



**AGREEMENT FOR GATEWAY SCULPTURE**  
[“Title”]

**THIS AGREEMENT**, (“Agreement”) is made and entered into this \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between the City of Roeland Park, Kansas (the “City”) and Nathan Pierce, (the “Artist”). The Artist and the City may collectively be referred to in this Agreement as the “Parties.”

**WHEREAS**, the City seeks to purchase a piece of art for public display promoting art and culture within the City; and

**WHEREAS**, Artist has created a piece of art that meets the City’s standards.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained herein, the sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

**1. SCOPE**

Artist shall design, fabricate, transport, install and complete the following artwork (the “Artwork”):

**Title:** “Origin”

**General Description:** The sculpture will sit on a concrete base designed to protect the sculpture from vehicles. The frame will be stainless steel with acrylic accents fastened to the stainless elements. The blue (circle) element will be lit to luminesce, and the sculpture will be lit from below. See Exhibit A for additional description as well as renderings.

**Dimensions:** 8 feet wide by 20 feet tall.

**Media:** Stainless steel structure with acrylic accent elements attached.

**Location/Installation:** Artwork will be fabricated and delivered to the City and installed on or before November 30, 2023. The installation is to occur at one of two site options selected by the City within the Roe Boulevard median to the south of the existing welcome sign and north of 48<sup>th</sup> Street. The final location will be reflected on a map as designated by the City (the “Designated Location”).

**2. PAYMENT**

The City shall pay Artist the amount of \$96,000.00 for the performance of this Agreement as follows:

City shall pay the Agreement sum in installments with \$26,000.00 due to Artist at the commencement of the Agreement to cover the cost of materials. An additional \$35,000.00 payments will be made when the Artwork fabrication has reached 75% completion. A final payment of \$35,000.00 is to be paid only after the Artwork and base have been installed in the City successfully for three months, the success of which to be determined solely by the City. Should the Artwork be damaged prior to delivery of the ownership to City in accordance with this Agreement; be damaged within the three month period after its installation in the City; or should Artist fail and/or refuse to deliver the ownership of the Artwork to the City, then Artist shall refund all amounts paid by the City under this Agreement.

Payment is based upon the cost summary in Exhibit B attached.

### **3. CITY- RIGHTS AND RESPONSIBILITIES**

- (a) Review of Artwork in Progress. The City or its representative(s) shall have the right to make reasonable inspection and review of the Artwork and the progress of the Artwork at any time. The fabrication of the Artwork shall be fully documented through digital photographic means and made available to the City for periodic review. Upon completion and installation of the Artwork, copies of all digital photographs shall be given to the City before final payment.
- (b) Site Preparation. The City will prepare the project site as necessary. Artist shall provide to the City the engineering detail for the base and footing necessary to stabilize the Artwork and such design shall reflect electrical conduit and junction boxes to provide lighting for the sculpture. The City shall extend and install electric circuits for the external lighting of the sculpture. Artist will collaborate with the City on the design of the base and footing. It shall be the City's responsibility to install the structural foundations for the Artwork at the Designated Location. The Artist will coordinate the connection of the Artwork's electrical lighting system to the City provided circuit. It is anticipated that the conduit and junction boxes for the circuit will be incorporated into the base located so that it is waterproof, easy to access and protected from mowers.
- (c) Base and Footing. The Artist's design for the base and footing shall be such that these elements provide protection to the Artwork from wayward vehicles and from adjacent lawn mowing/trimming operations. It is anticipated that a round reinforced concrete base and footing system will be employed for ease of design and construction as well as for cost effectiveness.

### **4. ARTIST- RIGHTS AND RESPONSIBILITIES**

(a) Design and Completion of Artwork.

- i. Artist shall determine the design and artistic expression of the Artwork, subject to the Approval of the City. The Artwork shall incorporate LED lighting of the blue (circle shaped) acrylic element such that it luminesces. The lighting should be designed so that it is simple to replace when it fails.
- ii. Artist shall deliver the Artwork to the site and supervise installation.
- iii. Upon installation of the Artwork, Artist shall provide to the City a maintenance document containing instructions regarding the proper maintenance of the Artwork. Provided that the City maintains the Artwork in accordance with the instructions contained in the maintenance document, there shall be no unusual wear and tear or weathering damage to the Artwork. Notwithstanding the foregoing, Artist warrants the Artwork against structural defects in craftsmanship, damage resulting from weather or unexpected wear to the Artwork for a period of one year from the Installation Date at the Designated Location.
- iv. Artist shall be responsible for determining the extent and sequencing of the work required to fabricate and install the Artwork, including: (1) structural and technical work required for safe and permanent installation, and (2) commitment that finished work will be in substantial conformity in size and shape with the design as shown in Exhibit A attached.
- v. Artist agrees to indemnify and save harmless the City, including its elected or appointed officials, employees, and agents against any and all claims, loss damage, injury, liability, and court costs and attorneys' fees incident thereto, including any claims made by employees of the Artist or any of their subcontractors, as well as all other persons, resulting directly or indirectly from the work covered by this Agreement or the equipment used in connection therewith. It is understood that this Agreement shall apply to any and all such claims whether resulting from the negligence or the intentional acts of Artist, or otherwise.
- vi. Artist represents and warrants that the Artwork is solely the result of the artistic effort of Artist and that it is unique and original and does not infringe upon any copyright and that it, or a duplicate of it, has not been accepted for sale elsewhere and that it is free and clear of any liens.
- vii. Artist further warrants that the City shall own, on its completion, the Artwork free and clear of any and all liens or claims. Artist will provide, where applicable, lien waivers or Contractor's affidavits, verifying that all subcontractors and material invoices have been paid prior to the City approving final payment.

