

WASHINGTON STATE ARTS COMMISSION  
ART IN PUBLIC PLACES PROGRAM  
RCW 43.17

**CONTRACT FOR COMMISSIONING OF ARTWORK**

ARTIST:

AGENCY:  
LOCATION:  
FUNDING:  
CITY:  
COUNTY:

ADDRESS:

PHONE:  
EMAIL:

CONTRACT AMOUNT:

ARTWORK TOTAL: \_\_\_\_\_

*Office use only:*

Accession No.:  
Tax rate:  
Tax amount:  
Contract deadline:  
# of payments scheduled:

**CONTRACT FOR COMMISSIONING OF ARTWORK  
TABLE OF CONTENTS**

CONTRACT FOR COMMISSIONING OF ARTWORK.....3

DEFINITIONS .....3

1. RETENTION OF ARTIST ..... 4

2. TIME SCHEDULE ..... 4

3. SCOPE OF WORK ..... 4

4. CHANGES TO WORK PRIOR TO COMPLETION ..... 6

5. REVIEW OF WORK IN PROGRESS ..... 6

6. FINAL PROJECT DOCUMENTATION ..... 6

7. PUBLIC EVENTS ..... 7

8. PAYMENT ..... 7

9. ARTIST AS INDEPENDENT CONTRACTOR..... 8

10. COPYRIGHT AND REPRODUCTION RIGHTS ..... 8

11. ACKNOWLEDGEMENT OF ARTS COMMISSION ..... 9

12. OWNERSHIP OF DOCUMENTS AND MODELS ..... 10

13. NONASSIGNABILITY ..... 10

14. RISK OF LOSS ..... 10

15. INDEMNIFICATION ..... 10

16. INSURANCE ..... 10

17. WARRANTY AGAINST DEFECTS ..... 11

18. WARRANTY OF TITLE..... 11

19. ADDRESSES FOR NOTICES AND DOCUMENTS..... 11

20. MAINTENANCE AND CARE ..... 12

21. MATERIAL CHANGES AFTER ACCEPTANCE OF WORK ..... 12

22. WAIVER..... 14

23. SEVERABILITY ..... 14

24. CONFLICT OF INTEREST ..... 14

25. COMPLIANCE WITH LAWS AND REGULATIONS ..... 14

26. DISPUTE RESOLUTION ..... 15

27. TERMINATION FOR CAUSE ..... 15

28. TERMINATION FOR CONVENIENCE..... 15

29. TERMINATION FOR DEATH OR INCAPACITY..... 15

30. TERMINATION PROCEDURE ..... 16

31. PUBLIC ARTIST ROSTER ..... 16

32. RECORDS ..... 16

33. AMENDMENT ..... 16

34. ENTIRE AGREEMENT ..... 17

ATTACHMENTS

Attachment A            DESIGN

# CONTRACT FOR COMMISSIONING OF ARTWORK

## DEFINITIONS

“ADDENDUM” shall mean a binding agreement between ARTS COMMISSION, AGENCY, and ARTIST that further obligates the AGENCY beyond the standard terms of the INTERAGENCY AGREEMENT between the ARTS COMMISSION and the AGENCY.

“AGENCY” shall mean any public entity where WORK acquired for the STATE ART COLLECTION is commissioned and/or sited.

“AMENDMENT” shall mean an agreement that changes the CONTRACT between the ARTS COMMISSION and the ARTIST.

“ARTS COMMISSION” shall mean the Washington State Arts Commission, of the state of Washington, any division, section, office, unit, or other entity of the agency, or any of the officers or other officials lawfully representing that agency.

“ARTIST” shall mean that individual, firm, provider, organization, or other entity performing services under this contract, and shall include all employees, SUBCONTRACTORS, and/or agents of the ARTIST.

“CONSERVATION” shall mean those extraordinary activities required to repair a malfunctioning or damaged WORK and to the treatment undertaken to bring a WORK to a stable condition so that future ROUTINE and SPECIAL ROUTINE MAINTENANCE can be effective. CONSERVATION may also include examination and documentation of the WORK.

“CONTRACT” shall mean the Contract for Commissioning of Artwork.

“DESIGN” shall mean the description of, specifications for, and model and/or drawings of the WORK. In most cases, the DESIGN is the result of a previous contract with the ARTS COMMISSION, and has been approved by the ARTS COMMISSION, in consultation with the AGENCY, prior to execution of this CONTRACT.

“INTERAGENCY AGREEMENT” shall mean the agreement between the ARTS COMMISSION and AGENCY regarding rights and obligations of the ARTS COMMISSION and AGENCY as to acquisition, location, modifications, stewardship, copyright, and ownership of the WORK.

“PUBLIC ARTIST ROSTER” shall mean the ARTS COMMISSION’S registry of artists eligible for contracts through the ARTS COMMISSION’S Art in Public Places Program.

“RESTORATION” shall mean those extraordinary activities required to repair a malfunctioning or damaged WORK, including treatment that returns the WORK to a known or assumed state, often through the addition of non-original material.

“ROUTINE MAINTENANCE” shall mean regular scheduled activities required to keep a WORK in clean, presentable, and working condition, including but not limited to surface dusting, removal of debris, cleaning of glass, oiling of moving parts, removal of debris, and/or landscape maintenance.

