

AGREEMENT FOR ACQUISITION OF ARTWORK

THIS AGREEMENT, is made and entered into this ____ day of _____, 2001 by and between The UrbanArt Commission ("UAC") and _____ (the "Artist"). UAC and Artist are hereinafter collectively referred to as the "Parties".

RECITALS

WHEREAS, the City of Memphis (the "City") desires to commission and have installed in _____ (site location) _____ (the "Site") an original artwork designed specifically for the Site; and

WHEREAS, UAC is a Tennessee corporation which regularly performs administrative services in connection with the creation, acquisition and installation of public art in Memphis, Tennessee; and

WHEREAS, UAC has entered into an agreement with the City to acquire public art on behalf of the City; and

WHEREAS, the Artist has been selected by UAC and approved by the City to design, fabricate and install certain artwork specifically for the Site (the "Artwork), which Artwork is more particularly described as _____ (sentence describing the artwork) _____; and

WHEREAS, UAC and the Artist now wish to set out herein the terms and conditions on which the Artwork will be created and installed at the Site;

NOW, THEREFORE, in consideration of the premises and the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

AGREEMENTS

1. **GENERAL.**

1.1. The Artist shall perform all services and furnish all supplies, materials and equipment necessary for the design, fabrication and/or installation, as required, of the Artwork.

1.2. The Artist shall determine the artistic expression, scope, design, color, size and texture of the Artwork, subject to review and approval by UAC and the City as set forth in this Agreement.

1.3. As promptly as possible after the execution of this Agreement, the Artist will conduct site inspections, interviews, research, and meetings to gather information necessary to prepare a design proposal for the Artwork. UAC will provide the Artist with background materials and information on all matters affecting the installation of the Artwork at the Site including plans, specifications, drawings, surveys, engineering reports and construction schedules, as necessary, for the Artist to design the Artwork in accordance with this Agreement. The Artist shall maintain a cooperative consultation relationship with UAC throughout the duration of this Agreement.

1.4. UAC will arrange and the Artist will attend meetings with representatives of the community as necessary in order for the Artist to learn of community concerns with regard to the Artwork and the Site.

2. SCHEMATIC PROPOSAL. On or before _____ (date) _____, the Artist will prepare and submit a schematic design proposal or proposals of the Site and the Artwork (the "Schematic Proposal") to UAC. The Schematic Proposal shall include such plans, specifications, drawings and other documents and models as necessary to present a meaningful representation of the concept and the schematic design of the proposed Artwork as installed as well as a preliminary budget for same. The Schematic Proposal shall also specify materials, general dimensions, weight, finish and preliminary maintenance recommendations.

3. SITE COMPATIBILITY. The Artwork, as set forth in the Schematic Proposal, shall be compatible with the physical characteristics existing at the Site as of the date set forth in Section 2 hereof, or in the event that a Project, as hereinafter defined in Paragraph 6.1 hereof, is planned for the Site, shall be compatible with the plans and specifications for such Project, so that installation of the Artwork will not require any change to, reinforcement of or redesign of the Site or the Project. Any Artist proposed changes to the electrical, structural and exterior system of the Site to facilitate installation of the Artwork must be approved in writing by the City in its sole and absolute discretion. The presence of the Artwork shall not interfere with the intended use of the Site, pedestrian and other traffic flow, parking, and safety devices and procedures at the Site. The Artist shall design the Artwork so that it complies with all applicable laws, statutes, ordinances and regulations.

4. SCHEMATIC PROPOSAL REVIEW.

4.1. Within five (5) business days of the submission of the Schematic Proposal to UAC, UAC shall present the Schematic Proposal to the City. The City may approve or reject the Schematic Proposal, and will use its best efforts to make such determination within ten (10) business days of its receipt of the Schematic Proposal from UAC. The Artist hereby acknowledges and agrees that the City shall have complete unlimited discretion in approving, outright or with conditions, or rejecting the Schematic Proposal. The Artist shall be available as reasonably required to meet with UAC and the City to discuss the Schematic Proposal.

