

MADISON ARTS COMMISSION
ART IN PUBLIC PLACES

Contract for Creation of Public Art Work to be owned by the City
[Sample Contract Template 1, additional/alternate details TBD]

THIS AGREEMENT, dated as of _____, is made by and between the City of Madison, a Wisconsin municipal corporation (the “City”), acting by and through the Madison Arts Commission, hereinafter called the “MAC,” and _____ (the “Artist”).

WHEREAS, Public Art enhances the beauty of public places, provides visual focal points for parks and public gathering spaces and documents the history and unique character of our neighborhoods. The City of Madison’s Public Art Framework and Field guide encourages integrating public art in all of its neighborhoods. One of the Madison Arts Commissions (MAC) most important roles is to commission and place public art throughout the city.

WHEREAS, this year MAC expects to fund approximately \$25,000 in Neighborhood or City Agency initiated public art projects. This money can only be used on expenditures of \$7,000 and higher for projects that will last 10 or more years. It cannot be distributed through MAC’s annual project grant program, Signature grant program, Blink program or for the creation of any other ephemeral art.

WHEREAS, MAC recognizes that some public art projects take years to accomplish, however, expenditures for the proposed phase of the project will need to be made in the 2012 calendar year

WHEREAS, [details about specific project]

NOW THEREFORE, the parties mutually agree as follows:

1. **Description of the Artwork.** [details TBD]
2. **Permanent Location.** [details TBD]
3. **Changes in Design.** The Artist shall create the Work in accordance with the proposed and approved design. Recognizing that the change in scale from model/maquette to full scale may require adjustments, the Artist has the right to make minor changes in the Work that are structurally and aesthetically necessary. Any change in scope, design, or material that significantly alters the original and approved concept and design of the Work or affects installation, scheduling, site preparation, location or maintenance for the Work shall require the prior review and written approval of MAC. Approval of the design shall be in writing addressed to Artist.
4. **Site Preparations.** The Artist shall be responsible the delivery and transportation of the Work to the site, and for all expenses, labor and equipment to prepare the Site for the timely installation of the Work, including but not limited public access and public security, protection and safety of the work site, and insurance. The Artist warrants that any contractors working on the job site will be insured. All Site preparations shall require written approval in advance from the City Engineer.

5. **Price and Payment Schedule.** As payment for the services of the Artist and for the completed Work, the City will pay the Artist a total of \$_____ which shall constitute full compensation from the City to the Artist for all costs incurred in the design and creation of the Work, including, but not limited to fees, materials, labor of the Artist and the Artist's assistants and contractors, studio and operating costs applicable to this project, travel costs for the Artist to visit and research the Site, transportation of the Work to the Site, and any costs incurred by the Artist for installation of the Work at the Site.

Payments to the Artist shall be made in accordance with the payment and work schedule attached hereto as Exhibit A.

The Artist shall submit a final report to the City's Arts Administrator within thirty days of project completion. Documentation may be requested in order to substantiate progress with the Work. The Arts Administrator shall notify the Artist within fourteen working days of receipt of the report with a determination of whether the Work has reached completion.

6. **Installation and Time Schedule.** The Artist will coordinate all Site preparation, installation plans, and timetables with the Arts Administrator and [other necessary parties, TBD]. The Artist shall deliver and complete installation of the Work no later than _____ (the "Completion Date"). All arrangements for, and costs of insurance and transportation of the Work to the Site are the responsibility of the Artist.

In the event that, through the fault of the Artist (as determined by the Arts Administrator), the Work is not completed and installed by the Completion Date, the amount of 10% of the balance due shall be deducted every fourteen calendar days until the installation is completed. The Artist may request an extension of the Completion Date from the Arts Administrator. Requests for extensions must be in writing and be submitted within 10 days of Artist's knowledge of a delay, but no later than fourteen calendar days prior to the Completion Date. If the extension is granted, a new Completion Date shall be agreed upon in writing and such change shall not affect any other provisions of this Agreement. In recognition of the significant engineering and infrastructure components involved in the Work, requests for extensions of time shall not be unreasonably refused.