- (b) Time. Artist, recognizing that time is of the essence, shall fabricate the Artwork in such manner and with sufficient equipment and forces to complete the Artwork by the date specified in the Agreement. Provided, however, that the Parties agree that extensions of time will be made for excusable delays arising from unforeseeable causes beyond control and without the fault or negligence of Artist or Artist's subcontractors or suppliers.

**5. OWNERSHIP AND COPYRIGHT OF ARTWORK**

- (a) The City shall have complete ownership of the Artwork. The City shall at all times have the right to move the Artwork or remove it from public display. The City shall also have the right to sell or otherwise transfer ownership of the Artwork as it deems appropriate. Notwithstanding and pursuant to the Visual Artists Rights Act ("VARA"), in the event of relocation, sale or transfer, the Artwork will be identified as the work of Artist and will not at any time be distorted, mutilated or modified so as to prejudice Artist or Artist's honor or reputation. The City will use the Artwork in a professional manner that respects the work of the Artist. In the event of breach of these conditions, Artist may preclude the use of Artist's name in connection with the creation of the Artwork.
- (b) Artist shall retain all copyrights on the Artwork. In view of the intention that the final Artwork be unique, Artist shall not make any additional exact duplicate reproductions of the final Artwork, nor shall Artist grant permission to others to do so except with the express written permission of the City. However, nothing herein shall prevent Artist from creating future artworks in Artist's manner and style of artistic expression nor shall this Agreement prevent Artist from using images of the Artwork for marketing and promotional purposes in connection with Artist's business.
- (c) All sketches, drawings, mockups, models, photographs, reliefs and any other materials relating to the design and/or fabrication of the Artwork shall remain the property of Artist. (No maquette shall be required). Artist may use all sketches, drawings, mockups, models, photographs, reliefs and any other materials related to the design of Artwork for the design of new and unique sculptures.
- (d) Artist grants to the 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. If reproductions by either party where the Artwork is the central focus of the reproductions are made, there shall be included credits listing Artist as the creator of the Artwork and owner of its copyright, and the City as the party which owns and commissioned the Artwork, and the Parties agree to use their best efforts to secure credits in any reproduction or public showing of a reproduction or public showing of a reproduction by other parties.

**6. INSURANCE AND RESPONSIBILITY FOR DAMAGES**

(a) Insurance. Artist or subcontractor actually performing the work on site, (either but not both) will provide certificates of insurance evidencing the following types and limits of insurance. The certificates of insurance will specifically address each of the requirements noted below. Each insurance company shall be acceptable to the City. The General Liability coverage shall name the “City of Roeland Park, Kansas” as additional insured. All insurance noted below is primary and in no event will be considered contributor to any insurance purchased by the City. All insurance noted below will not be canceled, reduced, or materially changed without providing the City thirty (30) days advance notice, via certified mail.

- i. **Commercial General Liability** including Products Liability/Completed Operations insurance, in an amount not less than \$1,000,000/occurrence, \$2,000,000/policy limit. The Artist shall be required to produce a copy of the policy upon the City’s request.
- ii. **Automobile Liability** insurance in an amount not less than \$1,000,000 combined single limit. Said insurance shall include owned, hired and non-owned vehicles.
- iii. **Workers’ Compensation** is to be provided as required by statute, by an insurance company license to write worker’s compensation in the State of Kansas. Employer’s Liability, in an amount not less than \$500,000 each accident, \$500,000 disease – policy limit, and \$500,000 disease – each employee.

Insurance Rating- All insurance policies required by this Agreement shall be underwritten by insurance companies with a minimum A.M. Best rating of A or better.

A certificate of insurance is required as evidence of coverage, with the “City of Roeland Park, Kansas” named as an additional insured. The same full insurance coverage provided to the named insured, whether it is Artist or a sub-contractor, shall be provided to the City without any limitations or endorsements that might limit or exclude coverage.

(b) Artist shall not commence work under this Agreement until Artist has obtained all insurance required under this section and such insurance has been approved by the City, nor shall Artist allow any subcontractor to commence work on their subcontract until the same insurance has been obtained by the subcontractor. Artist and their subcontractor(s) shall maintain all insurance required for not less than one year after completion of this Agreement.