4.2. UAC shall notify the Artist of whether the City approves or rejects the Schematic Proposal. In the event of rejection of the Schematic Proposal, UAC shall provide the Artist with a written statement of the City's reasons for such rejection. In such event, the Artist shall submit a second Schematic Proposal to UAC within ten (10) business days thereafter. If the second Schematic Proposal is rejected by the City, UAC will provide the Artist with a written notice of termination of this Agreement setting out the date of termination.

4.3. In the event of termination of this Agreement pursuant to paragraph 4.2, the Artist shall retain the ownership of all ideas presented and of all Schematic Proposals submitted hereunder, and shall be entitled to retain all compensation paid by UAC prior to the termination date, and neither party shall have any further obligations hereunder as of the date of termination set out in the termination notice.

5. FINAL DESIGN DOCUMENTS.

5.1. Within _____ (___) business days after notification by UAC of the City's approval of the Schematic Proposal, the Artist shall prepare and submit to UAC the final design proposal for the Site and the Artwork, which shall include detailed drawings and specifications for materials, site preparation, connections, building interface and lighting design, and shall also specifically include a detailed colored rendering indicating the exact subject matter and content of the Artwork along with the placement of the Artwork at the Site (the "Final Design Documents"). The Final Design Documents shall also include such other graphic material as may be reasonably requested by UAC.

5.2. Within five (5) business days of the Artist's submission of the Final Design Documents to UAC, UAC shall present the Final Design Documents to the City. Final Design Documents must include, without limitation, structural plans prepared and sealed by an engineer registered in the State of Tennessee. The City may approve, or reject the Final Design Documents, and will use its best efforts to make such determination within fifteen (15) business days after its receipt of the Final Design Documents from UAC. The Artist hereby acknowledges and agrees that the City shall have complete unlimited discretion in approving, outright or with conditions, or rejecting the Final Design Documents, which discretion shall extend to and include, but not be limited to, requiring such revisions as the City deems necessary for the Artwork to comply with applicable statutes, ordinances or regulations of any governmental regulatory agency having jurisdiction over the Site, or to ensure and maintain the physical integrity of the Artwork or its installation at the Site.

5.3. UAC shall notify the Artist of whether the City approves or rejects the Final Design Documents. In the event of rejection of the Final Design Documents, UAC shall provide the Artist with a written statement of the City's reasons, if any, for such rejection. In such event, UAC shall request that the Artist submit to it within fourteen (14) days thereafter, revised

Final Design Documents for the Artwork reflecting changes made to address the City's concerns in rejecting the initial Final Design Documents.

5.4. If the Artist refuses to make revisions to the Final Design Documents pursuant to paragraph 5.3, or if the Artist fails to adequately do so, in the sole and exclusive judgment of the City, then UAC shall be entitled, at its election, to terminate this Agreement. In such an event, UAC will provide the Artist with a written notice of termination to be effective upon receipt of same by the Artist.

5.5. In the event of termination of this Agreement pursuant to this paragraph 5.4, the Artist shall retain ownership of all ideas presented and of all Schematic Proposals and Final Design Documents submitted hereunder, and shall be entitled to retain all compensation paid by UAC or the City prior to the termination date, and neither party shall have any further obligations hereunder as of the effective date of termination.

6. EXECUTION, DELIVERY AND INSTALLATION OF THE ARTWORK

6.1. Upon approval of the Final Design Documents by the City, the Artist shall prepare and furnish to UAC, for the City's approval, a schedule for fabrication, construction, and installation, by the Completion Date (as defined in paragraph 12.1 hereof) of all elements within the Artwork (the "Artwork Execution Schedule"), including a description of what elements shall be fabricated by the Artist and what elements shall be fabricated by the Artist's subcontractors, agents or employees, and also including a schedule for the Artist's submission of progress reports to UAC. Upon approval of the Artwork Execution Schedule by the City, UAC and the Artist will coordinate the Artwork Execution Schedule with the schedule for construction of the building and related facilities at the Site (the "Project"). (The schedule for completion of the Project shall hereinafter be referred to as the "Project Construction Schedule").

Upon receipt of written notification from UAC to proceed with the Artwork, the Artist shall fabricate, transport and install the Artwork and/or supervise the fabrication and/or installation of the Artwork at the Site in accordance with the Artwork Execution Schedule. The Artist acknowledges that the Project Construction Schedule may change from time to time and hereby agrees that the Project Construction Schedule shall govern the Artwork Execution Schedule, as provided in paragraph 12.3 hereof.

