

Metro Art Contract

Metro Contract No. XXXXXX

The sample contract reflects preliminary, draft contract language and selected, proposed contract terms for this procurement. Proposers should be aware that such language terms and provisions are for illustrative purposes only and that Metro reserves the right, following submission and ranking of all proposals submitted in response to this procurement, to amend, modify or negotiate over any and all such contract language, terms and provisions regarding the agreement rising from this procurement. By submitting a proposal in response to this procurement, proposers acknowledge that they are aware of and do not object to any later, potential amendment and modification of such preliminary, draft language and terms. In addition, by responding to this procurement, proposers acknowledge that they are aware of their ability to offer alternatives to any of the preliminary, draft contract language and proposed contract terms set forth herein.

AGREEMENT FOR COMMISSIONING OF ARTWORK

THIS AGREEMENT is between Metro, a metropolitan service district organized under the laws of the State of Oregon and the 1992 Metro Charter, located at 600 NE Grand Avenue, Portland, Oregon 97232-2799, and **Company Name**, referred to herein as "Artist," located at **XXXXXX**.

WHEREAS, the Metro is implementing a public art program pursuant to Metro Code Chapter 2.07.

WHEREAS, the Artist was selected to design, execute, fabricate, transport and permanently install a work of art, hereinafter called the "Work," in the **Facility Name**.

NOW, THEREFORE, in exchange for the promises and other consideration set forth below, the parties agree as follows:

1. **DURATION**. This Agreement shall be effective **Month XX, 201X** and shall remain in effect until and including **Month XX, 201X**, unless terminated or extended as provided in this Agreement, except that continuing obligations of the parties, including without limitation Sections 14, 15, 16 and 17, shall survive the termination of the Agreement.

2. **SCOPE OF WORK**.

A. The Artist shall determine the artistic expression, scope, design, size, material, texture, and color and location of the Work, subject to review and approval by Metro.

B. If submitted, a drawing and/or written description of the proposed Work is to be attached to this Agreement, and by this reference, incorporated into this Agreement as though set forth fully herein. Any surrounding site conditions or facility design features considered integral to the aesthetic integrity of the Work shall be stipulated by the Artist in the drawing of the proposed Work. A general description of the Work is as follows:

XXXXXXXXXXXX

C. If requested by Metro at any time during the execution of this Agreement, the Artist shall prepare and present to Metro maquettes, detailed drawings by the Artist and/or other documents to describe the size and character of the Work. Such items, if requested, shall by this reference be incorporated into this Agreement as though set forth fully herein. For sculpture and suspended art, the Artist shall provide engineer's drawings and engineering calculations of the Work that meet all safety requirements including building and seismic codes.

D. The Artist shall execute the Work at a location determined by Metro, in accordance with the Artist's design.

E. Any substantive change in the scope, design, size, texture or material of the proposed Work, or any change that will substantially alter the Work, shall require prior review and approval of Metro.

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F. The Artist shall install the completed Work at:

Site: XXXXXXXXX

Specific location: XXXXXXXXXXXXX

Approximate dimensions of location: XXXXXXXXXX

G. Coordination with Facility Name

- a) The Artist shall become a team member with the staff of the facility name ("project staff") and the project architects to design the location and features for the Work. The Artist shall work with the project architects to carry out the design for the work. Adjustments to the location, design, or Work shall be reviewed with the project staff and approved by Metro.
- b) The Artist shall provide to the project architect the details as necessary to incorporate the Work into the facility.
- c) The Artist shall install the Work in a manner, which complies with all applicable safety regulations to prevent injury to the public or damage to the project property.
- d) The Artist shall provide Metro with proper documentation of the new installation including:
 - i. Conservation Record Form
 - ii. Restoration Narrative on the work completed
 - iii. Two (2) slides each of three (3) different views of both the Work and the base; Two (2) slides of the installation process.
 - iv. The Artist shall provide detailed documentation on maintenance and conservation of the Work, and restoration that may be required including the names and addresses of relevant manufacturers or agencies.
- e) Final payment shall be withheld until documentation is received in a manner acceptable to Metro.