7. **Official Acceptance.** Final payment to the Artist may not occur until the Common Council has accepted the Work. Such acceptance by the Common Council may occur only after the Artist has complied with all of Artist's obligations hereunder. The Arts Administrator will review the documentation submitted by the Artist as required by Section 10 and forward its recommendation on acceptance to the Common Council within thirty days after receipt of these materials from the Artist. The City shall so signify and take official ownership by sending a letter of acceptance of the Work to the Artist. Payment to the Artist shall be made within thirty days after official acceptance by the Common Council.

8. **Inspection and Review.** The City reserves the right to inspect and review the Work upon reasonable notice at any time while materials for the Work are on the Artist's premises or in transit.

9. **Artist as Independent Contractor.** The Artist agrees to perform all work and services under this Agreement as an independent contractor and not as an agent or employee of the City. Any and all employees of the Artist engaged in the performance of any work or services required by the Artist under this Agreement shall be considered employees of the Artist only. The Artist shall

furnish all supervision, labor, supplies, materials, insurance, and other incidentals needed to complete this Agreement.

10. **Documentation and Records.** Upon installation of the Work, and before final payment shall be made, the Artist shall furnish the Arts Administrator, at least ten days before the City's next regularly scheduled meeting, a final report consisting of and including: a) four good quality images (slides or jpegs), two each of two views of the Work, b) two black and white glossy photographs of the Work at least 4 X 6 inches capable of reproduction for print media, c) a written technical description of the Work, d) written maintenance instructions for the Work, and e) a record of all persons furnishing labor and material for the Work, and lien waivers from any persons furnishing labor and/or materials incorporated into the Work, for review and approval. The Arts Administrator shall notify the Artist within fourteen working days of receipt of the documentation and a determination as to whether the Work has reached completion.

11. **Public Notice.** The City shall prepare and install at the site a plaque identifying the Artist, the title of the Work, copyright notice, the year of completion, funding sources, and the Madison Arts Commission.

12. **Warranties.** The Artist warrants that the Work is the original product of the Artist's own creative efforts. The Artist also warrants that the Work is unique and that the Work or a duplicate thereof has not been accepted for sale elsewhere, unless, as stipulated to the City at the time this Agreement is signed, the Work is known by the City as one of a limited edition.

The Artist warrants that the execution and fabrication of the Work will be performed in a professional manner and that the Work, as fabricated and installed, will be free of defects in material and workmanship, including any defects consisting of "inherent vice" or qualities which cause or accelerate deterioration of the Work. The Artist shall guarantee and maintain the Work from faults of material and workmanship for a period of one year after the acceptance date.

The Artist warrants that reasonable maintenance of the Work will not require procedures substantially in excess of those described in the maintenance instructions submitted in the proposal for the Work previously approved.

13. **Assignment of Work.** The Work and services required of the Artist under this Agreement are personal and shall not be assigned, sublet, or transferred. This shall not prohibit the Artist from employing or subcontracting qualified personnel who shall work directly under the Artist's supervision.

14. **Indemnity and Liability.** The Artist does release and agree to save and hold harmless the City, and their officers, officials, members, agents, and employees from any and all causes of action, suits in law of equity, or demands or claims, or from any liability of any nature arising out of the construction and creation of the Work and from any obligations made by the Artist or the Artist's agents and/or employees.

All risks for damages, theft, vandalism, and Acts of God to the Work are the responsibility of the Artist during any and all operations, including creation, transit and storage by the Artist, which take place on other than the Site. The Artist shall provide a policy of insurance, covering all risks and hazards against any damage to or loss of the Work while it is being made, transported, installed or stored by the Artist.

In case of accident to or destruction or damage to the Work while the Work is being created, transported or stored by or on behalf of the Artist, the Artists shall re-fabricate the Work under the same terms and conditions as set forth in this agreement.

All risks for damages, theft, vandalism, and Acts of God to the Work are the responsibility of the City during any and all operations after its installation and acceptance of the Work. The Artist shall be responsible for all damage, claims, and liability arising from, growing out of damages caused by the Artist or the Artist's employees or claims that may occur as a result of the Artist's breach of warranties provided in Section 12.

