

ASD PROJECT: «ASD»

AIPP#: «AIPP»

AGENCY ACCT. # 50-505;

ACTIVITY/ACCT. #;

LINE ITEM 087

CONTRACT AMOUNT: «CXT_Amount» CONTRACT # _____

PROJ. COOR.

**STATE OF NEW MEXICO
DEPARTMENT OF CULTURAL AFFAIRS
NEW MEXICO ARTS
FINALIST PRESENTATION CONTRACT**

This Contract is made and entered into by the **State of New Mexico, New Mexico Arts**, a division of the Department of Cultural Affairs, hereinafter referred to as "NMA"; **Owner Agency, «Owner_Agency»** hereinafter referred to as the "**Owner**" and, **«Artist_First_Name» «Artist_Last_Name» «Business_Name»** hereinafter referred to as the "**Artist**".

WHEREAS, the Legislature of the State of New Mexico declares it to be the policy of the State that a portion of appropriations for capital expenditures be set aside for the acquisition or commission of works of art to be used in, upon and around public buildings; and

WHEREAS, the provisions of the Art in Public Places Act have generated funding for the purchase of a work of art which is the subject of this Contract; and

WHEREAS, both the Artist and the Work of Art described herein were selected by procedures established by NMA in accordance with Sections 13-4A-1 through 13-4A-11, NMSA 1978, as amended; and

WHEREAS, the finalist described herein was selected by the Local Selection Committee based upon specific criteria, to present a finalist presentation consisting of a tangible and written detailed proposal of the proposed artwork for the site, and

WHEREAS, the Artist is qualified to create the Work of Art described herein; and

THEREFORE, NMA, the Artist and the Owner agree to the terms and conditions of this Contract.

Section 1. DEFINITIONS

As used in this Contract:

A. "Work of Art" means the proposed artwork designed and created by the Artist. The Work of Art described herein is a Finalist Presentation.

B. "Finalist Presentation" means a personal presentation by the artist to the Local Selection Committee and the public of a tangible and written detailed proposal of the Work of Art, addressing required criteria included in the Finalist Notification letter.

A three-dimensional presentation of the Work of Art shall include: 1) delivery of the Work of Art to the Work Location; 2) a written narrative description of materials, budget, ADA requirements, timeline, maintenance, concept of the Work of Art and how it fulfills the project intent and installation plans, etc.; 3) a tangible three dimensional maquette of the proposed Work of Art; including placement of the Work of Art at the site; 4) sample materials;

C. "Work Location" means the building, area, and community in which the Artist's Work will be presented. For the Artist's Finalist Presentation described herein, the Work Location shall be «Worksite Location».

D. "Owner Agency" is the state or local agency having the control and management of the public building and the agency that received the appropriation for the construction or renovation of the building.

E. "Owner Agency Representative" is the individual designated by the Owner Agency with authority to bind the Owner Agency with respect to this Contract. For the purposes of this Contract, the "Owner Agency Representative" is «Owner Signatory».

Section 2. DUTIES; ARTIST AND OWNER

Artist's Duties. The Artist will execute the requirements of the Finalist Presentation and shall personally present the Work of Art to the Local Selection Committee on the date, time and location specified by the NMA Project Coordinator. The Artist shall consult with the NMA Project Coordinator if any questions regarding the Finalist Presentation arise.

Section 3. PURCHASE PRICE

For transferring ownership of the Work of Art and all related rights except those limited by this Contract, NMA agrees to pay the Artist, \$1000.00 for the maquette and presentation, \$«travel» for travel expenses for a total purchase price, not to exceed, \$«CXT Amount». This purchase price is for the Work of Art described in Section 1 and constitutes full and complete compensation for the Work of Art, and includes all payment for any expenditures made and expenses incurred by the Artist in relation to the Work of Art and presentation, including travel and gross receipts taxes. Payment for the Work of Art shall be made as follows:

A single payment of \$«CXT Amount» following artist's formal presentation and maquette on «Presentation Date» to the Local Selection Committee. The meeting will be held at the «Worksite Location». This is complete upon notification to NMA by the Artist, verified by the Owner Representative. Notification and verification will consist of the following: Submission of an invoice to NMA filled out and signed by the Artist under "Artist Signature" area and signed by the Owner Representative for the "Verification Signature" area.

Section 4. TERM

This Contract shall not become effective until signed by all parties. This Contract shall terminate on «Term Date», unless terminated earlier pursuant to Section 9. The Artist's services shall be completed in such sequence as to assure their timely completion in light of the purposes of this Contract.