6.2. The City and UAC shall have the right to review the Artwork at reasonable times during the fabrication thereof or during periods when the Artwork, in whole or in part, is in storage. The Artist shall submit progress reports to UAC in accordance with the Artwork Execution Schedule provided for in paragraph 6.1 hereof.

6.3. The Artist shall complete the fabrication and installation of any and all elements of the Artwork in substantial conformity with the Final Design Documents, as approved by the City.

6.4. Any material change in the Final Design Documents must be approved by the City. The Artist shall submit any request for such change to the Final Design Documents to UAC for review and approval by the City. For purposes of this Agreement, a material change is any change in the scope, design, color, size, material, or texture of the Artwork or any change in the location of the Artwork on the Site which affects the installation, scheduling, site preparation or maintenance for the Artwork or the concept of the Artwork as represented in the Final Design Documents.

6.5. The Artist shall notify UAC in writing when off-site fabrication of the Artwork is completed and the Artwork is ready for delivery and installation at the Site.

6.6. The Artist shall deliver and install any elements of the Artwork fabricated off-site to the Site in compliance with the Artwork Execution Schedule.

7. CONSTRUCTION ADMINISTRATION. The Artist shall monitor the construction and installation of the Artwork or any elements thereof at the Site. The Artist shall be physically present at the Site, as required by UAC, during the construction and installation of any element of the Artwork.

8. FINAL ACCEPTANCE. The Artist shall notify UAC when the Artwork (including installation thereof) has been completed according to the Final Design Documents. Final Acceptance of the Artwork shall be effective as of the date of UAC's written notification of the City's Final Acceptance of the Artwork.

9. POST INSTALLATION, DOCUMENTATION PUBLICITY

9.1. Within ten (10) business days after the Final Acceptance of the Artwork, the Artist shall deliver to UAC the following photographs of the Artwork as installed: (a) two sets of three 35 mm. color slides of the completed Artwork, one taken from each of the three different viewpoints, and (b) two sets of three different 8"x 10" glossy black and white prints of the Artwork and negatives.

9.2. The Artist shall be available at such time or times as the Artist and UAC may mutually agree to attend public meetings and community outreach functions, as well as any inauguration or presentation ceremonies relating to the dedication of the Artwork to the City. UAC shall use its best efforts to arrange for publicity for the completed Artwork in such art publications as may be mutually determined between UAC and the Artist as soon as practicable following Final Acceptance of the Artwork.

9.3. Upon Final Acceptance of the Artwork, the Artist shall provide to UAC detailed written instructions for appropriate maintenance and preservation of the Artwork. Upon Final

Acceptance of the Artwork, the Artist shall provide the UAC with a true and correct copy of written instructions for appropriate maintenance and preservation of the Artwork, as well as all final drawings, photographs, designs, maquettes, models and other work products prepared and submitted by the Artist to UAC hereunder and the originals of such items shall be returned to the Artist whose property it shall become.

10. TITLE. Title to the Artwork shall pass to the City upon Final Acceptance.

11. ARTIST'S COMPENSATION AND PAYMENT SCHEDULE. UAC shall provide the Artist an Artwork Budget not to exceed \$_____ for the Artist's performance of the Artist's obligations hereunder.

11.1. \$_____ of the Artwork Budget will be allocated exclusively for design of the Artwork and will be paid to the Artist in accordance with the following schedule:

- (a) \$_____ (10%) upon the execution of this Agreement;
- (b) \$_____ (40%) upon approval of the Schematic Proposal;
- (c) \$_____ (40%) upon approval of Final Design Documents;
- (d) \$_____ (10%) upon Final Acceptance of the Artwork after installation

11.2. The remaining \$_____ of the Artwork Budget will be allocated exclusively for payment of the actual cost of materials, fabrication and installation of the Artwork. The Artist shall submit invoices to UAC for approval and payment. Invoices shall not be submitted more often than monthly. UAC will use its best efforts to pay each invoice within twenty-one (21) days of the date thereof. The Artist will provide receipts and other documentation to support each invoice.