“SPECIAL ROUTINE MAINTENANCE” shall mean anticipated but infrequent activities required to maintain structural aspects of the WORK, including integrity of the overall surface and/or individual elements. SPECIAL ROUTINE MAINTENANCE typically involves non-art specific skills, including but not limited to application of paint and/or sealant and mortar replacement.

“SUBCONTRACTOR(S)” shall mean one not in the employment of the ARTIST, who is performing all or part of those services under this CONTRACT under a separate contract with the ARTIST, and who is considered an independent contractor.

“STATE ART COLLECTION” shall mean artwork acquired by the state through RCW 43.17.210, 43.19.455, 28A.335.210, and 28B.10.025.

“WORK” shall mean the work of art to be designed, executed, fabricated, transported, and permanently installed under this contract.

This CONTRACT is made and entered into by and between the WASHINGTON STATE ARTS COMMISSION, hereinafter called the “ARTS COMMISSION” , hereinafter called the “ARTIST”, at .

The ARTS COMMISSION and the ARTIST, for the consideration, covenants, and conditions hereinafter set forth, do agree as follows:

### **1. RETENTION OF ARTIST**

The ARTS COMMISSION does hereby retain the ARTIST to perform the work and services hereinafter described. The ARTIST is an independent contractor and shall furnish all supervision, labor, materials, supplies, equipment or use thereof, travel expenses, and all other incidentals, except as specifically provided below, and shall conduct and complete the work in a competent and professional manner.

### **2. TIME SCHEDULE**

The ARTIST shall commence work upon the effective date of this CONTRACT and shall complete the WORK including all phases under this CONTRACT by .

The effective date of the CONTRACT is determined to be the date that both the ARTIST and the ARTS COMMISSION have signed this CONTRACT. If there is an ADDENDUM to this CONTRACT between the ARTIST, ARTS COMMISSION, and the AGENCY, the effective date of this CONTRACT is the date of the last required signature.

Such time for completion may be extended by the ARTS COMMISSION 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 the signing of this CONTRACT.

### **3. SCOPE OF WORK**

#### **A. Description of Work**

The ARTIST shall complete the design refinements, fabricate and install the WORK in substantial conformity with the DESIGN for the WORK, conservation review, stamped structural engineering, and as described below and perform all tasks as indicated below.

The DESIGN is attached to this CONTRACT as Attachment A, and by this reference, incorporated into this CONTRACT as though set forth fully herein.

A description of the WORK is as follows:

#### **B. Location**

The ARTIST shall install the completed work at:  
Site:  
Specific location:

C. Other Obligations

If other obligations, are necessary it will be the responsibility of the party indicated below. Other obligations include but are not limited to clarification of the responsibilities of the ARTIST, AGENCY, and ARTS COMMISSION, and/or obligations related to structural engineering, site preparation, lighting, specification of site conditions to be considered integral to the WORK, and base, footings, or other anchoring devices.

The other obligations are as follows:

If other obligations, as described above, are determined to be the responsibility of the AGENCY, an ADDENDUM to this CONTRACT shall be issued stating the AGENCY'S responsibilities. The ADDENDUM shall be signed by the ARTS COMMISSION, AGENCY, and the ARTIST and attached to this CONTRACT, and by this reference, incorporated into this CONTRACT as though set forth fully herein.

The ARTIST shall have the opportunity to review and approve any plans or specifications prepared by the AGENCY and/or ARTS COMMISSION as part of the other obligations described above, including but not limited to detailed plans and/or specifications for site preparation, and/or the design of base, footing, or other anchoring devices for the WORK. In case the ARTIST does not approve such detailed plans, the ARTIST and the ARTS COMMISSION, in consultation with the AGENCY, will attempt to agree on a mutually satisfactory solution. If a mutually satisfactory solution cannot be reached, resolution will be governed by Section 26.

D. Identification Plaque

The ARTIST shall provide and install a permanent identification plaque near or as part of the WORK at a location agreed upon by the ARTIST, ARTS COMMISSION, and the AGENCY. The ARTIST will use the following format with final text approval by the ARTS COMMISSION.

Title  
Artist Name  
Year Installed  
Medium/s  
Washington State Arts Commission  
in partnership with

Accession #

1-3 sentences provided by the artist to encourage discourse on the WORK.

E. Coordination with Agency

The ARTIST shall attend construction coordination meetings with the AGENCY, the AGENCY'S general contractor, architect and other parties as appropriate to communicate about the WORK and to coordinate appropriate integration and/or installation of the WORK.

F. Additional Documentation

If requested by the ARTS COMMISSION at any time during the execution of this CONTRACT, the ARTIST shall prepare and present to the ARTS COMMISSION maquettes, detailed drawings, response to conservation review, and/or other documents including stamped drawings to scale and/or analysis by a licensed engineer, to describe the size and character of the WORK and/or its installation. Such items, if requested, shall by this reference, be incorporated into this CONTRACT as though set forth fully herein.