H. The necessary site preparation includes: (List structural, mechanical, architectural and other requirements.)

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

I. If preparation of the selected site is necessary, it will be the responsibility of the:

Artist:

1.XXXX

2.XXXX

Metro:

1.XXXX

2.XXXX

J. If other obligations are necessary, they are the responsibility of XXXXX. The other obligations are as follows: XXXXXXXXXXXXX

K. Any surrounding site conditions considered integral to the aesthetic integrity of the Work shall be stipulated by the Artist in the drawing of the proposed Work. If these conditions are determined as integral to the Work by Metro, an addendum to this Agreement shall be issued stating these conditions. The addendum shall be signed by Metro and the Artist and attached to this Agreement and, by this reference, incorporated into this Agreement as though set forth fully herein.



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L. An identification plaque including the Artist's name and other information pertinent to the Work shall be publicly displayed and identified with the Work. The identification plaque shall be provided by Metro with text approved by the Artist.

3. **PAYMENT.** Metro shall pay Artist for services performed and materials delivered in the amount(s), a maximum sum not to exceed XXXXX AND XX/100THS DOLLARS (\$XXXXX.XX). Artist's billing invoices shall include the Metro contract number, Artist name, remittance address, invoice date, invoice number, invoice amount, tax amount (if applicable), and an itemized statement of work performed and expenses incurred during the billing period, and will not be submitted more frequently than once a month. Artist's billing invoices shall be sent to metroaccountspayable@oregonmetro.gov. The Metro contract number and Artist's name shall be referenced in the email subject line. Metro requests that Artists submit billing invoices for services within 10 business days of completion of Work. Payment shall be made by Metro on a Net 30 day basis upon receipt of Artist invoice. These payments are based on completion of the Work, and inspection and acceptance by Metro for conformance with this contract's project specifications developed with the Artist, Metro's project manager, and the project architect.

4. **PROJECT MANAGERS.** The overall coordination and direction of the Project shall be provided by Metro's Project Manager, Name.

5. **NOTICES.** All notices provided for hereunder shall be in writing and sufficient if deposited in the United States mail, postage prepaid, to the parties addressed as indicated below:

To Artist Contact
Firm Name
Address
City State Zip
XXX-XXX-XXXX fax

To Metro: Metro Procurement Services
600 NE Grand Ave
Portland, Oregon 97232
503-797-1791 fax

With Copy to: Project Manager
Address
City State Zip
503.XXX-XXXX fax

6. **INSURANCE.**

A. Artist shall purchase and maintain at the Artist's expense, the following types of insurance, covering the Artist, its employees, and agents:

- a) The most recently approved ISO (Insurance Services Office) Commercial General Liability policy, or its equivalent, written on an occurrence basis, with limits not less than \$500,000 per occurrence and \$1,000,000 aggregate. The policy will include coverage for bodily injury, property damage, personal injury, contractual liability, premises and products/completed operations. Artist's coverage will be primary as respects Metro;
- b) Automobile insurance with coverage for bodily injury and property damage and with limits not less than minimum of \$500,000 per occurrence;
- c) Workers' Compensation insurance meeting Oregon statutory requirements including Employer's Liability with limits not less than \$500,000 per accident or disease; and

Metro, its elected officials, departments, employees, and agents shall be named as ADDITIONAL INSUREDS on Commercial General Liability and Automobile policies.

Artist shall provide to Metro 30 days notice of any material change or policy cancellation.

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Artist shall provide Metro with a Certificate of Insurance complying with this article upon return of the Artist signed agreement to Metro. Certificate of Insurance shall identify the Metro contract number.

7. **INDEMNIFICATION.** Artist shall indemnify and hold Metro, its agents, employees and elected officials harmless from any and all claims, demands, damages, actions, losses and expenses, arising out of or in any way connected with its performance of this Agreement, or with any patent infringement or copyright claims arising out of the use of Artist's designs or other materials by Metro and for any claims or disputes involving subArtists.

8. **OWNERSHIP OF DOCUMENTS AND MODELS.**

A. Drawings, specifications, and models or the Work performed under this Agreement, or which relate to the Work, including all preliminary studies, shall be the property of Metro following completion of the Work under this Agreement or following termination by Metro.

B. Metro shall have sole discretion to waive this provision and return the property to the Artist upon a determination by Metro that the property has no further intrinsic value to Metro.

