



**WASHINGTON STATE ARTS COMMISSION  
ART IN PUBLIC PLACES PROGRAM  
RCW 43.17**

**PROPOSAL DEVELOPMENT CONTRACT**

ARTIST:  
ADDRESS:  
  
PHONE:  
  
EMAIL:  
  
SWV:  
UBI:

AGENCY:  
  
LOCATION:  
  
ADDRESS:  
CITY:  
  
FUNDING:  
  
COUNTY:

***Office use only***

Accession Number: WSAC2022.999  
Contract Deadline: 2023-05-30  
No. of Payments Scheduled: 3

***For SAFS:***

Fund:  
Appn:  
Prog Ind:  
Sub Obj:  
Sub Sub Obj:  
Project:  
Sub-project:  
12 Phase:

**PROPOSAL DEVELOPMENT CONTRACT**

THIS CONTRACT is made and entered into by and between the WASHINGTON STATE ARTS COMMISSION, hereinafter referred to as "ARTS COMMISSION" and

Artist  
1234 Main Drive  
Somewhere, WA 98000

hereinafter referred to as "ARTIST" is entered into on the terms and conditions as are set forth below.

WHEREAS, the State of Washington is implementing a public art program pursuant to chapter 43.17.200 RCW, 43.17.205 RCW, 43.17.210 RCW, 43.19.455 RCW, 43.46.090 RCW, 43.46.095 RCW, 28A.335.210 RCW, 28B.10.025 RCW, and 28B.10.027 RCW, all state agencies, colleges and universities, and public schools, hereinafter called the "AGENCY", shall allocate 1/2 of 1% of the appropriation for the original construction of any state building for the acquisition of works of art;

WHEREAS, in addition, pursuant to chapter 28B.10.027 RCW, all universities and colleges, hereinafter called the "AGENCY", shall allocate 1/2 of 1% of the appropriation for any major renovation or remodeling work exceeding two hundred thousand dollars, (\$200,000.00), of any state building, for the acquisition of works of art;

WHEREAS, pursuant to chapter 43.17.200 RCW, 43.17.205 RCW, 43.17.210 RCW, 43.19.455 RCW, 43.46.090 RCW, 43.46.095 RCW, 28A.335.210 RCW, 28B.10.025 RCW, and 28B.10.027 RCW, the AGENCY has agreed that the ARTS COMMISSION shall perform these legislative mandates;

WHEREAS, the AGENCY shall transfer its 1/2 of 1% art allocation to the ARTS COMMISSION for expenditure by the ARTS COMMISSION;

All rights and obligations of the parties to this CONTRACT shall be subject to and governed by the General Terms and Conditions hereto set forth in Attachment "G" and incorporated by reference herein.

WHEREAS, the ARTS COMMISSION desires to enter into a contract with the ARTIST to develop a comprehensive artwork proposal for an artwork for the following project:

<b>Agency</b>	<b>Location/Site</b>
---------------	----------------------

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

1. The ARTIST under this CONTRACT is to develop, complete, and present to the ARTS COMMISSION descriptive text and a scale model and/or scale drawings that reflect project concept, imagery, feasibility, budget, timeline, life expectancy, and maintenance requirements for the proposed artwork for the above referenced project indicating materials,

placement, surroundings if included as integral to artwork, and technical details for fabrication and installation.

The ARTIST will participate in a Conservation Consultation and Conservation Review, as required, to ensure the proposed artwork will be created of durable, compatible materials and finishes utilizing appropriate fabrication and installation techniques. The ARTIST will provide stamped engineering, as required, from a structural engineer licensed in the state of Washington.

The model and /or drawings for the proposed artwork are based on a proposed artwork fabrication and installation budget of

**\$50,000.00, exclusive of applicable state sales tax**

2. The ARTS COMMISSION reserves the right to retain photographic imagery of the model, preliminary studies, and /or copies of the drawings following the completion of this CONTRACT.

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

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 artwork, including but not limited to public material, exhibitions, and announcements to give acknowledgment to the ARTS COMMISSION and hosting site agency in substantially the following form: "commissioned by the Washington State Arts Commission in partnership with [AGENCY]" In the event of oral presentations with no accompanying printed material and/or in-person interviews with journalists, the ARTIST agrees to give oral credit.

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.