11.3. All state or federal sales, use or excise taxes or similar charges relating to services and materials provided hereunder shall be paid by the Artist.

11.4. The Artist shall be responsible for the payment of all mailing or shipping charges incurred in making submissions to UAC and the costs of all travel by the Artist and the Artist's agents and employees related to their performance hereunder.

12. TIME OF PERFORMANCE.

12.1. The services to be rendered by the Artist hereunder shall be completed no later than _____, 20__ (the "Completion Date"), in accordance with the Artwork Execution Schedule, provided for in paragraph 6.1 hereof, unless extended by or in accordance with the terms and conditions hereof.

12.2. In the event that a force majeure renders timely performance hereunder impossible

or unexpectedly burdensome, then all such performance obligations shall be suspended for the duration of the force majeure, and the Artwork Execution Schedule will be extended by UAC for a reasonable period of time which will not be less than the suspension period, unless agreed to by the Artist, and if then necessary, the Completion Date will be extended for an identical period.

12.3. In the event of any delay in or extension of the Project Construction Schedule, then the Artwork Execution Schedule will be extended for a reasonable period of time which will preserve coordination between the Project Construction Schedule and the Artwork Execution Schedule.

12.4. If, upon completion of fabrication of the Artwork in accordance with the Artwork Execution Schedule, the Artist is delayed from timely installing the Artwork at the Site due to a delay in the Project Construction Schedule, then UAC will provide reasonably secure storage for the Artwork at a location provided by the City until such time as installation can be completed.

12.5. Extension of the time of performance hereunder may be granted upon the request of one party and the consent of the other thereto, which consent shall not be unreasonably withheld. In such event a corresponding amendment to the Artwork Execution Schedule shall be made in accordance with Section 21 hereof.

13. WARRANTIES. The Artist represents and warrants for any Artwork created and delivered hereunder that:

- A. The Artwork is solely the result of the artistic effort of the Artist;
- B. Except as otherwise disclosed in writing to UAC, the Artwork is unique and original and does not infringe upon any copyright or the rights of any person;
- C. The Artist has not transferred or licensed any interest in the Artwork or any copyright related thereto;
- D. That neither the Artwork, nor any duplicate thereof, has been accepted for sale elsewhere; and
- E. The Artwork is free and clear of any liens from any source whatever.

14. INSURANCE.

14.1. The Artist shall indemnify, defend, save and hold harmless UAC and the City, their respective officers, agents, and employees, from all suits, claims, actions or damages of any nature brought because of, arising out of or due to the breach of this Agreement by the Artist, its

subcontractors, agents or employees, or due to any negligent act or occurrence of omission or commission of the Artist, its subcontractors, agents, or employees, which occurs pursuant to the performance of this Agreement and this indemnification shall survive the termination or expiration of this Agreement. The Artist will not be liable under this paragraph for damages arising out of injury or damage to persons or property directly caused by or resulting from the negligence of UAC or the City or any of their respective officers, agents or employees.

The Artist shall immediately notify UAC of any written claim or suit made or filed against the Artist or its subcontractors, agents or employees regarding any matter resulting from or relating to the Artist's obligations under this Agreement, and will cooperate, assist, and consult with UAC and the City in the defense or investigation of any written claim, suit or action made or filed against UAC or the City as a result of or relating to the Artist's performance hereunder.

14.2. The Artist shall secure and maintain, at his or her own cost and expense, during the term of this Agreement, the insurance coverage listed below showing UAC and the City as additional insureds thereon. Such insurance coverage must be through insurance companies acceptable to UAC and the City. The Artist may, at his or her option, elect to maintain the required Commercial General Liability insurance coverage through UAC. The Artist must provide UAC with a current certificate of insurance for policies for all required coverages and with replacement certificates of insurance for all policies expiring during the term of this Agreement. Each such certificate and policy shall expressly provide that thirty (30) days prior written notice will be given to UAC and the City of any cancellation or material change in the policy. The Artist shall provide UAC or the City with copies of all required insurance policies upon request.