#### **4. CHANGES TO WORK PRIOR TO COMPLETION**

The ARTIST may request that changes be made to the DESIGN at any point during execution, fabrication, or installation of the WORK. Prior to execution of any significant change to the DESIGN, as described in Section 3 and/or Attachment A, the following procedure shall be followed:

- A. The ARTIST shall present the proposed changes in writing to the ARTS COMMISSION for further review and approval. The ARTIST must provide a detailed description of any significant changes in the concept, scope, dimensions, materials, and/or location of the WORK, or any change that will alter installation scheduling, site preparation, maintenance of the WORK or the WORK itself.
- B. The ARTS COMMISSION will review the requested change in consultation with the AGENCY. If the ARTS COMMISSION approves the requested change(s), written approval in the form of an AMENDMENT to this CONTRACT shall be issued stating the approved change(s) and attached to this CONTRACT, and by this reference, incorporated into this CONTRACT as though set forth fully herein.
- C. The ARTIST must obtain written approval of the proposed change from the ARTS COMMISSION. If the ARTS COMMISSION does not approve the proposed change(s), the ARTS COMMISSION will notify the ARTIST in writing and the ARTIST shall continue to fabricate the WORK in conformity with the approved proposal for the WORK.
- D. Any changes to the budget resulting from approved changes are the sole responsibility of the ARTIST. No extra payments will be allowed as a result of changes except by AMENDMENT or ADDENDUM to this CONTRACT.

#### **5. REVIEW OF WORK IN PROGRESS**

The ARTS COMMISSION, or its representative, shall have the right at reasonable times to review the progress of the WORK and the WORK itself, in order to monitor and evaluate performance, compliance, and/or quality assurance under this CONTRACT.

The ARTS COMMISSION shall request, from the ARTIST, documentation of the progress of the WORK and the WORK itself to determine the completion of the phases of WORK as outlined in Section 8 prior to payment.

#### **6. FINAL PROJECT DOCUMENTATION**

The ARTIST shall submit the following documents to the ARTS COMMISSION prior to the release of final payment.

- A. A 1-page ARTIST's statement about the WORK. The statement is intended to help facilitate the understanding of the WORK by the public. The statement shall include a description of the WORK, the ARTIST's intent and imagery, and construction techniques and materials used in the creation of the WORK. The statement should be submitted in both hard copy and as a MS Word document or Rich Text File on CD.
- B. A current professional resume.
- C. High resolution (300 dpi as .JPG or .TIFF) digital images at main assembly (as built) intervals in studio and on site, and publication quality images of each component of the WORK and entire installed WORK. Digital images should be submitted on CD, saved as separate image files, and labeled with production stage and photography credit.

D. Detailed Artwork Report for the WORK completed in full on forms provided by the ARTS COMMISSION. To the extent the WORK incorporates products covered by a manufacturer's warranty, the ARTIST shall attach copies of such warranties to the Detailed Artwork Report.

## 7. PUBLIC EVENTS

The ARTIST shall participate in at least one public event relating to the WORK, such as a dedication ceremony, public presentation, or other educational outreach. The ARTIST shall be available for the public event(s) at such time(s) as may be mutually agreed upon by the ARTS COMMISSION, AGENCY, and the ARTIST.

## 8. PAYMENT

### A. Payment for Work Performed

The ARTIST shall be paid by the ARTS COMMISSION for completed work and/or services related to this CONTRACT. Such payment shall be full compensation for all work performed and/or services rendered to complete the WORK.

The total payment for the WORK, inclusive of Washington State sales/use tax, shall be an amount not to exceed dollars. Based on sales/use tax rates applicable at the execution of this CONTRACT, it is estimated that the ARTIST will receive dollars in payment for the WORK and that dollars will be paid to the State in the form of sales/use tax. See subsection C. regarding tax payment and state residency requirements.

No payments in advance or in anticipation of services or supplies to be provided under this contract shall be made by the ARTS COMMISSION.

The ARTS COMMISSION shall authorize final payment upon acceptance of the WORK by the ARTS COMMISSION and receipt of the ARTIST'S final invoice voucher, receipt of the requirements listed in Section 6, and following a 30-day retainage period, which will commence on the date of completed installation of the WORK and identification plaque in the designated location.

### B. Payment Schedule

Payments will be made upon a percentage of completion as set forth below:

STAGE 1:  
\$XX,XXX upon completion of  
XX%

STAGE 2:  
\$XX,XXX upon completion of  
XX%

STAGE 3:  
\$XX,XXX upon completion of  
XX%

STAGE 4:  
\$XX,XXX upon completion of  
XX%

FINAL STAGE:  
\$XX,XXX upon completion of  
XX%

### C. Taxes

The ARTIST is responsible for all applicable taxes, including Washington State sales/use and excise taxes, local and federal taxes, which may be due from him/her as a result of this CONTRACT. The Washington State sales/use tax rate shall be determined according to rates applicable to the WORK installation site.

ARTISTS can contact the Washington State Department of Revenue to determine his/her eligibility for use of Resale Certificates for purchase of supplies and/or services under this CONTRACT.

ARTISTS residing in Washington State must register with the Washington State Department of Revenue and are responsible for remitting sales tax to the Department of Revenue. Should the rate of sales tax change during the performance of this CONTRACT, the ARTIST shall pay the prevailing sales tax rate to the Department of Revenue.