In view of the intention that the artwork proposal shall be unique, the ARTIST shall not make any additional exact duplications or editions of the artwork, 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.

3. If the above described model and/or drawings are selected and approved for the project by the ARTS COMMISSION, the ARTIST hereby agrees to contract with the ARTS COMMISSION to fabricate and install the proposed artwork.

4. The public notice (plaque) is hereby designated to be provided by the ARTIST. Its incorporation into the proposed work of art shall be indicated in the submitted model and/or drawings.

5A. The ARTIST shall commence work on the project upon the date of execution of this CONTRACT and shall complete the WORK including all phases under this CONTRACT by 2023-12-30.

5B. The date of execution of the CONTRACT is determined to be the last date of signature by either the ARTIST or the ARTS COMMISSION.

5C. It shall be the responsibility of the ARTIST to contact the ARTS COMMISSION during all phases of the WORK and make the necessary arrangements pertaining to this CONTRACT.

5D. 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 signing of this contract.

5E. The model and/or drawings are due in the office of the ARTS COMMISSION on the date listed in 5A. A model/drawings presentation by the ARTIST to the AGENCY may be required as part of this contract within 90 days of the due date listed in 5A.

6. If a designee is not listed below, 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 ARTIST designates the following party to receive payment as per the terms of this CONTRACT: N/A

The ARTIST shall provide the ARTS COMMISSION written notice of any change to this designation at least 15 days before the change is to take effect.

The ARTIST or his or her designee shall receive, from the ARTS COMMISSION, payment in an amount not to exceed \$5,000.00.

The ARTIST shall be paid according to the following schedule:

A. \$1,500.00 Upon submittal of vendor paperwork to WSAC, receiving a WA State Business License (UBI), and completion of site visit with Art Selection Committee.

B. \$1,500.00 Upon receipt by WSAC of materials related to Preliminary Concept Presentation, including written description of concept, location, materials, dimensions, and possible finishes; presentation of above to Art Selection Committee; and participation by ARTIST in Conservation Consultation.

C. \$2,000.00 Upon receipt by WSAC of materials required for Final Proposal; participation in Conservation Review; presentation of Final Proposal to Art Selection Committee; and receipt by WSAC of comprehensive and final proposal materials including stamped structural engineering by structural engineer currently licensed in Washington State.

7. The ARTS COMMISSION agrees to reimburse the ARTIST for the following travel and miscellaneous expenses:

8. The ARTS COMMISSION will make payment to the ARTIST within 30 days of receipt and approval of the model and/or drawings and travel and miscellaneous expenses (when applicable). The payment request will be submitted on a Washington State invoice voucher form.

**ARTIST**

**Washington State Arts Commission**

BY \_\_\_\_\_

BY \_\_\_\_\_

PRINT \_\_\_\_\_

PRINT Karen Hanan

TITLE \_\_\_\_\_

TITLE Executive Director

DATE \_\_\_\_\_

DATE \_\_\_\_\_

Approved as to form:

Susan Thomsen

4/16/09

Assistant Attorney General  
ORIGINAL SIGNATURE ON FILE

Date



## ATTACHMENT G GENERAL TERMS AND CONDITIONS

**DEFINITIONS** - As used throughout this contract, the following terms shall have the meaning set forth below:

- "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.
- "AGENCY" shall mean all Universities and Colleges, State Agencies, and Public Schools of Washington State.
- "CO-AGENT" shall mean a public and/or private entity cooperating in the artwork acquisition.
- "ARTIST" shall mean that individual, firm, provider, organization or other entity performing services under this contract, and shall include all employees of the ARTIST.
- "SUBCONTRACTOR" 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. The terms "Subcontractor" and "Subcontractors" means Subcontractor(s) in any tier.

1. **INDEPENDENT CAPACITY OF THE ARTIST** - The ARTIST and his or her employees or agents performing under this contract are not employees or agents of neither the ARTS COMMISSION nor the AGENCY. The ARTIST will not hold himself/herself out as nor claim to be an officer or employee of the ARTS COMMISSION or 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.

Any and all claims that may or might arise under the Worker's Compensation Act on behalf of said employees or other persons while so engaged, and any and all claims made by any third party as a consequence of any act or omission on the part of the ARTIST'S employees or other persons while so engaged in any of the work or service provided to be rendered herein, shall be the sole obligation and responsibility of the ARTIST.