- (a) Workers' Compensation coverage in accordance with the statutory requirements of the State of Tennessee (and the Artist shall require all subcontractors to carry this coverage also.)
- (b) Commercial General Liability Insurance including coverage for Premises and Operation, Contractual Liability, Personal Injury Liability, Products/Completed Operation Liability, Broad-Form Property Damage (if applicable) and Independent Contractor's Liability (if applicable), in an amount of not less than One Million Dollars (\$1,000,000.00) per occurrence, combined single limit, written on an occurrence form
- (c) Comprehensive Automobile Liability including owned, non-owned and hired autos, in an amount of not less than Three Hundred Thousand Dollars (\$300,000.00) per occurrence, combined single limit, written on an occurrence form.
- (d) UAC and the City do not waive their right of subrogation against the Artist or any subcontractors that the Artist engages hereunder.

15. COVENANTS AND REPRESENTATIONS.

15.1 During the life of the Artist, UAC will use its best efforts to assure that the Artwork is not used in any manner which would reflect discredit on the Artist's name or reputation as an Artist or which would violate the spirit of the Artwork.

15.2 UAC hereby covenants that it will use its best efforts to assure that the Artwork is not intentionally damaged, altered, modified or changed. In the event that any alteration accidentally occurs, then the Artwork will no longer be represented to be the original Artwork of the Artist.

15.3. Nothing in this Agreement shall preclude any right of the City (1) to remove the Artwork from public display or (2) to destroy the Artwork.

16. NO AGENCY. The Artist shall perform all work hereunder as an independent contractor. Nothing in this Agreement is intended by either party to create an agency or employment relationship between the Artist and UAC or between the Artist and the City. The Artist shall not be supervised by any employee or official of UAC or of the City, nor shall the Artist exercise supervision over any employee or official of UAC or the City.

17. WAIVER. No waiver of performance by either party shall be construed as or operate as a waiver of any subsequent default of any terms, covenants and conditions of this Agreement. The payment or acceptance of fees for any period after a default shall not be deemed a waiver of any right or acceptance of defective performance.

18. GOVERNING LAW. This Agreement, regardless of where executed or performed, shall be governed by and construed in accordance with the laws of the State of Tennessee.

19. ASSIGNMENT. This Agreement may not be assigned by either party without the prior written consent of the other party. Any purported assignment of this Agreement without such consent shall be absolutely void.

20. NON-DISCRIMINATION. In connection with the performance of this Agreement, the Artist shall not discriminate against any employee, applicant for employment or program participant because of race, religion, color, sex or national origin.

21. AMENDMENTS. This Agreement may be amended only by a writing signed by all of the parties hereto.

22. TERMINATION.

22.1. This Agreement may be terminated, with or without cause, by either party by giving twenty (20) days prior written notice to the other of the intent to and effective date of termination. In the event of such termination, the Artist shall be entitled to receive just and equitable compensation for any satisfactory work performed as of the termination date. All work accomplished by UAC prior to the date of such termination shall be recorded and tangible work documents shall be transferred to and become the sole property of the City prior to payment for services rendered.

22.2. Notwithstanding the foregoing paragraph, the Artist shall not be relieved of liability to UAC for damages sustained by UAC by virtue of any breach of the Agreement by the Artist and UAC may withhold any payments to the Artist for the purposes of setoff until such time as the exact amount of damages due UAC from the Artist is determined.

23. OTHER REMEDIES. The specification of remedies in this Agreement shall not be deemed to be exclusive. UAC hereby retains the right to pursue any remedy available for defective or delayed performance, including specifically the right to set off any damages for defective or delayed performance against any sum due the Artist under this Agreement.

24. NOTICES. All notices, requests, demands and other communications which are required or permitted to be given hereunder shall be in writing and shall be given to the parties through the following persons at the following addresses, or such other addresses as either party may specify in writing from time to time:

A. If to UAC:

UrbanArt Commission
Attn: Carissa Hussong
Executive Director
175 Toyota Plaza, Suite 700
Memphis, TN 38103
Telephone: 901-252-0880
Facsimile: 901-252-0805

With a copy to:

City Building Design and Construction Office
Attn: Mel Scheuerman
125 N. Main, Room 554
Memphis, Tenn. 38103
Telephone: 901-576-6344
Facsimile: 901-_____

