

MADISON ARTS GRANT AGREEMENT
ART IN PUBLIC PLACES
[Sample Agreement Template 2, additional/alternate details TBD]

Grantee:

Grantee Address:

Grantee Telephone:

Grantee Award:

Grantee Contact Person:

Grantee Email:

THIS AGREEMENT, made by and between City of Madison, Wisconsin, a municipal corporation, and through its Madison Arts Commission hereinafter City, and the Grantee listed above, hereinafter “Grantee.”

WITNESSETH:

WHEREAS, Madison Arts Commission whose address is c/o Madison Arts Commission Administrator, Room 200, Madison Municipal Building, 215 Martin Luther King, Jr. Blvd., Madison, WI 53710, desires to fund the project described in Grantee’s proposal to Madison Arts Commission; and

WHEREAS, Grantee is able and willing to undertake and complete said project; and

WHEREAS, the Madison Arts Commission and the Madison Common Council have approved the award of a grant to Grantee for the purposes and in the amount described herein;

NOW, THEREFORE, the parties mutually agree as follows:

1. **Purpose and Scope.** In consideration of a grant in the amount of «Award», Grantee agrees to create an arts project entitled “«Project»,” with a starting date of «StartDate» and ending date of «EndDate». Grantee agrees to perform and carry out in full the project as described in the grant proposal, or as modified in the revised project budget and project amendments.
2. **Exhibits, Entire Agreement.** This “Madison Arts Grant Agreement”, together with the following Exhibits (on file at the office of the Arts Program Administrator in The Planning Division of The Department of Planning and Community and Economic Development and incorporated by reference) together shall form the entire agreement between the parties:
 - Grantee’s Grant Application, including any approved amendments to the application
 - the approved Project Budget, including any approved amendments to the budget
3. **Budget.** Grantee agrees to use the grant funds exactly as set forth in the attached budget, and agrees to obtain matching funds equal to the amount of this grant. Such matching funds may be a combination of cash and in-kind services; at least one-quarter of the matching funds shall be in cash.
4. **Capital Equipment.** Grantee agrees to not use any Madison Arts Commission grant monies to purchase any kind of capital equipment, including, but not limited to computers, nonperishable art supplies, musical equipment, cameras and other audio-visual equipment, or machinery.

5. **Performance Schedules.** Grantee agrees to inform Madison Arts Commission of its schedule of performances, exhibits or activities. At least one performance, rehearsal or exhibit funded by this grant shall be accessible to the public.
6. **Credit.** The Grantee agrees to include the following statement in all brochures, news releases, programs, publications and other printed materials:

This project is funded in part by a grant from the Madison Arts Commission, with additional funds from the Wisconsin Arts Board.

When no printed information is used, verbal credit to Madison Arts Commission and the Wisconsin Arts Board shall be given prior to each performance or presentation. Grantee further agrees to use the Madison Arts Commission and Wisconsin Arts Board logos on all printed materials. Such logos shall be provided by Madison Arts Commission.