2. **ASSURANCE OF COMPLIANCE** - The ARTIST assures and certifies that it will comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), the Americans with Disabilities Act of 1990 (42 U.S.C. 12101-12213) and, where applicable, Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), Washington State Law Against Discrimination, Chapter 49.60 RCW, as well as all regulations of the National Endowment for the Arts issued pursuant to these statutes and that it immediately will take any measures necessary to comply.

Title VI of the Civil Rights Act, as amended, the Age Discrimination Act of 1975, and Title IX of the Education Amendments of 1972 provide that no person in the United States shall on the grounds of race, color, national origin, age or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Section 504 of the Rehabilitation Act of 1973 provides that no otherwise qualified disabled individual in the United States, as defined in Section 7(6), shall, solely by reason of his disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal assistance.

Americans with Disabilities Act ("ADA") prohibits discrimination on the basis of

disability in employment (Title I), State and local government services (Title II), and places of public accommodation and commercial facilities (Title III).

This assurance is given in connection with any and all financial assistance received from the ARTS COMMISSION after the date this form is signed. This includes payments after such date for financial assistance approved before such date.

The ARTIST recognizes and agrees that any such assistance will be extended in reliance on the representations and agreements made in this assurance, and that the United States shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the ARTIST, its successors, transferees, and assignees, and on the authorized official whose signature appears below.

In the event of the ARTIST'S noncompliance or refusal to comply with the above nondiscrimination clauses, this contract may be rescinded, canceled or terminated in whole or in part, and the ARTIST may be declared ineligible for further contracts with the ARTS COMMISSION. The ARTIST shall, however, be given a reasonable time in which to cure this noncompliance.

SUBCONTRACTING - Neither the ARTIST nor any SUBCONTRACTOR shall enter into subcontracts for any of the work contemplated under this contract without obtaining prior written approval of the ARTS COMMISSION.

NONASSIGNABILITY - Neither the ARTIST nor any SUBCONTRACTOR shall transfer or assign in any manner this contract, nor any claim arising under this contract, nor any of its rights or obligations under this contract.

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.

COVENANT AGAINST CONTINGENT FEES - The ARTIST warrants that no person or selling agent has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or a bona fide established agent maintained by the ARTIST for the purpose of securing business. The ARTS COMMISSION shall have the right, in the event of breach of this clause by the ARTIST, to annul this contract without liability, or, in its discretion, to deduct from the contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fee.

CONFLICT OF INTEREST - The ARTS COMMISSION may, by written notice to the ARTIST terminate this contract if it is found after due notice and examination by the designated ARTS COMMISSION AGENT that there is a violation of the Executive Conflict of Interest Act, Chapter 42.18 RCW; Code of Ethics for Public Officers and Employees, Chapter 42.22 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 above, 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 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.

ADVANCE PAYMENTS PROHIBITED - No payments in advance or in anticipation of services

or supplies to be provided under this contract shall be made by the ARTS COMMISSION.  
FUNDS NOT SUPPLANTING - The ARTIST agrees that the funds supporting activities and services under this contract shall not be used to supplant funds normally budgeted for services of the same type.

REGISTRATION WITH DEPARTMENT OF REVENUE - The ARTIST must register with the Washington State Department of Revenue as a Statewide Vendor and must obtain a Washington State business license (UBI).

This contract is not subject to Washington State sales/use tax but may be subject to other state or federal taxes. The ARTIST is responsible for payment of any taxes that may be due as a result of this contract. Contact the Washington State Department of Revenue to determine Washington State tax liability.

LICENSING, ACCREDITATION AND REGISTRATION - The ARTIST shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements/standards, necessary for the performance of this contract. In the performance under this contract, the ARTIST shall comply with all applicable federal, state, and local laws, rules, and regulations.

LIMITATION OF AUTHORITY - This contract contains the entire agreement of the parties. All understandings, oral or otherwise, not contained in this contract are not part of this contract. Only the ARTS COMMISSION AGENT or AGENT'S delegate by writing (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this contract. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this contract is not effective or binding unless made in writing and signed by all parties, and attached hereto.

WAIVER - Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of breach of any provision of the contract shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the contract unless stated to be such in writing, signed by the Commission's designated Agent and attached to the original contract.