15. **Nondiscrimination.** In the performance of this Agreement, the Artist agrees not to discriminate against any employee or applicant for employment because of race, religion, marital status, age, color, sex, handicap, national origin or ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, political beliefs or student status. The Artist further agrees not to discriminate against any subcontractor or person who offers to subcontract on this contract because of race, religion, color, age, disability, sex, or national origin.

16. **Affirmative Action.**

A. The following language applies if the Artist employs fifteen (15) or more employees:

The Artist agrees that, within thirty (30) days after the effective date of this Agreement, the Artist will provide to the City of Madison Department of Civil Rights (the "Department"), certain workforce utilization statistics, using a form provided by the City.

If the Agreement is still in effect, or if the City enters into a new Agreement with the Artist, within one year after the date on which the form was required to be provided, the Artist will provide updated workforce information using a second form, also to be furnished by the City. The second form will be submitted to the Department no later than one year after the date on which the first form was required to be provided.

The Artist further agrees that, for at least twelve (12) months after the effective date of this Agreement, it will notify the Department of each of its job openings at facilities in Dane County for which applicants not already employees of the Artist are to be considered. The notice will include a job description, classification, qualifications, and application procedures and deadlines. The Artist agrees to interview and consider candidates referred by the Department if the candidate meets the minimum qualification standards established by the Artist, and if the referral is timely. A referral is timely if it is received by the Artist on or before the date stated in the notice.

The Department will determine if a contractor is exempt from Sec. 13. A., at the time the Request for Exemption in 13.B. is made.

B. Articles of Agreement, Request for Exemption, and Release of Payment:

The "ARTICLES OF AGREEMENT" beginning on the following page, apply to all contractors, unless determined to be exempt under the following table and procedures:

NUMBER OF EMPLOYEES	LESS THAN \$25,000 Aggregate Annual Business with the City*	\$25,000 OR MORE Aggregate Annual Business with the City*
14 or less	Exempt**	Exempt**
15 or more	Exempt**	Not Exempt

*As determined by the City Comptroller

**As determined by the Department of Civil Rights

REQUEST FOR EXEMPTION: (MGO 39.02(9)(a)2.) Contractors who believe they are Exempt from the Articles of Agreement according to the table above, shall submit a Request for Exemption on a form provided by the Department of Civil Rights (“Department”), within thirty (30) days of the effective date of this Contract. The Department makes the final determination as to whether a contractor is exempt from the Articles of Agreement. In the event the Contractor is not exempt, the Articles of Agreement shall apply. **CONTRACTORS WITH 15 OR MORE EMPLOYEES WILL LOSE THIS EXEMPTION AND BECOME SUBJECT TO THE ARTICLES OF AGREEMENT UPON REACHING \$25,000 OR MORE ANNUAL AGGREGATE BUSINESS WITH THE CITY WITHIN THE CALENDAR YEAR.**

RELEASE OF PAYMENT: Within thirty (30) days from the effective date of this contract, and prior to release of payment by the city, all non-exempt contractors are required to have on file with the Department, an Affirmative Action plan meeting the requirements of Article IV below. Additionally, contractors that are exempt from the Articles of Agreement under Table 13-B, must have a Request for Exemption form on-file with the Department, prior to release of payment by the City.

ARTICLES OF AGREEMENT

ARTICLE I

The Contractor shall take affirmative action in accordance with the provisions of this contract to insure that applicants are employed, and that employees are treated during employment without regard to race, religion, color, age, marital status, disability, sex or national origin and that the employer shall provide harassment-free work environment for the realization of the potential of each employee. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training including apprenticeship insofar as it is within the control of the Contractor. The Contractor agrees to post in conspicuous places available to employees and applicants notices to be provided by the City setting out the provisions of the nondiscrimination clauses in this contract.

ARTICLE II

The Contractor shall in all solicitations or advertisements for employees placed by or on behalf of the Contractors state that all qualified or qualifiable applicants will be employed without regard to race, religion, color, age, marital status, disability, sex or national origin.

