00) for any single claim for any loss arising out of this Agreement with a maximum of one-million dollars (\$1,000,000) for any number of claims arising out of a single occurrence or accident. .

Engineer agrees to indemnify and hold harmless Owner and employees, from and against legal liability for all claims, losses, damages and expenses but only to the extent such claims, losses, damages or expenses are caused by Engineer, its agents or employees' negligent acts, errors or omissions. Engineer shall, under Article IX , indemnify the City of Norman, Oklahoma up to one hundred twenty-five thousand dollars (\$125,000.00) for any single claim or claimant for any loss arising out of this Agreement with a maximum of one-million dollars (\$1,000,000) for any number of claims arising out of a single occurrence or accident. Engineer further waives Engineer's rights against the City for injuries to Engineer's personnel or damages to Engineer's property alleged to have been sustained during the term of this Agreement.

X. Default

If either party defaults in any of the covenants or agreements contained herein, the defaulting party shall pay all costs and expenses, including reasonable attorney's fees, reasonably incurred by the other party in enforcing its rights arising under this Agreement, whether through legal action or otherwise.

XI. Binding

This Agreement shall be binding upon and inure to the benefit of the parties hereto, their agents, successors, and assigns.

XII. Integration

This Agreement represents the entire and integrated Agreement between the parties. It supersedes all prior and contemporaneous communications, representations, and agreements, whether oral or written, relating to the subject matter of this Agreement. This Agreement may only be changed by a written amendment executed by all parties.

XIII. Ownership of Documents and Models

Upon final acceptance, all studies, drawings, designs, maquettes and models prepared and submitted under this Agreement shall be returned to the Artist and shall belong to the Artist unless agreed by all parties.

XIV. Modification

No alteration, change or modification of the terms of this Agreement shall be valid unless made in writing and signed by all three parties hereto.

XV. Governing Law and Jurisdiction. This agreement shall be governed, construed and enforced in accordance with the laws of the State of Oklahoma. Any dispute arising between the parties shall be dealt with exclusively in the courts of Oklahoma.

XVI. Registered Agent. Artist agrees to retain CT Corporation to act as a Registered Agent for any claims related to, or arising from the Artist scope of the Work as set forth herein.

XVII. Severability. Any provision of this contract which is hereafter found by a court of law or otherwise to be in conflict with the laws, rules, and/or regulations of the United States, State of Oklahoma or City of Norman shall be considered null and void. Any provision rendered null and void by the operation of this provision will not invalidate the remainder of this contract to the extent the contract is capable of execution.

ARTIST AS INDEPENDENT CONTRACTOR

Paul Cocksedge, Principal
Paul Cocksedge Studio
2A Brenthouse Road
Soloman's Yard
London E9 6QG
United Kingdom

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ENGINEER AS INDEPENDENT CONTRACTOR

Alan Kirkpatrick
Kirkpatrick Forest Curtis, PC
525 Central Park Drive
Oklahoma City, OK 73105

CITY OF NORMAN

APPROVED this _____ day of May, 2018, by the Norman City Council.

MAYOR

ATTEST:

Brenda Hall, City Clerk

APPROVED as to form and legality this _____ day of May, 2018.

CITY ATTORNEY

Form A

I _____ hereby declare that the accompanying documents truthfully and accurately depict the most current status of the Work. I further declare that I produced and created the Work pictured in the accompanying documents.

Artist/ Project Manager

Date

Address: _____

State of _____

County of _____

Sworn to and subscribed before me this _____ day of _____, 2018.

Notary Public

My commission expires: _____.

Form B

Handover Certificate of Substantial Completion of Artwork

OWNER –	<input type="checkbox"/>
ARTIST –	<input type="checkbox"/>
CONTRACTOR –	<input type="checkbox"/>
FIELD –	<input type="checkbox"/>
OTHER –	<input type="checkbox"/>

PROJECT:

PROJECT NUMBER:

CONTRACT FOR:

CONTRACT DATE:

TO OWNER:

TO CONTRACTOR:

ARTWORK OR ARTWORK PORTION OF THE DESIGNATED FOR PARTIAL USE SHALL INCLUDE:

The work performed under this Contract has been reviewed and found, to the Artist’s best knowledge, information and belief, to be substantially complete. Substantial Completion is the stage in progress of the Work when the Work or designated portion is sufficiently completed in accordance with the Contract Documents so that the owner can enjoy the Work for its intended use. The date of Handover and Substantial Completion of the Work or portion designated above is the date of issuance established by this Certificate, which is also the date of commencement of applicable warranties required by the Contract Documents, except as stated below:

MAINTENANCE :

Regular maintenance should be carried out on the art work.
This should include – (INSERT HERE)

Warranty

Date of Commencement

ARTIST

BY

DATE OF ISSUANCE

A list of items to be completed or corrected is attached hereto. The failure to include and items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Unless otherwise agreed to in writing, the date of commencement of warranties for items on the attached list will be the date of issuance of the final Certificate of Payment or the final payment.

Cost estimate of Work that is incomplete or defective: