

30001790

AGREEMENT FOR SERVICES

This Agreement for Services (Agreement) is between the City of Portland, Oregon (City), a municipal corporation, and Regional Arts and Culture Council (RACC), a non-profit corporation.

RECITALS:

1. Whereas the history of the relationship between the City and RACC and its predecessor is recited in the Historical Recitals appended to this Agreement;
2. Whereas RACC is funded by the City, Metro, and Multnomah, Washington and Clackamas Counties;
3. Whereas this agreement is intended to specify the services to be performed by RACC on behalf of the City

AGREEMENT:

- A. **SCOPE OF RACC SERVICES:** RACC shall provide to the City the services set out below:

1. Oversee and review all public art matters for the City of Portland, including but not limited to the following:
 - a. Continue to utilize the Percent for Art Guidelines and administrative rules, adopted by RACC as they may be amended by RACC from time to time, to guide the process for selecting, purchasing, commissioning, placing, accessioning, deaccessioning, and maintaining the art purchased through the Percent for Art Program or through donations as guided by RACC's donation policy;
 - b. Continue to work with all City bureaus to explore public art opportunities beyond the Percent for Art ordinance, guided by Resolution No. 36308, adopted by the City Council on April 7, 2005;
 - c. Continue programming, managing and maintaining the exhibits on display at the Public Art Gallery located in the Portland Building;
 - d. Continue administration of the Visual Chronicle of Portland, a collection of artworks depicting Portland, and the City of Portland's Portable Works Collection;

- e. Continue to participate in the joint approval process for memorials in public parks according to 1989 City adopted policy;
 - f. Continue administration of the art substitute for ground floor windows guidelines and arts bonus floor area ratios contained within Chapter 33.702.190 of the Code of the City of Portland according to adopted guidelines;
 - g. Continue administration of the public art policy for the Bureau of Environmental Services and the Bureau of Water Works;
 - h. Continue to advise other governments and private developers on development of public art programs;
 - i. Continue to develop public art education programs for schools, tourism groups and the general public;
 - j. Continue to administer the Public Art Trust Fund which is the vehicle for funding Percent for Public Art; and
 - k. Work with the Portland Bureau of Transportation to place art in the public right-of-way, temporarily or permanently.
2. Continue operation of the Public Art Program, including the Public Art Murals component adopted by Council by Ordinance No. 178946, effective January 7, 2005.
 3. Provide support to a diversity of cultural development initiatives through technical assistance, project and professional development grants to artists, arts organizations, and public art commissions. RACC may provide loans to artists or arts and culture related businesses if funds become available and both the City and RACC agree to the parameters of the program.
 4. Seek to make the arts and culture a part of every child's education by fostering relationships and donations among community organizations, businesses, cultural organizations and schools as well as providing grants to arts education providers and schools.
 5. Coordinate and focus equitable cultural development through policy-making, initiation of new partnerships and exercise of leadership.
 6. Advise the City of Portland and Metro, Multnomah, Washington and Clackamas Counties in connection with artistic and cultural development.
 7. Support equal opportunity and access to the arts.

- a. Provide leadership and conduct studies, hearings, and investigations to determine the needs of the City and region in the arts and culture.
 - b. Prepare, publish and disseminate educational and other materials dealing with the arts.
8. Advocate for the arts at the local, regional, state, and national level by representing the arts in public forums, providing information to the media, general public and key decision makers, helping to define a role for the arts in the community and developing new resources.
- a. Work with local, regional, state and federal government agencies and with public and/or private groups, individuals and foundations to secure contributions and grants to finance programs for the arts and to develop collaborative projects beneficial to multiple services such as enhancing the travel and lodging industry through cultural tourism, to gather and consolidate information relating to the arts, and report to the City and Metro, Multnomah, Clackamas and Washington Counties periodically on its finding;
 - b. Recommend changes in state, federal and local laws and policies to promote the development of arts and culture in the region.
9. Plan for development and wise stewardship of our cultural resources within the arts sector and seek to incorporate an arts agenda into City and regional economic development, education, human service and growth management strategies.
10. Involve representative groups of citizens in its decision making at all levels, evaluating services and reporting on outcomes.
11. Promote and encourage public programs to further the development and public awareness of, and participation in the arts.
12. Pursue additional funding streams to support arts and culture in the region.
13. Develop annual budget and performance goals consistent with the Scope of Contractor Services and submit them for City of Portland review at the same time that City Bureaus submit budget and performance goals.
14. Provide annual performance reports to the City Council, as specified in Exhibit A hereto, incorporated herein by reference.
15. Comply with the requirements of City and Oregon Public Records Law and city communications and public outreach policies.

B. SCOPE OF CITY SERVICES: To assist RACC in carrying out its obligations hereunder, the City shall perform the services set out below:

1. The City shall be responsible at its own cost for the ongoing custody of City of Portland Public Art and shall be responsible for storage, structural integrity and insurance.
 2. The City shall be responsible for the ongoing maintenance of the Public Art Gallery and lobby space in the Portland Building.
 3. The City shall make meeting space available at no cost to RACC for official business during normal business hours.
 4. Appropriate City Bureaus shall submit a copy of their proposed and adopted CIP Budgets to RACC according to Chapter 5.74 of the City Code and Resolution No. 36308 to be used in the Percent for Art program for planning and administering projects, according to City adopted administrative guidelines. This Agreement is specifically intended to authorize RACC to prepare invoices for the disbursement of those funds dedicated to Public Art by Portland City Code (PCC) section 5.74.030.
 5. The City shall continue to maintain at no cost to RACC the Visual Chronicle Storeroom and the preparator space to be used when preparator is on site.
 6. The City shall continue to maintain at no cost to RACC the Public Art Storeroom.
 7. The Mayor shall appoint a City Council member as an ongoing liaison with RACC; the title of the City Council liaison shall be known as the City's, "Commissioner of Arts and Culture." The Commissioner of Arts and Culture is authorized to approve work hereunder, to give notices referred to herein, to propose termination of this Agreement as provided herein and to carry out any other City actions referred to herein. Termination of this agreement will be effective only after a vote of City Council on the proposed termination.
 8. The Mayor shall nominate to the City Council for confirmation prospective members to RACC board in accordance with RACC bylaws and at the request of the Commissioner of Arts and Culture.
 9. The City shall confer with the Executive Director of RACC in city goal setting, annual retreats, and appropriate task forces.
- C. **COMPENSATION:** The City shall pay RACC for work performed under this Agreement after the effective date in the amount provided below. The payment is compensation for work performed, for services rendered, and for all labor, materials, supplies, equipment and incidentals necessary to perform the work and services.
1. **Funding Base** The funding base for this agreement shall be \$3,572,344. The City shall annually increase the yearly funding target by an amount equal to the annual

growth rate in the Portland urban wage earners consumer price index (CPIW) or the growth rate in transient lodging tax revenues, whichever is greater, for the 12 month period ending in the December prior to the beginning of the new fiscal year as forecast by the Office of Management and Finance, Financial Planning Division.

2. **Percent for Art Payments** RACC shall separately receive disbursements of the amounts dedicated to Public Art by PCC section 5.74.040. To receive such a disbursement, RACC shall prepare an invoice to a Participating Bureau for the monetary contribution for Public Art due by reason of an Improvement Project, prepared in accordance with the procedures established by the administrative rules implementing PCC 5.74.030. Upon presentation of such an invoice by RACC, the amount dedicated to public art shall be disbursed to RACC under this Agreement. The contract number of this Agreement shall be used for such invoices and payments, no further contract shall be necessary to authorize these disbursements by any Participating Bureau or by the Office of Management and Finance.
3. **Adjustment of Funding Base** In the case of extraordinary circumstances causing severe financial restraints resulting in the curtailment of budgets, the funding target may be reduced by an amount not to exceed the average reduction in general fund discretionary budgets of similar size.
4. **Additional Special Appropriations** In consultation with RACC, the City may consider additional special appropriations to arts initiatives as opportunities arise.
5. **Phone System** RACC shall continue to utilize and be billed for the use of the City of Portland Centrex phone system.

D. PAYMENT PROCEDURE:

1. There will be three payments of the Funding Base to RACC. On July 1 (or for FY 2010-11 as soon thereafter as this contract is approved by Council), the City shall pay to RACC 56% of the funding base. On December 1, or the beginning of Accounting Period # 6 of the fiscal year, the City shall pay 37% of the funding base. On June 1 the City shall pay to RACC the remaining 7% of the funding base.
2. Public Art Allocations through Percent for Art will be invoiced to and paid separately by each appropriate City bureau.

E. EFFECTIVE AND TERMINATION DATES: This Agreement shall be effective as of December 1, 2010 and shall be terminated on November 30, 2015.

F. EARLY TERMINATION OF AGREEMENT:

1. The City and RACC, by mutual written agreement, may terminate this Agreement at any time.

2. The City and RACC, on thirty (30) days written notice to the other party, each may terminate this Agreement for any reason deemed appropriate in its sole discretion. If so terminated by either party, the parties shall attempt to agree upon an equitable allocation of any amounts already paid by the City under this Agreement. If they are not able to do so, a determination of fair compensation to RACC for work performed before the termination shall be made through arbitration conducted under ORS 36.300 et seq.

G. COMPLIANCE WITH LAWS: In connection with its activities under this Agreement, RACC shall comply with all applicable federal, state and local laws and regulations. In the event that RACC provides goods or services to the City in the aggregate in excess of \$2,500.00 per fiscal year, RACC agrees it has certified with the City's Equal Employment Opportunity certification process.

H. OREGON LAW AND FORUM:

1. This Agreement shall be construed according to the laws of the State of Oregon.
2. Any litigation between the City and RACC arising under this Agreement or out of work performed under this Agreement shall occur, if in the state courts, in the Multnomah County Court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the District of Oregon;

I. INDEMNIFICATION: RACC shall hold harmless, defend and indemnify for public liability and property damage the City, and the City's officers, agents and employees against all claims, demands, actions and suits (including all attorney's fees and costs) brought against any of them arising from RACC's negligent acts or omissions or intentional misconduct.

J. WORKERS' COMPENSATION INSURANCE:

1. RACC, its subcontractors, if any, and all employers working under this Agreement are subject employers under the Oregon workers' compensation law and shall comply with ORS 656.017 which requires them to provide workers' compensation coverage for all their subject workers. A certificate of insurance, or copy thereof, shall be attached to this Agreement as Exhibit B, if applicable, and shall be incorporated herein and made a term and part of this Agreement. RACC further agrees to maintain workers' compensation insurance coverage for the duration of this Agreement.
2. In the event RACC's workers' compensation insurance coverage is due to expire during the term of this Agreement, RACC agrees to timely renew its insurance, either as a carrier-insured employer or a self-insured employer, as provided by Chapter 656 of the Oregon Revised Statutes, before its expiration and RACC

agrees to provide the City of Portland such further certification of workers' compensation insurance as renewal of said insurance occur.

3. RACC agrees to accurately complete the City of Portland's Questionnaire, for Workers' Compensation Insurance and for Qualification as an Independent Contractor, prior to commencing work under this Agreement. The Questionnaire is attached to this Agreement as Exhibit B and shall remain attached to this Agreement and become a part thereof as if fully copied herein. Any misrepresentation of information on the Questionnaire by RACC shall constitute a breach of this Agreement. In the event of breach, pursuant to this subsection, the City may terminate the Agreement immediately.

K. **ASSIGNMENT:** RACC shall not assign this Agreement, in whole or in part, or any right or obligation hereunder, without the prior written approval of the City.

L. **INDEPENDENT CONTRACTOR STATUS:**

1. RACC is engaged as an independent contractor and shall be responsible for any federal, state and local taxes and fees applicable to payments hereunder.
2. RACC, its subcontractors and their employees are not employees of the City and are not eligible for any benefits, workers' compensation, and unemployment compensation and retirement benefits.

M. **NOTICE:** Any notice provided for under this Agreement shall be sufficient if in writing and delivered personally to the following addressee or deposited in the United States Mail, postage prepaid, certified mail, return receipt requested, addressed as follows, or to such other address as the receiving party hereafter shall specify in writing:

If to the City: Mayor Sam Adams
1221 SW Fourth, Room 340
Portland, Oregon 97204

With a copy to: Portland City Attorney's Office
1220 SW 4th Avenue, Rm. 430
Portland Oregon 97204

If to the RACC: Eloise Damrosch, Executive Director
108 NW 9th Ave., Ste. 300
Portland, Oregon 97209

N. **INTEGRATION:** This Agreement in combination with the Intergovernmental Agreement establishing contractor as the Regional Arts and Culture Council and the Transition Agreement between the City of Portland and RACC contains the entire agreement between the City and RACC and supersedes all prior written or oral discussions or agreements.

- O. **FUNDS:** The City certifies that sufficient funds are available and authorized for expenditure to finance the cost of this Agreement.
- P. **BUSINESS LICENSE:** RACC shall obtain applicable business license, if any, that may be required for a Section 501 (c)(3) tax-exempt corporation.
- Q. **MAINTENANCE OF RECORDS:** RACC shall maintain records on a current basis to support its billings to the City and to document the performance of services in accordance with this agreement. The City or its authorized representative shall have the authority to inspect, audit and copy on reasonable notice and from time to time, any records of RACC regarding its billings and performance of services. RACC shall retain these records for inspection, audit and copying for three (3) years from the date of completion or termination of this Agreement.
- R. **AUDITS:** The City, either directly or through a designated representative, may conduct financial and performance audits of the services specified in this Agreement at any time in the course of the Agreement and during the three (3) year period established above.
- S. **LIABILITY INSURANCE:** RACC shall maintain public liability and property damage insurance that protects RACC and the City and its officers, agents and employees from any and all claims, demands, actions and suits for damage to property or personal injury, including death, arising from RACC's work under this Agreement. The insurance shall provide coverage for not less than \$200,000 for personal injury to each person, \$500,000 for each occurrence, and \$500,000 for each occurrence involving property damage; or a single limit policy of not less than \$500,000 covering all claims per occurrence. The limits of the insurance shall be subject to statutory changes as to maximum limits of liability imposed on municipalities of the State of Oregon during the term of the Agreement. The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds the City and its officers, agents and employees. Notwithstanding the naming of additional insureds, the insurance shall protect each insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured. The coverage must apply as to claims between insureds on the policy. RACC shall provide that the insurance shall not terminate or be cancelled without thirty (30) days written notice first being given to the City Auditor. If the Insurance is cancelled or terminated prior to completion of the Agreement, RACC shall provide a new policy with the same terms. RACC agrees to maintain continuous, uninterrupted coverage for the duration of the Agreement. The insurance shall include coverage for any damages or injuries arising out of the use of automobiles or other motor vehicles by RACC.

RACC shall maintain on file with the City Auditor a certificate of insurance certifying the coverage required under subsection (a). The adequacy of the insurance shall be subject to the approval of the City Attorney. Failure to maintain liability insurance shall be cause for immediate termination of the Agreement by the City.

T. BREACH OF AGREEMENT:

1. The City or RACC shall breach this Agreement if it fails to perform any substantial obligation under the Agreement. Before terminating this Agreement for breach, however, the non-breaching party shall give to the other party written notice of the breach and of the party's intent to terminate. If the party has not entirely cured the breach within fifteen (15) days of the notice, then the party giving the notice may terminate the Agreement at any time thereafter by giving a written notice of termination.
2. Neither the City nor RACC shall have breached this Agreement by reason of any failure to perform a substantial obligation under the Agreement if the failure arises out of causes beyond its control and without its fault or negligence. Such causes may include, without limitation, acts of God or the public enemy, acts of the federal, state or local governments, fires, floods, epidemics, volcanic eruptions, quarantine restrictions, strikes, freight embargoes and unusually severe weather. Should either the City or RACC fail to perform because of a cause described in this subsection, the City and RACC shall make a mutually acceptable revision of this Agreement.

U. CONTRACTOR'S PERSONNEL:

1. RACC shall assign the following personnel to do the work in the capacities designated:

<u>Name</u>	<u>Capacity</u>
Eloise Damrosch	Executive Director

2. RACC shall not change these personnel assignments without the written consent of the City, which consent shall not be unreasonably withheld.

V. AMENDMENTS:

1. The City and RACC may amend this Agreement at any time only by written amendment executed by the City and RACC. Unless otherwise provided, any amendment that increases the amount of compensation payable to RACC must be approved by ordinance of the City Council. The Project Manager may agree to and execute any other amendment on behalf of the City.
2. Any change in the Scope of Contractor Services shall be deemed an amendment subject to subsection 1.

W. NON-WAIVER The City and RACC shall not be deemed to have waived any breach of the Agreement by the other party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach be of the same nature as that waived.

X. PROHIBITED INTEREST

1. No City officer or employee during his or her tenure or for one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.
2. No City officer or employee who participated in the award of the Agreement shall be employed by RACC, except for those employees transferred from city employment to contractor appointment, during the period of the Agreement.

RACC: _____

By: [Signature]

Date: 11.17.10

Business License No. _____

Tax I.D. No. _____

CITY OF PORTLAND

By: [Signature]

Commissioner Sam Adams
Commissioner of Public Utilities

Date: 11.18.10

[Signature]
K. L. R. P. R. T
CAO

Approved as to Form

By: [Signature]
Office of the City Attorney

Date: 11/10/2010

BY [Signature]
AUDITOR

HISTORICAL RECITALS

The City decided in 1973 that a vital arts sector was a worthwhile investment and co-founded the Metropolitan Arts Commission (MAC) by Intergovernmental Agreement with Multnomah County to support the development of the arts and increase their availability to the public;

MAC Public Art Program was established in 1980. Ordinances were in place that provide for MAC management and collection of funds for the Percent for Public Arts Programs for the City of Portland, Multnomah County, and Metro. MAC was responsible for selection, acquisition, siting, maintenance, administration, deaccessioning, community education, and registration of Public Art of the City/County Public Art Collection;

MAC was responsible for approving art substitutes for ground floor windows and for the percent for art floor area ratio bonus program as defined by City Of Portland Zoning Code (Title 33) according to MAC adopted guidelines;

MAC's Public Art Program operated the Metropolitan Center for Public Art, administered the Visual Chronicle of Portland Collection, and participated in the joint approval process for memorials in public parks as described in the City's policy for placing memorials in public parks;

A Public Art Trust Fund exists in the City Of Portland Treasury into which monetary contributions for Public Art were deposited (City Code 5.74.040). Of the 2% of the total costs of improvement projects, 1.46% is used for costs associated with Public Art including acquisition, siting, maintenance and deaccessioning. The .54% is used for selection, administration, community education and registration of Public Art. Separate accounts are established within the fund if requested by a participating agency or required by law;

The City Of Portland was a primary sponsor, funder and participant in the citizen driven Arts Plan 2000+;

The City Of Portland demonstrated its leadership and commitment to the arts by adopting Arts Plan 2000+ (resolution #34949) in February 1992, providing and sustaining increased funding and including Arts Plan implementation as one of thirteen City Council goals in fiscal years 1993/94 and 1994/95;

The City of Portland and Multnomah County recognized the increasingly regional scope of MAC's duties and amended the Intergovernmental Agreement in 1993 to include Clackamas, Washington and Clark Counties allowing for regional representation and service by MAC;

The City Of Portland was an active participant in the Metro Regional Arts Funding Task Forces, which recommended short and long term solutions to arts programs and facilities needs, including the transition of MAC to a regional nonprofit organization;

The City of Portland adopted an Arts Funding Policy in 1994 (resolution #35313) to represent its long term commitment to the health and vitality of the arts in Portland;

MAC was restructured into a nonprofit organization in order to implement the Arts Plan 2000+ and Metro Regional Arts Funding Task Force recommendation to provide more cost effective, efficient and flexible services;

It is well established and confirmed that local governments have an appropriate role in encouraging the arts, using modest public investments to leverage other resources. The transition was not intended to diminish that role;

The purpose of local government investment in the arts, including City of Portland funding, is to promote access, inclusion and excellence in the arts, to leverage other resources for the arts, and to enhance the contribution of the arts to economic vitality, educational opportunities, neighborhood and community revitalization, social harmony, regional growth management and overall quality of life;

The City of Portland along with Metro, Multnomah, Washington, Clackamas, and Clark Counties entered into an Intergovernmental Agreement (1994) designating RACC as the regional arts and cultural agency and agreed to enter into service agreements with RACC to provide its professional expertise for leadership, strategic planning, policy making, financial support, and coordination for the regional arts industry. Service Agreements have been entered into between the City of Portland and RACC since that time to the present;

The Portland City Council adopted Resolution No. 36308 to clarify the City of Portland Percent for Art Program on April 7, 2005;

The Portland City Council adopted Ordinance No. 178946 amending PCC chapter 5.74, Acquisition of Art, and creating the Public Art Murals program, effective January 7, 2005. In 2004, the City of Portland expanded RACC's public art program to include new oversight and funding for community murals. RACC became responsible for reviewing submissions for public art murals to be placed on public wall space, and the City committed additional dollars per year to help fund the creation of new murals. The RACC review process includes guidelines for placement, artistic quality, architectural and historical context, scale, community support, and other factors. In 2009, the City expanded the program to also allow the City to permit some murals that are not intended to be part of the City's public art collection;

In 2006, The City of Portland committed an additional \$200,000/year to RACC to establish and sustain an annual matching challenge fund for Work for Art. The City identified funds from the 2006 business license fee reapportionment process to pay for this program. RACC uses these funds to incent workplace giving contributions and other private sector gifts that support the city's arts and culture organizations.

In 2006, the City amend the Business License Law (Ordinance 180629 amended PCC 17.02.830) to allow businesses to donate to the Work for Art program (amended PCC 7.02). The Revenue Bureau is authorized to collect and remit donations from taxpayers to "Work for Art," and distribute these funds to RACC.

The City Of Portland was a primary sponsor, funder and participant in the citizen driven Creative Capacity Strategy and its resulting Act for Art: A Creative Action Plan for the Portland Metropolitan Region;

The City Of Portland demonstrated its leadership and commitment to the arts by adopting the report on Act for Art in April 2009, calling for strengthening our cultural infrastructure through dedicated funding and the creation of the Creative Advocacy Network, improving access to arts and arts education, and investing in creative talent.