The ARTIST agrees to notify the ARTS COMMISSION of changes in his/her address and failure to do so, if such failure prevents the ARTS COMMISSION from locating him/her, shall be deemed a waiver of the ARTIST'S rights in the sections "Repairs and Maintenance" and "Changes and Resale", when applicable.

TERMINATION - The ARTS COMMISSION or ARTIST may, upon fifteen (15) days written notice, for non-fulfillment of contractual terms or when deemed to be in the best interests of the ARTS COMMISSION or ARTIST, terminate this contract at any time in whole or in part. If this contract is so terminated, the ARTS COMMISSION shall be liable only for payment in accordance with the terms of this agreement for services rendered or costs incurred and documented by the ARTIST on ARTS COMMISSION forms prior to the effective date of termination. It is specifically understood and agreed that the ARTS COMMISSION may terminate this contract if, and in the event that, funding from the State or Federal Government is withdrawn, reduced, or limited in any way after the effective date of this contract and prior to normal termination.

GOVERNING LAW - This contract shall be governed by the laws of the state of Washington. In the event of a lawsuit involving this contract, venue shall be proper only in Thurston County.

SEVERABILITY - If any provision of this contract or any provision of any document



incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this contract which can be given effect without the invalid provision, and to this end the provisions of this contract are declared to be severable.

ACKNOWLEDGEMENTS - In all published material and announcements regarding this contract the ARTIST agrees that a special note will be made as follows:

"This artwork is acquired through the Washington State Arts Commission's Art in Public Places Program."

When no printed matter is produced, oral credit shall be given.

When the ARTIST engages in in-person interviews with audio, video, or print journalists which result from this contract the following verbal announcement is to be made: "This artwork is presented by the Washington State Arts Commission."

Copies of prepared information releases to media concerning services performed under this agreement shall be submitted to the ARTS COMMISSION.

COPYRIGHT AND REPRODUCTION - The ARTIST reserves all rights under copyright law to which preliminary studies, drawings, specifications, models and the artwork may be subject.

The ARTIST hereby agrees not to reproduce the artwork unless the artwork is part of an existing edition as mutually agreed upon between the ARTIST and the ARTS COMMISSION at the time of signing of the contract.

The ARTIST hereby reserves the right to graphically reproduce the artwork. The ARTIST shall provide a credit to the ARTS COMMISSION and the AGENCY in any public exhibition of the artwork or reproduction of the artwork.

The ARTS COMMISSION shall have the right to graphically reproduce the artwork and/or models and drawings relating to the artwork, for the purposes of publicity, education or exhibition of the artwork, provided that any such reproduction is credited to the ARTIST.

ENTIRE AGREEMENT - This contract contains the entire agreement of the parties. All understandings, oral or otherwise, not contained in this contract are not part of this contract unless written, signed by all parties, and attached hereto.

AMENDMENTS - This contract may only be amended by mutual consent of the ARTS COMMISSION and ARTIST. To be effective, any amendment must be in writing, signed by all parties, and attached hereto.

In the event Federal funds are committed by this contract, the following General Terms and Conditions apply:

"GENERAL TERMS AND CONDITIONS" - The ARTIST agrees to abide by all conditions of the National Endowment for the Arts "General Terms and Conditions" for federal funding, set forth as Attachment F and which is incorporated herein by reference, if federal funds apply.

WORKING CONDITIONS - In consideration of a grant made under Section 5 of the National Foundation on the Arts and the Humanities Act of 1965 and in order to satisfy the condition expressed in Section 5(j) of that act so as to be eligible to receive federal grant funds, the ARTIST does hereby make his contractually binding promise to the Secretary of Labor that (1) all professional performers and related or supporting professional personnel employed on projects or productions which are financed in whole or in part under this section will be paid, without subsequent deduction or rebate on any account, not less than the minimum compensation as determined in 29CFR 503(3)(a) to be the prevailing minimum compensation for persons employed in similar activities; and (2) no part of any project or production which is financed in whole or in part under Section 5 of the National Foundation on the Arts and the Humanities Act of 1965 will be performed or engaged in under working conditions which are unsanitary or hazardous or dangerous to the health and safety of the employee engaged in such project or production. Compliance with the safety and sanitary

laws of Washington State shall be prima-facie evidence of compliance.