For out-of-state ARTISTS, the ARTS COMMISSION shall remit payment for Washington State and local use taxes to the Washington State Department of Revenue. Should the use tax rate change during the performance of this CONTRACT, the ARTS COMMISSION shall pay the prevailing use tax rate to the Department of Revenue and adjust the payment for the WORK to the ARTIST.

### D. Billing Procedures

The ARTIST shall submit a signed billing, on a state of Washington invoice voucher form, to the ARTS COMMISSION, when he/she documents completion of each stage outlined in Section 8. B. The invoice voucher will be provided to the ARTIST by the ARTS COMMISSION. Only signed original invoice vouchers will be accepted; payment cannot be made on invoice vouchers transmitted electronically or by facsimile.

The determination that a payment stage has been reached shall be at the discretion of the ARTS COMMISSION based upon ARTIST-provided documentation. The ARTS COMMISSION will promptly determine whether the ARTIST has completed the applicable stage. When the ARTS COMMISSION determines the stage is complete the ARTS COMMISSION will process the invoice voucher and make payment to the ARTIST within 30 days.

## **9. ARTIST AS INDEPENDENT CONTRACTOR**

The parties intend that an independent contractor relationship will be created by this CONTRACT. The ARTIST performing under this CONTRACT is not an employee, SUBCONTRACTOR, or agent of the ARTS COMMISSION nor of the AGENCY. The ARTIST will not hold himself/herself out as nor claim to be an officer or employee of the ARTS COMMISSION, the AGENCY, or of the state of Washington by reason hereof, nor will the ARTIST make any claim of right, privilege, or benefit which would accrue to an employee under law. Conduct and control of the work completed under this CONTRACT will be solely with the ARTIST.

The ARTIST shall execute the WORK at a location determined by the ARTIST.

The ARTIST is responsible for payment of all costs related to the WORK, including but not limited to SUBCONTRACTORS, required materials, supplies, equipment, labor of assistants, insurance, communications, studio space, travel, lodging, sustenance, transportation, storage, rentals, installation, documentation, and ARTIST participation in a public event related to the WORK.

## **10. COPYRIGHT AND REPRODUCTION RIGHTS**

The ARTIST shall retain all rights under copyright law to which the WORK, preliminary studies, drawings, specifications, and models may be subject. The ARTIST represents and agrees that the ARTIST is the sole creator of the WORK and that the WORK has not been previously displayed in whole or part, and that nothing in the WORK will infringe copyright, violate any rights to privacy or publicity, or otherwise be in violation of applicable law.

In view of the intention that the WORK shall be unique, the ARTIST shall not make any additional exact duplicate editions of the WORK, nor shall the ARTIST grant permission to others to do so except with the written permission of the ARTS COMMISSION. However, nothing shall prevent the ARTIST from creating future artwork in the ARTIST's manner and style of artistic expression.

The ARTIST grants to the ARTS COMMISSION and its assigns an irrevocable license to make and use graphic reproductions of the WORK, including ARTIST-provided two-dimensional graphic reproductions for non-commercial purposes, including, but not limited to, reproductions used in brochures, media publicity, and exhibition catalogues or similar publications (including reproductions in all graphic media now known or later developed, digital or otherwise, and including the Internet and the World Wide Web) provided that these rights are exercised in a tasteful and professional manner. The ARTIST agrees these rights shall be royalty-free, unrestricted, non-exclusive, and permanent. Reproductions of the WORK may include but are not limited to the artwork proposal, preliminary studies, images of models of the WORK, and/or images of the WORK during fabrication, installation, as installed, or during conservation. The ARTS COMMISSION shall not identify or represent reproductions of the artwork proposal, preliminary studies, or models of the WORK as the finished WORK.

All reproductions by the ARTS COMMISSION shall contain a credit line that includes the ARTIST's name, WORK title, date, "Washington State Arts Commission in partnership with" and photography credit as designated by the ARTIST, if applicable.

The ARTIST agrees that the ARTS COMMISSION and AGENCY shall have the right to use the Artist's name, voice, signature, photograph, biography, and likeness in connection with the display, publication, and promotion of the WORK.

If the ARTS COMMISSION or AGENCY wishes to make reproductions of the WORK for commercial purposes, including but not limited to, tee shirts, mugs, and calendars, the parties shall execute a separate agreement to address the terms of the license granted by the ARTIST and the royalty the ARTIST shall receive.

The ARTS COMMISSION and AGENCY are not responsible for any third party infringement of the ARTIST's copyright and are not responsible for protecting the intellectual property rights of the ARTIST. It is understood that the WORK may be photographed by the public.

If the ARTIST uses the recognizable likeness of an individual in their imagery, the ARTIST shall be liable and shall secure a signed model waiver from the individual or legal guardian unless the imagery is in the public domain.

## **11. ACKNOWLEDGEMENT OF ARTS COMMISSION**

The ARTIST shall use his/her best efforts in any public showing of preliminary studies, drawings, specifications, models, derivatives and/or use of graphic reproductions (any 2-D image) of the WORK, including but not limited to published material, exhibitions, and announcements to give acknowledgment to the ARTS COMMISSION and the AGENCY in substantially the following form: "commissioned by the Washington State Arts Commission in partnership with ." In the event of oral presentations with no accompanying printed material and/or in-person interviews with journalists, the ARTIST agrees to give the oral credit.

