

**SERVICES AGREEMENT
BETWEEN THE CITY OF NORMAN
AND THE NORMAN ARTS COUNCIL**

This Services Agreement ("Agreement"), made and entered into on this _____ day of _____, 2016, the Effective Date, is by and between the Norman Arts Council ("NAC") and the City of Norman, Oklahoma ("City");

WHEREAS, the City is a charter municipality vested with the power to enter into contracts, and the NAC is a non-profit corporation with the powers of a corporation, including the authority to contract; and

WHEREAS, on October 13, 2015, voters of the City passed the Norman Forward sales tax for quality of life projects within the City; and

WHEREAS, the Norman Forward sales tax dedicates 1% of aggregated construction costs to be used for public art at locations to be approved by City Council; and

WHEREAS, the existence of public art fosters a broader sense of community and improves the City's image locally, regionally, and nationally; and

WHEREAS, the City and the NAC desire to partner to facilitate the selection, location, and installation of public art purchased with Norman Forward sales tax funds to be placed in as many of the Norman Forward sales tax quality of life projects as feasible; and

WHEREAS, the City and the NAC desire to enter into this Agreement to create such a partnership.

NOW, THEREFORE, IN CONSIDERATION of One Dollar (\$1.00) and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, to effectuate the purposes stated above, and the mutual covenants and agreements contained herein, the parties agree as follows:

I. SCOPE OF WORK

1. The NAC agrees to serve as the administrator for the selection, location, and installation of public art purchased with Norman Forward sales tax funds. As administrator, the NAC will work cooperatively with the City to select appropriate works of art for each facility constructed with Norman Forward funds.
2. The NAC will administer the selection, location, and installation of public art purchased with Norman Forward sales tax funds in four phases per work of art.
 - a. The first phase will be **Project Development**. This includes research by NAC into similar public art projects at applicable locations such as libraries, parks, sports facilities, aquatic centers, and public pools. During Project Development, NAC will

assemble a Project Team which will include members from the NAC; representatives from the community with expertise in art, architecture, or design; member(s) of the Norman Forward Ad Hoc Committee; and member(s) of the Norman Public Arts Board (PAB). The City retains the option to appoint a Councilmember and/or City Staff member to the Project Team.

Once the Project Team is assembled, the Team will be responsible for evaluating public art opportunities; developing a project budget; creating a Selection Panel for selection of the art work; and establishing a timeline for each work of art. The Selection Panel may be different for each work of art, but the Panel may be made up of the following members: PAB members; arts professionals; community stakeholders; design professionals; City Manager designee; and member(s) of the Norman Forward Ad Hoc Committee. For each piece of art proposed to be purchased with Norman Forward funds, the Project Team will have the same responsibilities.

- b. The second phase will be the **Selection Process**. The Selection Process will include the following steps: project announcement and advertising; Selection Panel review of submissions as a blind jury; development of a finalist short list; mandatory site visit for selected finalists; final proposal presentations; selection of artist; and contract negotiation and approval.

Once the NAC, along with the Project Team and appropriate Selection Panel, has chosen an artist and a proposed work of art, the NAC through the City of Norman City Attorney's Office shall negotiate a contract with the chosen artist.

Once the artist is chosen, the proposed contract and work of art shall be presented to the Norman City Council for their review and approval. Once approved, the artist shall complete the work of art according to the terms of his/her contract with the City.

- c. The third phase will be the **Execution and Installation Process**. During this phase, which will be governed by the contract between the City and the artist, the NAC will serve to coordinate with the City for permitting and plan approvals; with the artist for fabrication and installation; and with either the City or artist to resolve any other issue that might arise.
- d. The fourth and final phase will be **Public Engagement and Education**. During this phase, once installation of the work of art is complete, the NAC will design and install appropriate markers for the work of art as well as taking archival-quality audio, video, and/or photographs. The NAC shall also endeavor to generate public awareness and appreciation for each work of art through press releases, social media, and other appropriate channels. The NAC shall also be responsible for collaborating with City Staff to engage in care and maintenance of each work of art according to the artist's instructions and the terms of the contract with the artist.

II. PROJECT FUNDING

1. The City agrees to fund public art installed at or as a part of Norman Forward sales tax funded projects up to 1% of construction costs for: Central Library, East Library, Indoor Basketball/Volleyball Facility; Indoor Aquatic Center, Westwood Recreational Complex, Ruby Grant Park, Andrews Park, Saxon Park, Reaves Park, and Griffin Park. One percent (1%) of construction costs for these projects, aggregated together, is estimated to be \$1.2 million ("The Norman Forward Public Arts Funds" or "NFPAF"). Expenditures of the NFPAF shall be recommended by the NAC and approved by the City.
2. Of the NFPAF, at least 90% shall be allocated to: art selection, artist fees, fabrication, installation, and maintenance. The remaining NFPAF, up to 10% of the total allocated to each project, shall be paid to NAC as an administrative fee.
3. The aggregate NFPAF available for projects shall be adjusted periodically by the City as actual construction costs of eligible Norman Forward projects are determined.
4. As NAC brings forward information for the Project Development phase of a particular Norman Forward Public Art project, the City shall make available the estimated administrative fee associated with the particular project from NFPAF in a timely manner so as to allow NAC to proceed through this first phase. The NAC, at the completion of the selection process, will bring forward information to the City regarding its recommendation for the particular project for City Council consideration. Once a particular project is approved by the City, then NAC shall proceed with the remaining phases of the particular project with NFPAF being made available for the particular project as appropriate.
5. The NAC shall submit to the City Manager or his designee, on a quarterly basis, a detailed report of its activities, including funds received and expenditures made pursuant to the purposes of this Agreement. In addition, the NAC shall prepare a detailed annual accounting in a form acceptable to the City Manager or his designee. It is understood and agreed that failure to submit a quarterly report or the annual accounting could result in termination of this contract. It is also agreed that the City has the right at any time to review and audit the NAC books and financial records related to the performance of this Agreement.

