

## ART PURCHASE CONTRACT

**THIS ART PURCHASE CONTRACT (the “Contract”)**, made and entered into this \_\_\_\_\_ day of April, 2013 (“Effective Date”) between the City of Lawrence, Kansas, a municipal corporation (City), and Rock Cottage Glassworks, Inc., a Kansas Corporation (Artist).

In consideration of the payments and mutual agreements contained in this Contract, the City and Artist agree as follows:

**Sec. 1. Services to be Performed.** Artist shall develop, design, fabricate, produce, transport, and install artwork (the “Work”), as more particularly described on Attachment 1, Scope of Services.

**Sec. 2. Responsibilities of City.** The City shall perform the responsibilities described on Attachment 2.

**Sec. 3. Contract Times.** Time is of the essence for the performance of Artist’s services.

**Sec. 4. Term of Contract.**

1. This Contract shall begin upon execution of this Contract and shall end no later than five days after the construction completion of the Lawrence Public Library. The time limits may be extended or modified by written agreement between the Artist and City. City agrees to grant reasonable extension of time to the Artist in the event that there is a delay caused by conditions beyond the Artist’s control or Acts of God render timely performance of the Artist’s services impossible. Failure to fulfill contractual obligations due to conditions beyond 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.

**Sec. 5. Compensation and Reimbursables.**

- A. The maximum amount that City shall pay Artist under this Contract is Seventy-Five Thousand and 00/100 Dollars (\$75,000.00). City is not liable for any obligation incurred by Artist except as approved under the provisions of this Contract.
- B. Timing of Invoices and Payment. Upon completion of each milestone set forth below Artist shall provide notice to the City that the milestone is complete. The City shall inspect the work and verify satisfactory achievement of the milestone. Artist shall invoice the City the amount stated below for each respective milestone. City, upon approving the invoice, shall remit payment to Artist within 21 days of the date of the invoice:

| Milestone                                           | Invoice Amount |
|-----------------------------------------------------|----------------|
| Effective Date of this Contract                     | \$7500         |
| Submission of Working Drawings                      | \$7500         |
| Delivery of Anchors                                 | \$15,000       |
| Approval of Frame Support                           | \$15,000       |
| Approval of Glass                                   | \$15,000       |
| Approval of fully built Work (at Artist’s premises) | \$7500         |
| Delivery and Installation                           | \$7500         |

C. Condition Precedent to Payment.

1. Warranties of Title. The Artist represents and warrants that:
  - (a) The Work is solely the result of the artistic effort of Artist;
  - (b) The Work is unique and original and does not, to Artist's knowledge, infringe upon any copyright;
  - (c) That the Work, or a duplicate has not been accepted for sale elsewhere;
  - (d) The Work is free and clear of any liens from any source whatsoever.; and
  - (e) The Artwork contains no libelous, defamatory or other unlawful material.
2. It shall be a condition precedent to payment of any invoice from Artist that Artist is in material compliance with, and not in material breach or default of, all terms, covenants and conditions of this Contract, provided that such breach continues uncured beyond any applicable notice and cure period.

**Sec. 6. Notices.** All notices required by this Contract shall be in writing sent by regular U.S. mail, postage prepaid, commercial overnight courier, or facsimile to the following:

City: City Manager  
6 E. 6<sup>th</sup> Street  
Lawrence, KS 66044  
Phone: 785-832-3400                      Facsimile: 785-832-3405

Artist:  
Rock Cottage Glassworks, Inc.  
Attention: Dierk Van Keppel  
6801 Farley  
Merriam, KS 66203  
Phone: 913-262-1763  
Email: info@rockcottageglassworks.com

All notices mailed by regular U.S. mail are effective 3 days after mailing.

**Sec. 7. Risk of Loss.** The risk of loss or damage to the Work shall be borne by the Artist and the Artist shall take such measures as are necessary to protect the Work from loss or damage until its final acceptance by the City.

**Sec. 8. Title and Ownership.** Upon completion and installation of the Work and upon final acceptance and final payment to the Artist by the City, title to the Work shall pass to the City. The City grants Artist a license to include visual images or descriptions of the Work for non-commercial purposes, including but not limited to, in advertising, brochures, media publicity and demonstrative portfolios of Artist's work. All preparatory or experimental materials, including without limitation, ideas, sketches, initial copy, concepts and proofs of concepts, artwork and type which are not incorporated in or substantially similar to the final Work shall remain the sole and exclusive property of the Artist.

Artist shall retain all right, title and interest in all of Artist's ideas, know-how, approaches, methodologies, concepts, skills, tools, techniques, expressions, and processes (collectively referred to as "Knowledge Capital"), irrespective of whether possessed by Artist, prior to, or acquired, developed, or refined by Artist (either independently or in concert with the City)

during the course of its performance under this Contract. It is agreed and understood that Artist is in the business of creating artwork for third parties, which are or may be substantially similar to the artwork being developed for the City. It is not the intent of this Contract to prevent Artist from pursuing its stated business by independently creating such original but similar works for the benefit of third parties.