Any information releases or media announcements produced by the ARTIST, or produced by his/her representative(s), and concerning the WORK or services performed under this CONTRACT will be submitted to the ARTS COMMISSION for written approval prior to any final distribution.

## **12. OWNERSHIP OF DOCUMENTS AND MODELS**

ARTIST-prepared materials submitted under this CONTRACT shall be retained by the ARTS COMMISSION to hold for permanent safekeeping and for purposes of public information, education, exhibition, and/or publication. Materials may include copies of all preliminary studies, drawings, specifications, and photographs of models related to the WORK submitted to the ARTS COMMISSION by the ARTIST pursuant to Sections 3, 5, 6, and 8 of this CONTRACT. ARTIST may retain the rights to originals. Should the ARTIST exhibit or sell the originals of the preliminary studies the following attribution should be attached to the WORK: "*Preliminary study, drawing, or model of artwork* originally commissioned by the Washington State Arts Commission in partnership with ."

## **13. NONASSIGNABILITY**

Neither this CONTRACT, nor any claim arising from this CONTRACT, shall be transferred or assigned by the ARTIST without prior written consent of the ARTS COMMISSION.

## **14. RISK OF LOSS**

The responsibility for and risk of damage to or loss of the WORK during fabrication and through installation shall be solely that of the ARTIST. The ARTIST shall take such measures as are reasonably necessary to protect the WORK from loss or damage during the creation, storage, transportation, delivery of the WORK, and through completion of installation of the WORK.

The ARTS COMMISSION shall require the ARTIST to provide a policy of insurance to cover the risk of damage to or loss of the WORK during fabrication and through installation.

Upon installation of the WORK, the responsibility for and risk of damage to or loss of the WORK shall no longer be the responsibility of the ARTIST. Upon installation, the AGENCY will be responsible for protecting the WORK against loss, theft, mutilation, vandalism, or other damage, per the INTERAGENCY AGREEMENT.

## **15. INDEMNIFICATION**

The ARTS COMMISSION shall indemnify and hold harmless the ARTIST from all claims, costs, damages, or expenses arising out of the negligence of the ARTS COMMISSION. Likewise, the ARTIST shall indemnify and hold harmless the ARTS COMMISSION and the State of Washington from all claims, costs, damages, or expenses arising out of the actions of the ARTIST, including the violation or infringement of any copyright. In the case of negligence of both the ARTS COMMISSION and the ARTIST, any damages allowed shall be levied in proportion to the percentage of negligence attributable to each party.

## **16. INSURANCE**

The ARTIST shall provide insurance coverage as set out in this section and in Section 14. The intent of the required insurance is to protect the State should there be any claims, suits, actions, costs, damages or expenses arising from any negligent or intentional act or omission of the ARTIST or SUBCONTRACTOR or agents of either, while performing under the terms of this contract.

The insurance required shall be issued by an insurance company authorized to do business within the state of Washington, and shall name the "Washington State Arts Commission and AGENCY" as additional insured under the insurance policy. All policies shall be primary to any other valid and collectable insurance.

The ARTIST shall provide insurance coverage that shall be maintained in full force and effect during the term of this CONTRACT, as follows:

Provide a Commercial General Liability Insurance Policy, including contractual liability, written on an occurrence basis, in adequate quantity to protect against legal liability arising out of contract activity but no less than \$ per occurrence. Additionally, the ARTIST is responsible for ensuring that any SUBCONTRACTORS provide adequate insurance coverage for the activities arising out of subcontracts.

The ARTS COMMISSION will require the ARTIST to submit to the ARTS COMMISSION a certificate of insurance, which outlines the coverage and limits defined in this section. The ARTIST shall submit renewal certificates as appropriate during the term of this CONTRACT.

## **17. WARRANTY AGAINST DEFECTS**

The ARTIST warrants and represents that the WORK shall comply with the appropriate stamped engineering documents provided by an engineer licensed to practice in the State of Washington and be free from defective or inferior materials and/or inferior or faulty fabrication and installation techniques. At the ARTS COMMISSION'S option, the ARTIST shall remedy and/or pay for any loss or damage resulting from faulty materials or workmanship that occurs or appears within a period of years after completion of installation of the WORK.

The ARTS COMMISSION shall give written notice with reasonable promptness to the ARTIST regarding observed defects in the WORK. The responsibility for the determination of the ARTIST'S liability for faults or defects in the WORK during the -year period shall be solely that of the ARTS COMMISSION. Failure to agree with such determination by the ARTS COMMISSION shall be a dispute within the meaning of Section 26 of this CONTRACT.

The ARTIST represents and warrants that ROUTINE and SPECIAL ROUTINE MAINTENANCE of the WORK will not require procedures substantially in excess of those recommendations described in the DESIGN and the Detailed Artwork Report submitted by the ARTIST pursuant to Section 6.