(c) Artist shall be responsible for all loss and damages to the Artwork until such time that the Artwork is installed and completed to the City’s satisfaction.

7. **MISCELLANEOUS**

- (a) Independent Contractor. Artist is an independent contractor, and as such, neither Artist nor Artist's employees and agents are agents or employees of the City. Artist is responsible for payment of any and all federal, state and local taxes (if any).
- (b) No Assignment. The City has engaged Artist to fabricate the Artwork based upon Artist's individual and unique artistic and technical skills. Accordingly, this Agreement may not be assigned by Artist.
- (c) Termination of Agreement. The City may terminate this Agreement at any time. The Artist may terminate this Agreement upon thirty (30) days written notice to the City. Notice shall be sufficient either when served personally or when sent by first-class mail addressed to the City at the address set forth in this Agreement. City shall not be liable for, nor shall the Artist be liable to perform, any services or expenses incurred after the receipt of notice of termination.
- (d) No Contingent Fees. Artist warrants that Artist has not employed or retained an agent to solicit or secure the awarding of this Agreement based upon an arrangement that the agent will receive any fee, commission, percentage, gift or other consideration resulting from the award of this Agreement. For breach or violation of this provision, the City may: terminate this Agreement without liability, at its discretion deduct from payment due, or otherwise recover the full amount of such fee, percentage, gift or consideration.
- (e) Entire Agreement. The written terms and provisions of this Agreement shall supersede all prior verbal and written statements between the Parties and such statements shall not be effective or be construed as entering into, or forming a part of this Agreement. This Agreement may only be modified or amended by written agreement between the Parties.
- (f) Governing Law. This Agreement shall be subject to, governed by, and construed in accordance with the laws of the State of Kansas.
- (g) Addresses for Notices and Payments. The City shall send all payments and notifications required herein to Artist at:

Nathan Pierce  
 [Artist]  
1425 Merriwether Street, Cape Girardeau, MO 63703  
 [Address]  
Npierce1s@hotmail.com  
 [E-mail]

All notices and invoices to the City shall be either hand delivered or sent by certified or registered mail, United States First Class to the following address:

The City of Roeland Park

Attn: City Clerk  
4600 West 51<sup>st</sup> Street  
Roeland Park, Kansas 66205

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on the date first above written.

**CITY OF ROELAND PARK, KANSAS:**

By: \_\_\_\_\_  
Keith Moody, City Administrator

ATTEST:

\_\_\_\_\_  
Kelley Nielsen, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Steven E. Mauer, City Attorney

**[ARTIST'S NAME]**

Artist: \_\_\_\_\_

Address: \_\_\_\_\_

**EXHIBIT A**

(Artist Proposal)



**EXHIBIT B**

**Artist Cost Summary**

Item	total
<b>Materials</b>	
All Stainless-steel tubing bends (pre-order)	\$14,000.00
Stainless-steel other	\$4,000.00
Acrylic	\$3,500.00
Other	\$1,500.00
<b>Documentation</b>	
Design Development and engineering	\$9,000.00
<b>Construction</b>	\$36,500.00
Acrylic shaping	
fabrication	
CNC services	
<b>Delivery</b>	
Travel and Installation assistance	\$3,500.00
<b>Artist Fee</b>	
@25% of overall budget	\$24,000.00
<b>Project total</b>	<b>\$96,000.00</b>

## VARA Waiver

The City of Roeland Park, Kansas (hereinafter referred to as “City”) is purchasing the \_\_\_\_\_, (hereinafter referred to as “Artwork”) created by \_\_\_\_\_, (hereinafter referred to as “Artist”) for the sum of \$ \_\_\_\_\_.

Artist waives any right granted Artist pursuant to the Visual Artists Rights Act (VARA) as part of the sale. The City will use the Artwork in a professional manner that respects the work of the Artist. The City may sell or dispose of the Artwork when it no longer has the need or use for it.

*About the Visual Artists Rights Act/VARA:*

The Visual Artists’ Rights Act of 1990 (VARA) was enacted to protect the post-sale rights of artists who have created works of fine art and the purchasers of those works. The concept behind VARA is to prevent intentional distortion or modification of an original work of visual art, where the modification or distortion would prejudice the artist’s honor or reputation. It also prevents the intentional or grossly negligent destruction of works of recognized stature. Finally, it protects the artist’s right to be credited with the creation of the work and the right to not be credited as the creator of the works if altered or modified or if the artist did not create it.

VARA protects “works of visual art” which is defined as including paintings, drawings, prints, sculptures or still photographs, but excludes posters, maps, globes, charts, technical drawings, diagrams, models, applied art, motion pictures or other audiovisual works, pantomimes, choreographic works and sound recordings. Other works not specifically included in the definition also would not be entitled to protection under the statute. Within this group, only single copies or signed and numbered limited editions of 200 or less are actually protected.