7. **Accounting.** Grantee agrees that, no later than thirty (30) days after the date of Grantee's last performance, or the date of closing of the last exhibit, or such other date as shall mark the conclusion of the project, it will submit to City the final evaluation forms and the final accounting form, as provided by the Madison Arts Commission Administrator.
8. **Independent Contractor.** Grantee agrees that at all times Grantee is acting as an independent contractor, and not acting as an employee, or agent, or in any other manner for, or on behalf of, the City, and that any persons who the Grantee utilizes or who provide services under this Agreement are employees of Grantee and are not employees of the City.
9. **Assignment/Subcontracting.** All of the services required of Grantee under this Agreement shall be performed by Grantee and employees of Grantee. Grantee shall not assign or subcontract any interest in or obligation under this Agreement.
10. **Payment.** Payment will be made to the Grantee upon completion of the Project and receipt and approval by Madison Arts Commission of the final accounting form.
11. **Amendment.** This Agreement cannot be changed orally, but only by a written amendment, signed by the duly authorized agent or agents who executed this Agreement.
12. **Termination.** In the event Grantee shall default in any of the covenants, terms, or conditions of this Agreement, the City shall provide the Grantee with a ten-day written notice to cure. If the Grantee fails to cure the default within the ten (10) day period, the City may immediately terminate this Agreement and all rights of Grantee under this Agreement, and may seek any other remedy available to it against the Grantee. Grantee shall, within thirty (30) days of termination of this Agreement, return to the City the full amount of the Madison Arts Commission grant provided to Grantee.
13. **Notices.** All notices to be given under the terms of this Agreement shall be in writing and shall be sent by U.S. mail, postage prepaid, or hand-delivered to the addresses of the parties listed above.
14. **Nondiscrimination.** In the performance of work under this Agreement, Grantee 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. Grantee further agrees not to discriminate against any subcontractor or person who offers to subcontract on this Agreement because of race, religion, color, age, disability, sex, or national origin.

15. **Indemnification.** The Grantee shall be liable to and hereby agrees to indemnify, defend and hold harmless the City of Madison, and its officers, officials, agents, and employees against all loss or expense (including liability costs and attorney's fees) by reason of any claim or suit, or of liability imposed by law upon the City or its officers, officials, agents or employees for damages because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damages to property, including loss of use thereof, arising from, in connection with, caused by or resulting from any acts or omissions of Grantee or any of its employees or agents in the performance of this Agreement.
16. **Insurance.** The Grantee will insure, and will require each subcontractor to insure, as indicated, against the following risks to the extent stated below. The Grantee shall not commence work under this Contract, nor shall the Grantee 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. The parties do hereby expressly agree that City, acting at its sole option and through its Risk Manager, may waive any and all requirements contained in this paragraph 16, such waiver to be made writing, as an Addendum to this Agreement, signed by the City Risk Manager. Such waiver may include or be limited to a reduction in the amount of coverage required above. The extent of waiver shall be determined solely by City's Risk Manager taking into account the nature of the work and other factors relevant to City's exposure, if any, under this Agreement.

Commercial General Liability. The Grantee shall procure and maintain during the life of this contract, 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. Grantee's coverage shall be primary and list the City of Madison, its officers, officials, agents and employees as additional insureds. Grantee shall require all subcontractors under this Contract (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 Grantee shall procure and maintain during the life of this contract 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. Grantee shall require all subcontractors under this Contract (if any) to procure and maintain insurance covering each subcontractor and meeting the above criteria.

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

Professional Liability (*if the services being provided are professional services*) The Grantee shall procure and maintain professional liability insurance with coverage of not less than \$1,000,000. If such policy is a “claims made” policy, all renewals thereof during the life of the contract shall include “prior acts coverage” covering at all times all claims made with respect to Grantee’s work performed under the contract. This Professional Liability coverage must be kept in force for a period of six (6) years after the services have been accepted by the City.

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 Grantee 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 Contract. Grantee 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 Grantee shall provide copies of additional insured endorsements or insurance policies, if requested by the City Risk Manager.

The Grantee and/or Insurer shall give the City thirty (30) days advance written notice of cancellation, non-renewal or material changes to any of the above-required policies during the term of this Contract.

17. **Compliance with Laws.** Grantee will comply with all Federal, State and Local laws, ordinances and regulations.
18. **Nondiscrimination Based on Disability.** For purposes of this paragraph, the word “Contractor” shall mean the Grantee. Contractor shall comply with Section 39.05, Madison General Ordinances, “Nondiscrimination Based on Disability in City-Assisted Programs and Activities.” Under section 39.05(7) of the Madison General Ordinances, no City financial assistance shall be granted unless an Assurance of Compliance with Sec. 39.05 is provided by the applicant or recipient, prior to the granting of the City financial assistance.