## **18. WARRANTY OF TITLE**

The ARTIST warrants and represents that, upon installation of the WORK and final payment to the ARTIST under Section 8, the state of Washington shall acquire good title to the WORK, and that the WORK shall be free from any and all claims, liens, and charges by any person or entity, including but not limited to any employee, supplier, or SUBCONTRACTOR.

The ARTIST warrants and represents that the WORK is the result of the artistic effort of the ARTIST or disclosed and attributed collaboration, the WORK does not infringe upon any copyright, and that the WORK is unique and limited to an edition of one (1).

## **19. ADDRESSES FOR NOTICES AND DOCUMENTS**

All notices, forms, reports, and other documents required under this CONTRACT or regarding the performance of this CONTRACT shall be delivered or mailed to the addresses stated below, or to such other address as may be specified hereafter by either party for itself by notice to the other party:

For the ARTS COMMISSION: Washington State Arts Commission  
Art in Public Places Program  
711 Capitol Way S, Suite 600  
PO Box 42675  
Olympia, WA 98504-2675

For the ARTIST:

>

>

The ARTIST'S failure to keep the ARTS COMMISSION reasonably informed regarding the ARTIST'S current physical and mailing address shall be deemed a waiver of the ARTIST'S rights and opportunities under Section 21 of this CONTRACT.

## **20. MAINTENANCE AND CARE**

The ARTS COMMISSION recognizes that ROUTINE and SPECIAL ROUTINE MAINTENANCE are essential to the integrity of the WORK. The AGENCY has agreed to provide ROUTINE and SPECIAL ROUTINE MAINTENANCE for the WORK as specified by the ARTS COMMISSION with consideration of the Detailed Artwork Report provided by the ARTIST. The ARTS COMMISSION, to the best of its ability, will ensure compliance by the AGENCY of this responsibility. Neither the ARTS COMMISSION nor the AGENCY shall be required to contact the ARTIST prior to ROUTINE and/or SPECIAL ROUTINE MAINTENANCE.

## **21. MATERIAL CHANGES AFTER ACCEPTANCE OF WORK**

Except as provided herein, the ARTS COMMISSION will not make material changes to the WORK without written authorization from the ARTIST regarding the proposed changes. A material change is a change affecting the intended character or appearance of the WORK resulting from an intentional act by a third party, an accident, or an act of nature.

### A. Conservation and Restoration

If any material change occurs to the WORK after transfer to the ARTS COMMISSION the ARTS COMMISSION reserves the right to determine if, when, and how any CONSERVATION and RESTORATION of the WORK can be made, and the nature, scope and anticipated cost of any such CONSERVATION and RESTORATION. The ARTS COMMISSION reserves the right to contract with a conservator to implement any such CONSERVATION or RESTORATION.

### B. Funding of Conservation and Restoration

The ARTS COMMISSION shall be responsible for making all necessary CONSERVATION and RESTORATION of the WORK. The ARTS COMMISSION'S responsibility for CONSERVATION and RESTORATION of the WORK is, by law, contingent upon receipt of adequate appropriations for this purpose.

### C. Notification of Conservation and Restoration

In the event the ARTS COMMISSION determines CONSERVATION and RESTORATION should be undertaken, the ARTS COMMISSION shall notify the ARTIST in writing of:

1. The nature of the material change, including documentation in the form of one or more drawings, photographs, diagrams, plans, or other documentation to illustrate the change;
2. The ARTS COMMISSION'S recommendations for the proposed means and methods for CONSERVATION and RESTORATION;
3. A timeline establishing the date by which the ARTIST must respond in writing and a set period for good faith negotiations by all parties regarding CONSERVATION and RESTORATION; and
4. The actions to be taken by the ARTS COMMISSION should the ARTIST fail to respond to the established timeline and engage in good faith negotiations to reach agreement regarding the WORK'S CONSERVATION and RESTORATION.

D. Approval of Conservation and Restoration

The ARTIST shall not unreasonably withhold approval for any reasonable CONSERVATION or RESTORATION of the WORK outlined by the ARTS COMMISSION in the written notice.

The failure of the ARTIST to respond in writing within the established timeline to the ARTS COMMISSION'S notice of change(s) to the WORK shall constitute the ARTIST'S waiver of all objections to the CONSERVATION or RESTORATION of the WORK (including means and methods) described in such ARTS COMMISSION notice.

E. Negotiation of Conservation and Restoration

The ARTIST and the ARTS COMMISSION shall engage in good faith negotiations concerning the ARTS COMMISSION'S recommendations for CONSERVATION and RESTORATION. Should the ARTIST and the ARTS COMMISSION not reach mutual agreement on the CONSERVATION or RESTORATION means or methods within the timeline provided in the ARTS COMMISSION'S written notice to the ARTIST, the WORK may be repaired or restored as determined by the ARTS COMMISSION.

F. Relocation, Removal, and Site Modifications

The state of Washington reserves the right to manage its buildings, facilities, and public sites for public purposes, and in doing so, may determine that it is necessary to relocate or remove the WORK and/or modify the site in/on which it is located. The ARTS COMMISSION will not approve relocation or removal of the WORK and/or substantially modify the site in/on which it is located without notifying the ARTIST of the proposed change and attempting to reach agreement with the ARTIST regarding the future appearance or location of the WORK.