ARTICLE III

The Contractor shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice to be provided by the City advising the labor union or workers representative of the Contractor's equal employment opportunity and affirmative action commitments. Such notices shall be posted in conspicuous places available to employees and applicants for employment.

ARTICLE IV

(This Article applies to non-public works contracts.)

The Contractor agrees that it will comply with all provisions of the Affirmative Action Ordinance of the City of Madison including the contract compliance requirements. The Contractor warrants and certifies that, of the following two paragraphs, paragraph A or B is true **(check one)**:

- A. It has prepared and has on file an affirmative action plan that meets the format requirements of Federal Revised Order No. 4, 41 CFR part 60-2, as established by 43 FR 51400 November 3, 1978, including appendices required by City of Madison ordinances or it has prepared and has on file a model affirmative action plan approved by the Madison Common Council.
- B. Within thirty (30) days after the effective date of this contract, it will complete an affirmative action plan that meets the format requirements of Federal Revised Order No. 4, 41 CFR Part 60-2, as established by 43 FR 51400, November 3, 1978, including appendices required by City of Madison ordinance or within thirty (30) days after the effective date of this contract, it will complete a model affirmative action plan approved by the Madison Common Council.

ARTICLE V

(This Article applies only to public works contracts.)

The Contractor agrees that it will comply with all provisions of the Affirmative Action Ordinance of the City of Madison, including the contract compliance requirements. The Contractor agrees to submit the model affirmative action plan for public works Contractors in a form approved by the Director of Affirmative Action.

ARTICLE VI

The Contractor will maintain records as required by Section 39.02(9)(f) of the Madison General Ordinances and will provide the City's Department of Affirmative Action with access to such records and to persons who have relevant and necessary information, as provided in Section 39.02(9)(f). The City agrees to keep all such records confidential, except to the extent that public inspection is required by law.

ARTICLE VII

In the event of the Contractor's or subcontractor's failure to comply with the Equal Employment Opportunity and Affirmative Action provisions of this contract or Sections 39.03 and 39.02 of the Madison General Ordinances, it is agreed that the City at its option may do any or all of the following:

- A. Cancel, terminate or suspend this contract in whole or in part.
- B. Declare the Contractor ineligible for further City contracts until the Affirmative Action requirements are met.

- C. Recover on behalf of the City from the prime Contractor 0.5 percent of the contract award price for each week that such party fails or refuses to comply, in the nature of liquidated damages, but not to exceed a total of five percent (5%) of the contract price, or five thousand dollars (\$5,000), whichever is less. Under public works contracts, if a subcontractor is in noncompliance, the City may recover liquidated damages from the prime Contractor in the manner described above. The preceding sentence shall not be construed to prohibit a prime Contractor from recovering the amount of such damage from the noncomplying subcontractor.

ARTICLE VIII

(This Article applies to public works contracts only.)

The Contractor shall include the above provisions of this contract in every subcontract so that such provisions will be binding upon each subcontractor. The Contractor shall take such action with respect to any subcontractor as necessary to enforce such provisions, including sanctions provided for noncompliance.

ARTICLE IX

The Contractor shall allow the maximum feasible opportunity to small business enterprises to compete for any subcontracts entered into pursuant to this contract. (In federally funded contracts the terms "DBE, MBE, and WBE" shall be substituted for the term "small business" in this Article.)

17. **Compliance with Laws.** The Artist shall observe and comply with all applicable statutes, orders, ordinances and regulations of the City, the County of Dane, the State of Wisconsin, the federal government and any other governmental authority having jurisdiction over the site or the Work. The Artist may, if in good faith and on reasonable grounds, dispute the validity of any charge, complaint or action taken pursuant to or under color of any statute, order, ordinance or regulation, defend against the same, and in good faith diligently conduct any necessary proceedings to prevent and avoid any adverse consequence of the same. The Artist agrees that any such contest shall be prosecuted to a final conclusion as soon as possible and that it will hold the City harmless with respect to any actions taken by any lawful governmental authority with respect thereto.