9. **PROJECT INFORMATION.** Artist shall share all project information and fully cooperate with Metro, informing Metro of all aspects of the project including actual or potential problems or defects. Artist shall abstain from releasing any information or project news without the prior and specific written approval of Metro.

10. **OWNERSHIP OF THE WORK.**

A. **Ownership.** Ownership of the Work under this Agreement shall transfer to Metro upon completion of the final payment to the Artist.

B. **Copyright.** The Artist shall retain copyright and all other rights in and to the artwork, at the present or future location but shall make no exact duplications of the Work at another location.

C. **Reproductions.** The Artist grants Metro the irrevocable perpetual license to reproduce in any manner the image of the artwork, preliminary studies, models and maquettes, thereof, that have been delivered to and accepted by Metro. Metro may authorize third parties to photographically reproduce all of the same for municipal (i.e., educational and public information) purposes, and as may be desirable or necessary for the marketing of the facility, without payment of royalties or further compensation to the Artist. On reproductions that display the Work as the primary feature, the Artist shall be acknowledged using designations provided by the Artist in compliance with U.S. copyright law.

D. **Credits.** The Artist also agrees that photographic reproductions of the Work made by Artist for publicity purposes shall refer to the fact that the Work is installed at the **facility name.**

E. **Copyright Claims.** Artist shall give Metro written notice, via signature delivery, prior to asserting any claim pertaining to the specific Work referenced herein which may arise pursuant to 17 U.S.C. Sec. 106 et seq., (The "Copyright Law"), including but not limited to 17 U.S.C. Sec. 106A(e), the Visual Artists' Rights Act. Upon receiving such notice, Metro shall have at least 90 days from the date of receipt to evaluate and/or cure any such claim.

11. **TIME SCHEDULE.**

A. The Artist shall commence work on the project upon the date of execution of this Agreement and shall complete the Work including all phases under this Agreement by **Month XX, XXXX.**

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B. Such time for completion may be extended by Metro to the extent the Artist actually incurs delays in the design, fabrication and installation of the Work due to circumstances unforeseen by the Artist at the time of signing of this Agreement.

12. REVIEW OF THE WORK IN PROGRESS.

A. Metro, or its representative, shall have the right at reasonable times to review the progress of the Work and the Work, upon request to the Artist.

B. Metro may request, from the Artist, documentation of the progress of the Work to determine the completion of the phases of the Work as set out in this Agreement.

13. REPAIRS AND MAINTENANCE.

A. The Parties recognize that normal maintenance of the Work will involve simple procedures and that such maintenance on a regular basis is essential to the integrity of the Work. Metro is responsible for all routine maintenance required on a periodic basis as specified by the Artist in the technical and maintenance specifications record.

B. The facility shall be responsible for making all necessary repairs and restorations of the Work. Responsibility for repairs and restoration of the Work is, by law, contingent upon receipt of adequate appropriations for this purpose.

C. Unless the Artist is not available, the Artist shall be consulted as to his/her recommendations regarding repairs and restorations being made during the lifetime of the Artist. To the extent practical and in accordance with accepted principle of professional conservation, the Artist shall be given the opportunity to accomplish repairs and restorations and shall be paid a reasonable fee for the services, if the Artist can accomplish the work in a timely and cost-effective manner.

14. CHANGES AND RESALE.

A. The parties acknowledge that the **facility name** is a public facility and is subject to future modification which may impact the Work. Final determination regarding future expansion, renovation or alteration of the **Facility Name** shall be at the sole discretion of Metro, and Artist hereby waives all rights of action and claims under the Visual Artists' Rights Act ("VARA") of 1990, 17 U.S.C. § 106 A arising out of such expansion, renovation or alteration.

B. Metro shall make reasonable efforts to notify the Artist of any proposed future alteration of the site or adjoining areas that would significantly affect the intended character and appearance of the installed Work, and shall make reasonable efforts to consult the Artist in the planning of such alteration.

C. Except as provided above, should the Work be intentionally, damaged, altered, modified or changed by Metro, Metro shall either restore the Work to its original form, or Metro shall have the right to remove the Work from public display to storage or to destroy the Work.

D. If any significant damage to the Work occurs through mutilation, vandalism or other damage, and the Work is not fully restored to its original form in a timely manner, the Artist may, upon notice to Metro followed by 30 days' opportunity to cure, request that Metro remove or obliterate the identification plaque referred to in Section 2, as well as any signature or other emblem identifying the Artist with the Work, and Metro shall do so.