The ARTIST shall not unreasonably withhold approval of the relocation or removal of a WORK from the site in which it is located or the modification of such location, as proposed by the ARTS COMMISSION in its notice to the ARTIST pursuant to this subsection. Failure to agree with such determination by the ARTS COMMISSION shall be a dispute within the meaning of Section 26 of this CONTRACT.

G. Removal for Imminent Harm or Hazard

If the ARTS COMMISSION reasonably determines that the WORK presents imminent harm or hazard to the public, other than as a result of the ARTS COMMISSION'S or AGENCY'S failure to maintain the WORK, the ARTS COMMISSION may authorize modifications of, including material changes, or removal of the WORK without prior approval of the ARTIST.

H. Disassociation

If a modification of the WORK occurs without the ARTIST'S written permission and the ARTIST gives written notice to the ARTS COMMISSION requesting that his/her name and the WORK be disassociated, the WORK will no longer be designated as the WORK of the ARTIST.

I. Deaccession

In the event the ARTS COMMISSION deaccessions the WORK, the ARTIST shall have the first right of refusal to purchase his/her work in its current condition at salvage cost or the cost to retrieve the WORK, providing it is not integrated into a larger piece or a structure, and/or can be removed without destruction of the WORK.

J. Integrated artwork

If the WORK is integrated into or otherwise made part of a building, facility, or public site, the ARTIST acknowledges that such installation may subject the WORK to destruction, distortion, mutilation, or other modification by reason of its removal from or significant changes to that location.

K. Inherent nature of materials and public presentation

For purposes of this CONTRACT, no modification of the WORK that results from the passage of time or the inherent nature of the materials used in the WORK shall constitute modification for which the ARTIST may claim relief or any remedy from the ARTS COMMISSION. In addition, no modification of the WORK that is the result of CONSERVATION, RESTORATION, or of its public presentation (including but not limited to lighting and placement) shall constitute a modification that is prejudicial to the ARTIST'S honor or reputation or for which the ARTIST may claim relief or any remedy from the ARTS COMMISSION unless such modification is the direct result of gross negligence.

## **22. WAIVER**

Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of the CONTRACT unless stated to be such in writing, signed by authorized representative of the ARTS COMMISSION.

## **23. SEVERABILITY**

The provisions of this CONTRACT are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the CONTRACT.

## **24. CONFLICT OF INTEREST**

The ARTS COMMISSION may, at its sole discretion and by written notice to the ARTIST, terminate this contract if it finds, after due notice and examination, that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW; or any similar statute involving the ARTIST in the procurement of, or performance under, this CONTRACT.

In the event this CONTRACT is terminated as provided in this section, the ARTS COMMISSION shall be entitled to pursue the same remedies against the ARTIST as it could pursue in the event of a breach of the CONTRACT by the ARTIST. The rights and remedies of the ARTS COMMISSION provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which the ARTS COMMISSION makes any determination under this clause shall be an issue and may be reviewed as provided in the Section 26 of this CONTRACT.

## **25. COMPLIANCE WITH LAWS AND REGULATIONS**

The ARTIST shall perform and comply with all the applicable federal, state and local laws, rules, and regulations.

The ARTIST must comply with all applicable provisions of the Americans with Disabilities Act (ADA) of 1990, Public Law 101-336, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

The ARTIST shall comply with all applicable local, state, and federal licensing, accreditation, and registration requirements/standards, necessary for the performance of this CONTRACT.

This CONTRACT shall be construed and interpreted in accordance with the laws of the state of Washington and the venue of any action brought hereunder shall be in Superior Court of Thurston County.

## **26. DISPUTE RESOLUTION**

Except as otherwise provided in this CONTRACT, when a dispute arises between the ARTS COMMISSION and the ARTIST and it cannot be resolved by direct negotiation, the parties agree to participate in mediation in good faith. The mediator shall be chosen by agreement of the parties. If the parties cannot agree on a mediator, the parties shall use a mediation service that selects the mediator for the parties. The parties will equally share the costs of the mediation service, but each party will bear its own costs, including but not limited to attorney fees, in conjunction with the mediation proceeding. The parties agree that mediation shall precede any action in a judicial or quasi-judicial tribunal.

Nothing in this CONTRACT shall be construed to limit the parties' choice of a mutually acceptable alternative resolution method such as a disputes hearing, a dispute resolution board, or arbitration.

## **27. TERMINATION FOR CAUSE**

In the event that the ARTS COMMISSION determines the ARTIST has failed to comply with the conditions of this CONTRACT, the ARTS COMMISSION has the right to suspend or terminate the CONTRACT. Before suspending or terminating the CONTRACT, the ARTS COMMISSION shall notify the ARTIST in writing of the need to take corrective action. If corrective action is not taken within 30 days, the CONTRACT may be terminated or suspended.

The ARTS COMMISSION reserves the right to suspend all or part of the CONTRACT, withhold further payments, or prohibit the ARTIST from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the ARTIST or a decision by the ARTS COMMISSION to terminate the CONTRACT. A termination may be retroactively deemed to be a "Termination for Convenience" if it is determined that the ARTIST: (1) was not in default; or (2) failure to perform was outside of his/her control, fault, or negligence.