18. **Copyright.** The Artist expressly reserves every right available to the Artist in common law or under the Federal Copyright Act and all other rights in and to the work except ownership and possession of the Work and any such rights as those limited or assigned by this agreement. The City shall have the right to photographically or mechanically reproduce the Work for sale without written agreement of the artist. All reproductions of the Work by the City shall contain a credit to the Artist as follows: "(c) artist ~ year completed~." The Artist agrees to give credit in the following form: "Original owned by City of Madison" in any public showing of any reproductions of the Work.

19. **Alteration of the Work.** The City agrees that it will not intentionally damage, alter, modify or change the Work without the prior written approval of the Artist. If any changes, alterations or destructions occur to the Work after it has been completed and installed, including any change in the interrelationship or relative locations of parts of the Work, the Work will no longer be represented as the Work of the Artist upon receipt of a written request to that effect from the Artist or the Artist's heirs.

Nothing in this section shall preclude any right of the City to: 1) remove the Work from public display or 2) destroy the Work. If the City shall at any time decide to destroy the Work, it shall by notice to the Artist offer the Artist a reasonable opportunity to reacquire the Work at no cost to the Artist except for an obligation of the Artist to indemnify and reimburse the City for the amount by which the cost to the City of such recovery exceeds the costs to the City of the proposed destruction.

20. **Repairs.** The City shall consult with the Artist concerning repairs and restoration of the Work.

21. **Relocation.** The Work shall be placed on the Site designated in Section 2 of this Agreement. Should the Site prove to be unacceptable or unavailable to the City after the signing of this Agreement, an alternative site shall be mutually agreed upon by the Artist and the City. After the installation, the City agrees that it will attempt to notify the Artist if, for non-emergency reasons, the Work has to be removed and permanently relocated to a Site not specified in Section 2 of this Agreement. The Artist may advise the City regarding relocation of the Work.

22. **Waiver and Termination of Rights.** The Artist agrees to notify the City in writing of any changes in the Artist's address within sixty days of that change. Failure to do so shall be deemed a waiver of those Artist's rights expressed in Sections 18, 19, and 20 of this Agreement. Upon the death of the Artist, all of the Artist's rights expressed in Sections 18 and 19 of this Agreement shall revert to the City.

23. **Termination.** In the event that the project in which the Work is to be incorporated is delayed or canceled, the City reserves the right, upon no less than fifteen days notice to the Artist, to postpone the execution schedule of this Agreement. If the project is postponed for one year or more from the scheduled completion date of this agreement, the City or the Artist may, in writing and without penalty, cancel this agreement within ninety days after such postponement is known to both the City and the Artist.

In the event this Agreement is terminated by the Artist because of a one year or more postponement in the project, the Artist shall refund to the City all monies paid by the City to the Artist for the performance of work under this agreement. The Artist may then retain the Work, together with any models, plans or drawings and all materials and supplies purchased for the Work, for the Artist's own use without restrictions.

In the event this Agreement is terminated by the City without fault on the part of the Artist, the Artist shall be entitled to a final payment or settlement as set forth in either of the following, at the option of the Artist:

A. The Artist shall be paid an amount equal to the percentage of the Work completed at the time the Agreement is terminated. If payments previously made to the Artist exceed the total amount due as computed above, then the Artist shall refund to the City that amount of the total previous payments which exceeds the amount determined by applying the above formula. The Artist shall deliver to the City the Work in whatever form it exists at the time of termination which shall then become the property of City for use without restriction, except that it shall not be represented to be the completed Work of the Artist; or

B. The Artist may refund to the City all monies paid prior to the time of termination and shall then retain the Work, together with any models, plans, or drawings and all materials and supplies purchased for the Work, for the Artist's own use without restrictions.

In the event this Agreement is terminated by City for fault on the part of the Artist, or because of the disability of the Artist; or is terminated automatically because of the death of the Artist; or in the event of any breach of its terms by the Artist, the City may select and impose either of the options that would have been available to the Artist in this Section. Exercise of either of these options by the City shall not prevent the City from pursuing a remedy otherwise available to it in law or equity.

24. **Modifications of this Agreement.** No alterations, changes or modification of the terms of this Agreement shall be valid unless made in writing and signed by all parties hereto.