III. TERM

1. This Agreement shall begin on the Effective Date and continue for a term of one year. The Agreement shall renew automatically annually on the Effective Date so long as Norman Forward revenues remain for the purchase and installation of public art at facilities constructed with Norman Forward revenues.

IV. TERMINATION AND ASSIGNMENT

1. This Agreement may be terminated by either City or NAC at its sole option and without prejudice by giving sixty (60) days written notice of termination to the other Party.
2. Neither party shall assign, transfer, or sub-contract any of its rights, burdens, duties, or obligations under this Agreement without the prior written permission of the other Party to this Agreement.

V. DISPUTE RESOLUTION AND VENUE

1. In the event both Parties are unable to jointly resolve a dispute arising under this Agreement, then the final decision specific to that dispute will be submitted for resolution to the City Manager and the Chairperson of the NAC. In the event the City Manager and the Chairperson of the NAC are unable to jointly resolve any such dispute, then the matter will be submitted within thirty (30) days to a third party mediator. In the event the mediation is unsuccessful in resolving any such dispute, then each party has the option to file suit.
2. All obligations of each party to this Agreement shall be performed in Cleveland County, Oklahoma. The laws of the State of Oklahoma shall govern the interpretation, validity, performance, and enforcement of this Agreement and the exclusive venue for any legal proceedings involving this Agreement shall be Cleveland County, Oklahoma.

VI. NOTICES

1. Any notice to be given by City to NAC hereunder shall be deemed to be properly served if deposited in the United States mail, postage prepaid, addressed to: Executive Director Erinn Gavaghan, Norman Arts Council, 122 E. Main St., Norman, Oklahoma, 73069.
2. Any notice to be given hereunder by NAC to City shall be deemed to be properly served if deposited in the United States mail, postage prepaid addressed to: City Manager Steve Lewis, P. O. Box 370, Norman, Oklahoma, 73070 with a copy to the Office of the City Attorney, P. O. Box 370, Norman, Oklahoma, 73070.

VII. SEVERABILITY

1. If any provisions of this Agreement, or the application of such provision, shall be rendered or declared invalid by a court of competent jurisdiction, or by reason of its requiring any steps, actions, or results, the remaining parts or portions of this Agreement shall remain in full force and effect.

VIII. HOLD HARMLESS CLAUSE

1. To the extent allowed by law, NAC does hereby agree to waive all claims against, release, and hold harmless City and all of its officials, officers, agents, employees, in both

their public and private capacities, for any and all liability, claims, suits, demands, losses, damages, attorneys' fees, including all expenses of litigation or settlement, or causes of action which may arise by reason of injury or death of any person or for loss of, damage to, or loss of use of any property arising out of or in connection with this Agreement.

2. To the extent allowed by law, City does hereby agree to waive all claims against, release, and hold harmless NAC and all of its officials, officers, agents, employees, in both their public and private capacities, for any and all liability, claims, suits, demands, losses, damages, attorneys' fees, including all expenses of litigation or settlement, or causes of action which may arise by reason of injury or death of any person or for loss of, damage to, or loss of use of any property arising out of or in connection with this Agreement.
3. It is the intention of both Parties that this mutual hold harmless clause shall be interpreted to mean that each party shall only be responsible for the actions of each party's own employees, officials, officers, and agents. The Parties agree that the City has not waived its sovereign immunity by entering into and performing its obligations under this Agreement.

IX. ENTIRE AGREEMENT

1. This Agreement shall be binding upon the parties hereto, their successors and assigns, and constitutes the entire Agreement between the parties. No other Agreements, oral or written, pertaining to the performance of this Agreement exists between the parties. This Agreement can be modified only by an Agreement in writing, signed by both of the parties.

Executed this _____ day of _____, 2016.


CITY OF NORMAN, OKLAHOMA

By _____
Mayor


ATTEST:

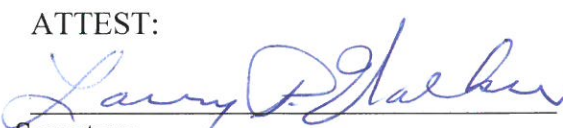
City Clerk

Approved as to form and legality this 7th day of April, 2016.


City Attorney

NORMAN ARTS COUNCIL

By 
Vice Chairman of the Board

ATTEST:

Secretary