15. INDEMNIFICATION FOR ACQUISITION OF ARTWORK.

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- A. Upon completion of the installation of the Work, the Artist does hereby agree to warrant for a period of one year from the date of the installation of the Work the integrity of the materials and fabrication techniques in the Work.
- B. The responsibility for the determination of the Artist's liability for faults or defects in the Work during the one-year period shall be solely that of Metro.
16. AUDITS, INSPECTIONS AND RETENTION OF RECORDS. Metro shall have full access to and the right to examine, during normal business hours and as often as it deems necessary, all of the Artist's records with respect to all matters covered by this Agreement.
- A. Artist and subArtists shall maintain all fiscal records relating to such contracts in accordance with generally accepted accounting principles. In addition, Artist and subcontractors shall maintain any other records necessary to clearly document:
- a) The performance of the Artist, including but not limited to the Artist's compliance with contract plans and specifications, compliance with fair contracting and employment programs, compliance with Oregon law on the payment of wages and accelerated payment provisions; and compliance with any and all requirements imposed on the Artist or subcontractor under the terms of the contract or subcontract;
 - b) Any claims arising from or relating to the performance of the Artist or subcontractor under a public contract;
 - c) Any cost and pricing data relating to the contract; and
 - d) Payments made to all suppliers and subcontractors.
- B. Artist and subcontractors shall maintain records for the longer period of (a.) six years from the date of final completion of the contract to which the records relate or (b.) until the conclusion of any audit, controversy or litigation arising out of or related to the contract.
- C. Artist and subcontractors shall make records available to Metro and its authorized representatives, including but not limited to the staff of any Metro department and the staff of the Metro Auditor, within the boundaries of the Metro region, at reasonable times and places regardless of whether litigation has been filed on any claims. If the records are not made available within the boundaries of Metro, the Artist or subcontractor agrees to bear all of the costs for Metro employees, and any necessary consultants hired by Metro, including but not limited to the costs of travel, per diem sums, salary, and any other expenses that Metro incurs, in sending its employees or consultants to examine, audit, inspect, and copy those records. If the Artist elects to have such records outside these boundaries, the costs paid by the Artist to Metro for inspection, auditing, examining and copying those records shall not be recoverable costs in any legal proceeding.
- D. Artist and subcontractors authorize and permit Metro and its authorized representatives, including but not limited to the staff of any Metro department and the staff of the Metro Auditor, to inspect, examine, copy and audit the books and records of Artist or subcontractor, including tax returns, financial statements, other financial documents and any documents that may be placed in escrow according to any contract requirements. Metro shall keep any such documents confidential to the extent permitted by Oregon law, subject to the provisions of section E.
- E. Artist and subcontractor agree to disclose the records requested by Metro and agree to the admission of such records as evidence in any proceeding between Metro and the Artist or subcontractors, including, but not limited to, a court proceeding, arbitration, mediation or other alternative dispute resolution process.



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F. Artist and subcontractor agree that in the event such records disclose that Metro is owed any sum of money or establish that any portion of any claim made against Metro is not warranted, the Artist or subcontractor shall pay all costs incurred by Metro in conducting the audit and inspection. Such costs may be withheld from any sum that is due or that becomes due from Metro.

G. Failure of the Artist or subcontractor to keep or disclose records as required by this document or any solicitation document may result in debarment as a bidder or proposer for future Metro contracts as provided in ORS 279B.130 and Metro Code Section 2.04.070(c), or may result in a finding that the Artist or subcontractor is not a responsible bidder or proposer as provided in ORS 279B.110 and Metro Code Section 2.04.052.

17. INDEPENDENT CONTRACTOR STATUS. Artist shall be an independent contractor for all purposes and shall be entitled only to the compensation provided for in this Agreement. Under no circumstances shall Artist be considered an employee of Metro. Artist shall provide all tools or equipment necessary to carry out this Agreement, and shall exercise complete control in achieving the results specified in the Scope of Work. Artist is solely responsible for its performance under this Agreement and the quality of its work; for obtaining and maintaining all licenses and certifications necessary to carry out this Agreement; for payment of any fees, taxes, royalties, or other expenses necessary to complete the work except as otherwise specified in the Scope of Work; and for meeting all other requirements of law in carrying out this Agreement. Artist shall identify and certify tax status and identification number through execution of IRS form W-9 prior to submitting any request for payment to Metro.