25. **Status of Artist/Tax Filings.** It is agreed that Artist is an independent contractor and not an employee of the City, and that any persons who the Artist utilizes and provides for services under this agreement are employees of the Artist and are not employees of the City. The Artist's taxpayer identification number/social security numbers have been provided to the City's Payroll office. The Artist is informed that as an independent contractor, he/she may have a responsibility to make estimated tax returns, file tax returns, and pay income taxes on the amounts received under this Agreement. Artist agrees that the City will not withhold amounts from payments due to the Artist for these purposes, and that payment of taxes are solely the responsibility and obligation of the Artist.

26. **Goodwill.** Any and all goodwill arising out of this Agreement inures solely to the benefit of the City; Artist waives all claims to the benefit of such goodwill. Notwithstanding this provision the Artist retains all rights provided in Section 18.

27. **Third Party Rights.** This Agreement is intended to be solely between the parties hereto. No part of this Agreement shall be construed to add, supplement, amend, abridge or repeal existing rights, benefits or privileges of any third party or parties, including but not limited to employees of either of the parties.

28. **No Waiver.** No failure to exercise, and no delay in exercising, any right, power, or remedy hereunder on the part of the City or Artist shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power, or remedy preclude any other or further exercise thereof or the exercise of any other right, power, or remedy. No express waiver shall affect any event or default other than the event or default specified in such waiver, and any such waiver, to be effective, must be in writing and shall be operative only for the time and to the extent expressly provided by the City or Artist therein. A waiver of any covenant, term, or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term, or condition.

29. **Insurance.** The Artist will insure, and will require each subcontractor to insure, as indicated, against the following risks to the extent stated below. The Artist shall not commence work under this Agreement, nor shall the Artist allow any subcontractor to commence work on its subcontract, until the insurance required below has been obtained and corresponding certificate(s) of insurance have been approved by the City Risk Manager.

Commercial General Liability

The Artist shall procure and maintain during the life of this Agreement, Commercial General Liability insurance including, but not limited to, products and completed operations, bodily injury, property damage, personal injury, and products and completed operations (unless determined to be inapplicable by the Risk Manager) in an amount not less than \$1,000,000 per occurrence. This policy shall also provide contractual liability in the same amount. Artist's coverage shall be primary and list the City of Madison, its officers, officials, agents and employees as additional insureds. Artist shall require all subcontractors under this Agreement (if any) to procure and maintain insurance meeting the above criteria, applying on a primary basis and listing the City of Madison, its officers, officials, agents and employees as additional insureds.

Automobile Liability

The Artist shall procure and maintain during the life of this Agreement Business Automobile Liability insurance covering owned, non-owned and hired automobiles with limits of not less than \$1,000,000 combined single limit per accident. Artist shall require all subcontractors under this Agreement (if any) to procure and maintain insurance covering each subcontractor and meeting the above criteria.

Worker's Compensation

The Artist shall procure and maintain during the life of this Agreement statutory Workers' Compensation insurance as required by the State of Wisconsin. The Artist shall also carry Employers Liability limits of at least \$100,000 Each Accident, \$100,000 Disease – Each Employee, and \$500,000 Disease – Policy Limit. The Artist shall require all subcontractors under this Agreement (if any) to procure and maintain such insurance, covering each subcontractor.

Acceptability of Insurers. The above-required insurance is to be placed with insurers who have an A.M. Best rating of no less than A- (A minus) and a Financial Category rating of no less than VII.

Proof of Insurance, Approval. The Artist shall provide the City with certificate(s) of insurance showing the type, amount, class of operations covered, effective dates, and expiration dates of required policies prior to commencing work under this Agreement. Artist shall provide the certificate(s) to the City's representative upon execution of the contract, or sooner, for approval by the City Risk Manager. The Artist shall provide copies of additional insured endorsements or insurance policies, if requested by the City Risk Manager.

The Artist and/or Insurer shall give the City thirty days advance written notice of cancellation, non-renewal or material changes to any of the above-required policies during the term of this Agreement.

IN WITNESS WHEREOF, the undersigned hereunto set hands and seals, this _____ day of _____, 2012.