## **28. TERMINATION FOR CONVENIENCE**

Except as otherwise provided in this CONTRACT, the ARTS COMMISSION may, by 15-day written notice, terminate this CONTRACT, in whole or in part. In the event that appropriations from the state, federal, or other sources are withdrawn, reduced, or limited in any way after the effective date of this CONTRACT and prior to completion, the ARTS COMMISSION may terminate the CONTRACT without the 15-day notice requirement, subject to renegotiation at the ARTS COMMISSION'S discretion under any new funding limitations and conditions.

## **29. TERMINATION FOR DEATH OR INCAPACITY**

If the ARTIST becomes unable to complete this CONTRACT due to death or incapacitation, such death or incapacity will not be deemed a breach of this CONTRACT. However, nothing in this section shall obligate the ARTS COMMISSION to accept the WORK.

- A. In the event of incapacity, the ARTIST shall assign the ARTIST's obligations and services under this contract to another artist provided that the ARTS COMMISSION in its sole discretion, approves of the new artist. Alternatively, the ARTS COMMISSION may elect to terminate this CONTRACT.
- B. In the event of the death of the ARTIST, this CONTRACT shall terminate effective the date of death. Should the ARTS COMMISSION accept the partially completed WORK, the ARTIST'S executor shall deliver to the ARTS COMMISSION the WORK in whatever form or degree of completion it may be at the time. Title of the WORK shall then transfer to the ARTS COMMISSION. However, the WORK shall not be represented to be the completed WORK of the ARTIST unless the ARTS COMMISSION is otherwise directed by the ARTIST'S estate.

### **30. TERMINATION PROCEDURE**

Upon termination of this CONTRACT, the ARTS COMMISSION, in addition to any other rights provided in this CONTRACT, may require the ARTIST to deliver to the ARTS COMMISSION the WORK, together with any drawings, specifications, and models and all materials and supplies purchased for the WORK.

The ARTS COMMISSION shall pay the ARTIST for services performed and goods delivered prior to the effective date of termination, consistent with the schedule of payments set forth in Section 8 of this CONTRACT, unless the termination is for default, in which case the ARTS COMMISSION shall determine the extent of the liability to the ARTIST. At the request of the ARTS COMMISSION, the ARTIST shall provide an accounting of all expenses incurred under this CONTRACT prior to the effective date of termination, and shall return to the ARTS COMMISSION all funds provided by the ARTS COMMISSION in excess of expenses already incurred. The ARTS COMMISSION may withhold from any amounts due the ARTIST such sum as the ARTS COMMISSION determines to be necessary to protect against potential loss or liability. Failure to agree with such determination by the ARTS COMMISSION shall be a dispute within the meaning of Section 26 of this CONTRACT.

The rights and remedies of the ARTS COMMISSION provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this CONTRACT.

### **31. PUBLIC ARTIST ROSTER**

The ARTS COMMISSION reserves the right to manage the PUBLIC ARTIST ROSTER in the best interest of the state of Washington and the ARTS COMMISSION. The ARTS COMMISSION may remove the ARTIST from the PUBLIC ARTIST ROSTER in the event that this CONTRACT is terminated for cause, or if the ARTS COMMISSION determines that the ARTIST has not complied with Sections 17 and 18 of this CONTRACT.

In the event that the ARTIST is removed from the PUBLIC ARTIST ROSTER, the effective date of that removal will be the effective date of termination for cause or the date of written notification from the ARTS COMMISSION of failure to comply with the warranty requirements detailed in Sections 17 and 18. After a period of not less than five years from removal, the ARTIST may reapply for inclusion in the PUBLIC ARTIST ROSTER during the next regularly scheduled application period. The ARTS COMMISSION shall have the sole discretion to require the ARTIST to submit to a reference check and to determine whether to forward the ARTIST'S application to the PUBLIC ARTIST ROSTER Jury.

### **32. RECORDS**

The ARTS COMMISSION agrees to maintain on permanent file a record of this CONTRACT and the location and disposition of the WORK.

### **33. AMENDMENT**

This CONTRACT may be amended by mutual agreement of the parties. Such AMENDMENTS shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

**34. ENTIRE AGREEMENT**

This CONTRACT, including referenced attachment and ADDENDUM, represents all the terms and conditions agreed upon by the parties. No other statements or representations, written or oral, shall be deemed a part hereof.

Authorized Signature for CONTRACT FOR COMMISSIONING OF ARTWORK FOR

<b>ARTIST</b>	WASHINGTON STATE ARTS COMMISSION
BY _____ Signature	BY _____ Signature
BY _____ Print	BY _____ Print
TITLE _____	TITLE <u>Executive Director</u>
DATE _____	DATE _____
_____	
Mailing Address	
_____	
City, State, Zip Code	

The following is applicable to **Washington State artists only:**

Washington State Department of Revenue Registration Number \_\_\_\_\_

Congressional District Number \_\_\_\_\_ Legislative District Number \_\_\_\_\_

(Revised June 18, 2008)

Approved as to form  
Assistant Attorney General: ORIGINAL  
SIGNATURE ON FILE, DATE