18. RIGHT TO WITHHOLD PAYMENTS. Metro shall have the right to withhold from payments due to Artist such sums as necessary, in Metro's sole opinion, to protect Metro against any loss, damage, or claim which may result from Artist's performance or failure to perform under this Agreement or the failure of Artist to make proper payment to any suppliers or subcontractors.

19. STATE AND FEDERAL LAW CONSTRAINTS. Both parties shall comply with the public contracting provisions of ORS chapter 279A-C, and the recycling provisions of ORS 279.545 - 279.650, to the extent those provisions apply to this Agreement. All such provisions required to be included in this Agreement are incorporated herein by reference. Artist shall comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations including those of the Americans with Disabilities Act.

20. EQUAL EMPLOYMENT OPPORTUNITY. The Artist agrees to abide by all state and federal laws and regulations with respect to employment. This includes, but is not limited to, equal opportunity employment, nondiscrimination assurances, project record keeping, audits, inspection, and retention of records.

21. SITUS. The situs of this Agreement is Portland, Oregon. Any litigation over this agreement shall be governed by the laws of the State of Oregon and shall be conducted in the Circuit Court of the state of Oregon for Multnomah County, or, if jurisdiction is proper, in the U.S. District Court for the District of Oregon.

22. ASSIGNMENT. This Agreement is binding on each party, its successors, assigns, and legal representatives and may not, under any circumstance, be assigned or transferred by either party.

23. TERMINATION.

A. This Agreement may be terminated by mutual consent of the parties. In addition, Metro may terminate this Agreement by giving Artist seven days prior written notice of intent to terminate, without waiving any claims or remedies it may have against Artist. Termination shall not excuse payment for



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expenses properly incurred prior to notice of termination, but neither party shall be liable for indirect or consequential damages arising from termination under this section.

B. In the event of a termination pursuant to Paragraph 24(A), the Artist may refund all moneys paid to him/her by Metro prior to the time of termination and retain the Work, together with any drawings, specifications and models, and all materials and supplies purchased for the Work, for his/her own use without restriction.

24. NO WAIVER OF CLAIMS. The failure to enforce any provision of this Agreement shall not constitute a waiver by Metro of that or any other provision.

25. MODIFICATIONS. Notwithstanding and succeeding any and all prior agreement(s) or practice(s), this Agreement constitutes the entire Agreement between the parties, and may only be expressly modified in writing(s), signed by both parties. Metro may approve changes and modifications to the original contract, including deletions of work, order of additional materials, and additional services reasonably related to the original work scope. Artist may propose changes in the work that Artist believes are necessary, will result in higher quality work, improve safety, decrease the amount of the contract, or otherwise result in a better or more efficient work product. If such changes are approved by Metro, they shall be executed by written contract amendment signed by both parties. Such changes shall not relieve Artist of any obligation or warranty under the contract. No oral statements by either party shall modify or affect the terms of the contract.

26. SEVERABILITY. The parties agree that any provision of this Contract that is held to be illegal, invalid, or unenforceable under present or future laws shall be fully severable. The parties further agree that this Contract shall be construed and enforced as if the illegal, invalid, or unenforceable provision had never been a part of them and the remaining provisions of the Contract shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Contract. Furthermore, a provision as similar to the illegal, invalid, or unenforceable provision as is possible and legal, valid and enforceable shall be automatically added to this Contract in lieu of the illegal, invalid, or unenforceable provision. Any failure by Metro to enforce a provision of the Contract is not to be construed as a waiver by Metro of this right to do so.

27. COUNTERPARTS. This Contract may be executed in counterparts or multiples, any one of which will have the full force of an original.

28. ACCEPTANCE. Metro's authorized representatives may reject WORK and require that it be redone if it is not in conformance with the project specifications agreed upon by Artist and Metro. Metro will accept the finished Work when it conforms sufficiently to specifications. Metro reserves the right to reject any portion of the Work outright if it cannot be brought into satisfactory conformance.

ARTIST

METRO

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____