B. If to the Artist, to:

All such notices, etc. shall be sent by U.S. mail, postage prepaid, or by hand delivery. Notice shall be deemed to have been given on the third day after the date of postmark, if sent by U.S. mail; or upon receipt thereof, if hand delivered.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

URBANART COMMISSION

ARTIST

By: _____

By: _____

Title: _____

SS No. _____

Date: _____

Date: _____

Approved:

CITY OF MEMPHIS

By: _____

Date: _____

Exhibit I

New Vendor Form
(for UAC office use)

Date:

New Vendor Name: (Artist)

New Address:

Social Security Number or FEIN:

Exhibit II

I-18/Workers Comp Form
(for UAC office use)

Exhibit III

Insurance Form

(for Artist to be named as Additional Insured on UAC General Liability coverage)

Artist:

Address:

Address of Project:

Brief Description of Project:

Projected Dates of Installation:

Exhibit IV

Invoice

Date:

Invoice#:

To: UrbanArt Commission
175 Toyota Plaza, Suite 700
Memphis, TN 38103

From: (Artist)

Re: (Project)

Payment Type (ex. Final Design Payment)

Amount Due

Total Due

Make check payable to (Artist Name or Business Name)

Exhibit V

Budget Worksheet

As part of your design submission, you will be required to prepare both a preliminary and final approved budget. The budget should total the amount of the art allocation.

The format shown below lists many of the possible project costs. Neither will all of the items listed apply to your particular project nor is the list inclusive of all costs that may relate to your project. The artist contract should be consulted as it specifies many of the project requirements.

Other points to consider:

- Dealer fees are not acceptable as a separate budgeted project expense. Any fee must be considered as part of your total artist design fee. The NEA recommends that an artist’s agent not receive more than 10% of an artist’s fee.
- We encourage you to keep a log of your project hours and all receipts pertaining directly to your project.
- Take into consideration the possible inflation of service and material costs between now and project completion.
- The project architect may be able to advise you on the possible range of some of these costs as well as vendor sources.
- If you install your artwork independently of the general contractor, you may be required to use union laborers or pay the prevailing union wages.
- If you have a quote from an outside subcontractor but plan to use the general contractor, or a subcontractor to the general contractor, to fabricate or install any portion of the work, please note that 5% overhead is typically added by the general contractor for oversight of that portion of the work.

Worksheet: _____ **Total amount of commission \$** _____

General

Artist design fee
(Generally 10% of total commission) _____

Professional/Consultant Fee’s
(Architect, Engineer) _____

Expenses-applicable only to this project
(Transportation to meeting, copies, postage, phone, fax, etc.) _____

Insurance _____
 General Liability
 Workers' Comp
 Automobile

Documentation _____
 Photographs, transparency and slides of project, model, etc.
 Video or other process documentation

Fabrication

Preparatory Materials
(Working Drawings, Model, Templates) _____

Labor
(Assistants, Subcontractors, Fabricators or Artist) _____

Materials
(For fabrication) _____

Tools/Equipment Rental
(If needed for fabrication) _____

Space rental/Storage
(If additional space if needed) _____

Installation

Delivery of Project/Components _____

Labor
(Subcontractors) _____

Display Details
(Framing, Lighting, Footing, Pedestals, Mechanical Devices) _____

Site Preparation
(May be provided in project budget) _____

Signage
(Permanent label identifying artwork) _____

Other

Contingency

(Generally 5-10% of the budget)

Total Project Budget

Exhibit VI

Timeline Worksheet

Exhibit VII

Schematic Proposal Worksheet

Schematic Proposal	Date Due:	Date Received:
	Conceptual design	
	Concept statement	
	Preliminary budget	
	Materials	
	General dimensions	
	Approximate weight	
	Finish	
	Preliminary Maintenance	
	Comments:	

Exhibit VIII

Final Design Worksheet

Final Design	Date Due:	Date Received:
	Detailed drawings/other graphic material (includes color rendering, subject matter/content, and placement of artwork at site)	
	Materials	
	Site preparation	
	Connections	
	Building interface	
	Lighting design	
	Maintenance instructions	
	Revised budget	
	Comments:	