**Sec. 9. Ownership of Artwork after Acceptance.** Prior to final acceptance, the Artist shall present an Affidavit of completion declaring that the installation is complete and that any subcontractors and suppliers have been paid in full. The final acceptance of the artwork by the City shall be in writing by the City Manager and shall not be unreasonably withheld upon the completion of the artwork.

Upon final acceptance of the artwork, the City shall own the artwork and its copyright. The Artist shall have limited rights to the materials used in the completion and installation of the artwork, and limited right to its visual or photographic representation or reproduction in accordance with the License referred to in Section 8 of this Contract.

**Sec. 10. Assignability or Subcontracting.** Artist may subcontract Artist's obligations under this Contract, provided that Artist remains responsible to City for the delivery of the Work. Artist shall not otherwise assign this Contract without the prior approval of City.

**Sec. 11. Independent Contractor.** Artist is an independent contractor with respect to all services performed under this Contract. Artist shall furnish all the material and do all work necessary to complete the Art according to the Contract specifications. Artist accepts full and exclusive liability for the payment of any and all premiums, contributions or taxes for workers' compensation, Social Security, unemployment benefits, or other employee benefits now or hereinafter imposed under any state or federal law which are measured by the wages, salaries or other remuneration paid to persons employed by Artist on work performed under the terms of this Contract. Artist shall defend, indemnify and save harmless City from any claims or liability for such contributions or taxes. Nothing contained in this Contract nor any act of City, or Artist, shall be deemed or construed to create any third-party beneficiary or principal and agent association or relationship with City. Artist is not City's agent and Artist has no authority to take any action or execute any documents on behalf of City.

**Sec. 12 Indemnification.** Artist 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 the Artist, its officers, employees, subconsultants, subcontractors, successors, assigns, invitees and other agents, in the performance of professional services under this Agreement. Artist is not obligated under this Section to indemnify City for the negligent acts of City or any of its agencies, officials, officers, or employees. Artist 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 Agreement caused in whole or in part by Artist or Artist's Agents.

To the extent permitted by law, the City shall indemnify and hold harmless the Artist and any of its 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 the City, its officials, officers, or employees. City is not obligated under this Section to indemnify Artist for the negligent acts of Artist, its agents, officials, officers or employees.

**Sec. 13. Insurance.**

- A. Artist shall procure and maintain in effect throughout the duration of this Agreement, and for a period of two (2) years thereafter, insurance coverage not less than the types and amounts specified below.
  - 1. Commercial General Liability Insurance with limits of \$500,000, naming the City as an additional insured.
  - 2. Worker's Compensation Insurance: as required by Kansas.
- B. The policies listed above may not be canceled until after thirty (30) days written notice of cancellation to City. Artist shall provide to City at execution of this Agreement a certificate of insurance showing the required endorsements and naming City as an additional insured.

**Sec. 14. Governing Law.** This Contract shall be construed and governed in accordance with the law of the State of Kansas.

**Sec. 15. Compliance with Laws.** Artist shall comply with all federal, state and local laws, ordinances and regulations applicable to the work. Artist, at its own expense, shall secure all occupational and professional licenses and permits from public or private sources necessary for the fulfillment of its obligations under this Contract.

**Sec. 16. Termination of Contract.**

- A. City may terminate this Contract upon ten (10) days' notice to Artist if Artist is in material breach of this Contract and fails to cure the breach before the end of the ten (10) day notice period.

Material breach shall include, but is not limited to, the determination that the Work does not materially comply with the specifications set forth in Attachment 1 (the "Specifications") and/or does not conform to the Milestone Schedule set forth in Section 5.B.

- B. Artist may terminate this Contract upon ten (10) days' notice to City if City is in material breach of this Contract and fails to cure the breach before the end of the ten (10) day notice period.
- C. If this Contract is terminated prior to Artist's completion of the services to be performed hereunder, then all finished or unfinished documents, including but not limited to data, studies, surveys, drawings, maps, models, photographs, reports, computer programs or other materials prepared or obtained by Artist pursuant to this contract shall become City's property.

**Sec. 17. Defaults and Remedies.**

- A. Artist shall be in default of this Contract upon the happening of any of the following events:
  - 1. If Artist fails to comply with any of the provisions required of Artist under this Contract, and such failure continues for a period of ten (10) days after written notice thereof is given to Artist by City; or
  - 2. If, by operation of law or otherwise, the right, title, or interest of Artist in this Contract is transferred to, passes to, or devolves upon any other person, firm or corporation without written consent of City.