Contractor hereby makes the following assurances: Contractor assures and certifies that it will comply with section 39.05 of the Madison General Ordinances, “Nondiscrimination Based on Disability in City Facilities and City-Assisted Programs and Activities,” and agrees to ensure that any subcontractor who performs any part of this agreement complies with sec. 39.05, where applicable. This includes but is not limited to assuring compliance by the Contractor and any subcontractor, with section 39.05(4) of the Madison General Ordinances, “Discriminatory Actions Prohibited.”

Contractor may not, in providing any aid, benefit or service, directly or through contractual, licensing or other arrangements, violate the prohibitions in Section 39.05(4), listed below:

Discriminatory Actions Prohibited: Contractor assures that, in providing any aid, benefit, or service, it shall not, directly or through contractual, licensing, or other arrangements, on the basis of disability:

1. Deny a qualified person with a disability the opportunity to participate in or benefit from the aid, benefit, or service;

2. Afford a qualified person with a disability an opportunity to participate in or benefit from the aid, benefit, or service, or the City facility, that is not equal to that afforded others;
3. Provide a qualified person with a disability with a City facility or an aid, benefit, or service that is not as effective as that provided to others;
4. Provide different or separate City facilities, or aid, benefits, or services to persons with a disability or to any class of persons with disabilities unless such action is necessary to provide qualified persons with a disability with City facilities, aid, benefits, or services that are as effective as those provided to others;
5. Aid or perpetuate discrimination against a qualified person with a disability by providing significant assistance to any agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the recipient's program;
6. Deny a qualified person with a disability the opportunity to participate as a member of planning or advisory boards; or
7. Otherwise limit a qualified person with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service from a recipient, or by others using City facilities.

Contractor shall post notices in an accessible format to applicants, beneficiaries, and other persons, describing the applicable provisions of Sec. 39.05 of the Madison General Ordinances, in the manner prescribed by section 711 of the Civil Rights Act of 1964 (42 USCA Sec 2000e-10).

19. Affirmative Action. *(This section is required by sec. 39.02(9)(c) and (e)2. of the Madison General Ordinances. For purposes of this paragraph, the term "Contractor" shall mean "Grantee.")*

A. The following provisions apply to all Grantees employing fifteen (15) or more employees: (MGO 39.02(9)(c).)

The Contractor agrees that, within thirty (30) days after the effective date of this contract, Contractor 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 contract is still in effect, or if the City enters into a new agreement with the Contractor, within one year after the date on which the form was required to be provided, the Contractor 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 Contractor further agrees that, for at least twelve (12) months after the effective date of this contract, it will notify the Department of each of its job openings at facilities in Dane County for which applicants not already employees of the Contractor are to be considered. The notice will include a job description, classification, qualifications, and application procedures and deadlines. The Contractor agrees to interview and consider candidates referred by the Department if the candidate meets the minimum qualification standards established by the Contractor, and if the referral is timely. A referral is timely if it is received by the Contractor on or before the date stated in the notice.

The Department will determine if a contractor is exempt from Sec. A., at the time the Request for Exemption in 5.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 Grantees, unless determined to be exempt under the following table and procedures:

NUMBER OF EMPLOYEES	LESS THAN \$25,000	\$25,000 OR MORE
	Aggregate Annual Business with the City*	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 on the following page (according to the Table) 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: (MGO 39.02(9)(e)1.b.) 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 5.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.)

IN WITNESS WHEREOF, the parties hereto have set their hands at Madison, WI.

GRANTEE: «Organization»

By: _____
(type name: _____) Date

If organization, provide Grantee's Federal Identification Number: _____
(individual grantees shall provide their social security number to the Arts Administrator prior to payment)

THE CITY OF MADISON:

APPROVED:

Eric Veum, Risk Manager

By: _____
Bradley J. Murphy Date
Planning Division Director

APPROVED:

David Schmiedicke, Finance Director

APPROVED AS TO FORM:

Michael May, City Attorney