- Sec. 18. 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 other 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 Artist to which the same may apply and, until complete performance by 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.
- Sec. 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.
- Sec. 20. Merger.** This Contract, including any referenced Attachments, constitutes the entire agreement between City and Artist with respect to this subject matter, and supersedes all prior agreements between City and Artist 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.
- Sec. 21. 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 Artist.
  - 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 Artist.
- Sec. 22. Severability of Provisions.** Except as specifically provided herein, 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 the valid provisions of this Contract are so essentially and inseparably connected with and so dependent upon the invalid provision(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.
- Sec. 23. Binding Effect.** This Contract shall be binding upon City and Artist and their successors in interest.
- Sec. 24. Representations and Warranties.** City and Artist 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.

**ARTIST**

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By: Rock Cottage Glassworks, Inc.

Title: \_\_\_\_\_

**CITY**

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By: David L. Corliss

Title: City Manager

**ATTACHMENT 1**  
**SCOPE OF SERVICES**

Artist has been selected to:

Develop, design, fabricate, produce, transport, and install the following artwork:

- A. An Atrium sculpture, "*A Ribbon of Light*," will be constructed of clear and colored glass that will be suspended by a stainless steel aluminum structure and shall hang from hangers the artist provides to the contractor for installation during the construction process. The sculpture will be approximately 25 feet in length; will vary in width from 5 feet wide at one end to 3 feet wide in the center, to 8 feet wide on the other end.
- B. A quantity of 22 Way Finding panels constructed of clear and colored glass with a "daylight" opening dimension of 6 inches x 24 inches.
- C. Children's area panels constructed of clear and colored glass, consisting of quantity of 5 for the children's reading cubbies at 6 inches diameter, and a quantity of 15 for the children's treasure hunt at 6 inches diameter, a quantity of 1 of 24 inches diameter, 1 of 12 inches diameter, and 1 of 6 inches diameter for the Children's project room. These items will be placed in coordination with the Library staff and the architect.
- D. Clear and colored glass constructed in a manner to fit into signage designed and provided by the City of Lawrence.

**1. Design Development.**

- A. Within forty-five (45) days of the execution of this Contract, the Artist will prepare and submit to the City detailed working drawings and plans and specifications, including but not limited to connection details, special installation details, calculations of structural design, specifications which clearly outline any special materials or installation methods required (Collectively "Working Drawings") for fabrication and installation of the Work for approval by the City. The Artist shall, at the Artist's expense, have a licensed structural engineer review the atrium sculpture and provide a written report to the City approving the structural integrity of the sculpture plans.
  - B. The Artist will determine the specific location of the Work at the Site and submit to City for approval.
  - C. The Artist shall provide suspension anchors, glass production, mock-up assembly, mobilize, crate, deliver, and install the Work. .
- 2. Guarantee that the Art shall be constructed without further compensation than that provided for in this contract.
  - 3. Guarantee to make good, at its own expense and in accordance with the reasonable instructions of the City Manager any and all faulty or defective material or workmanship, including the installation, which may appear in the Work within a period of five (5) years from the date of final acceptance.
  - 4. Commence the work upon execution of this agreement.
  - 5. Fabricate, transport, and install the Work at the Site.

6. Fabricate the work in accordance with the proposed concept, which is outlined in this Scope of Services.
7. The City shall have the right to inspect the Work at reasonable times during the fabrication at the City's expense subject to the appropriation of the City.
8. Be responsible for transportation of all components of the Work to the site and notify the City for final preparation of the site for installation of the Work.
9. Coordinate the installation of the Work with the City, its architect and its construction contractor upon completion of the library construction.
10. Advise, consult, and inspect the completed installation of the Work at the site to ensure that the installation is in conformance with the Scope of Services.
11. The Artist will have an information plaque fabricated and installed in a mutually agreeable location as specified by the City.
12. Final Acceptance.
  - A. The Artist will advise the City in writing when all services required under Attachment 1, Scope of Services, have been completed.
  - B. The Artist will, prior to final acceptance of the Work, provide the City with a description of the methods of cleaning, preserving and maintaining the Work.
  - C. The City will notify the Artist of its final acceptance of the Work. Final acceptance shall be effective as of the date the City's notification of final acceptance.
  - D. The Artist will be available, at his or her expense, at a mutually agreed to time for any inauguration or dedication ceremonies.

**ATTACHMENT 2**  
**RESPONSIBILITIES OF CITY**

1. The City will conduct reviews of plans and respond promptly to Artist with comments and/or approval in the times specified in the approved schedule.
2. The City will display the Artist's name, title, and date of the Work near or on the Work in a mutually acceptable location.
3. The City recognizes that maintenance of the Work on a regular basis is essential to the integrity of the Work. The City, to the extent allowed by law, subject to appropriation, reasonably assures that the Work will be properly maintained and protected, taking into account the instructions of the Artist and will to the extent allowed by law, and subject to appropriation, reasonably protect and maintain the Work against the ravages of time, vandalism and the elements.
4. 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.