Section 5. OWNERSHIP OF DOCUMENTS AND MODELS

All drawings, specifications, and models of the Work of Art, including all preliminary studies, shall be the property of the Owner, upon the delivery of the Work of Art by the Artist, or following termination of this Contract by NMA or the Owner without fault on the part of the Artist, and will not be used by NMA or the Owner in other projects, except pursuant to a written agreement between the Artist and NMA or the Owner.

Section 6. ADDITIONAL WARRANTIES AND RELEASE

The Artist warrants that the Artist is sole creator of the Work of Art; and that the Artist has the full power and authority to enter this Contract; and that the Artist's Work does not infringe any copyright or violate any property right or other intellectual property rights. The Artist agrees to defend, indemnify, and hold harmless the State, NMA, the Owner, their officials, agents, and employees from and against any and all claims, actions, suits, or proceedings of any kind brought against said parties for or on account of any matter arising from or out of the services and other obligations performed by the Artist under this Contract.

Section 7. TAXES

The Artist is solely responsible for all taxes, including without limitation federal income taxes, which may become due on amounts paid under this Contract.

Section 8. COPYRIGHT AND REPRODUCTION RIGHTS

The Artist expressly reserves every right available to the Artist under any copyright, trademark, patent or other intellectual property laws, except any rights that are limited by this Contract.

Section 9. TERMINATION FOR CAUSE

A. If the Artist fails to fulfill any of the Artist's obligations under this Contract in a timely or proper manner, or if the Artist violates any of the covenants, agreements, or stipulations of this Contract, NMA thereupon shall have the right to terminate this Contract by giving the Artist and the Owner written notice of termination at least ten (10) days before the effective date of termination. The termination date and reasons for the termination shall be stated in the notice. In such event, all finished or unfinished drawings, specifications, models, portions of the Artist's Work, supplies, or other objects which have been prepared by the Artist under this Contract, shall at the option of NMA become NMA's property, and the Artist shall be entitled to receive just and equitable compensation for any services completed under this Contract to the satisfaction of NMA.

B. The Artist shall be liable to the State for damages sustained by the State by virtue of any breach of this Contract by the Artist, and NMA may withhold any payments to the Artist for the purposes of set-off until such time as the exact amount of damages due NMA from the Artist is determined. Damages shall include all amounts paid pursuant to this Contract. In addition thereto, NMA has the right to recover any sums paid to the Artist plus attorney's fees costs and expenses.

Section 10. SCOPE OF CONTRACT

This Contract contains the entire agreement of NMA, the Owner, and the Artist, and supersedes any and all other contracts, agreements, or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.

Section 11. EQUAL OPPORTUNITY COMPLIANCE

The Artist agrees to abide by all Federal and State laws, rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations and executive orders, the Artist agrees to assure that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, sexual preference, age or handicap, be excluded from employment with or participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity performed under this Contract. If the Artist is found to be not in compliance with these requirements during the life of this Contract, the Artist agrees to take appropriate steps to correct these deficiencies.

Section 12. APPROPRIATIONS

The terms of this Contract are contingent upon sufficient appropriations and authorization being made by the Legislature of the State of New Mexico for the performance of this Contract. If sufficient appropriations and authorization are not made by the Legislature, this Contract shall terminate upon written notice being given by NMA to the Artist. NMA's decision as to whether sufficient appropriations and authorization are available shall be accepted by the Artist and shall be final.

Section 13. CONFLICT OF INTEREST

No officer, agent, or employee of the State will participate in any decision relating to this Contract which affects his personal interest or the interest of any corporation, partnership, or association in which he is directly or indirectly interested or in which he has any direct or indirect personal or pecuniary interest.

Section 14. BRIBES, GRATUITIES, AND KICK-BACKS

The Procurement Code, Sections 13-1-28 through 13-1-199, NMSA 1978, as amended, imposes civil and criminal penalties for its violation. In addition, New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

Section 15. NOTICE

For purposes of giving formal, written notice and/or contact with Owner, Owner or User Representative, Artist, or NMA:

**OWNER AGENCY
SIGNATORY**

ARTIST

**NMA CONTRACT
CONTACT**

**NMA PROJECT
COORDINATOR**

New Mexico Arts
PO Box 1450
Santa Fe NM 87504-1450
505-827-6490
505-827-6043/fax
800-879-4278/instate

New Mexico Arts
PO Box 1450
Santa Fe, NM 87504-1450
505-827-6490
505-827-6043 fax
800-879-4278 instate

Section 15. REQUIRED SIGNATURES

This Contract will not be binding upon NMA until all signatures required below have been obtained.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of the last signature below:

DEPARTMENT OF CULTURAL AFFAIRS:

Stuart Ashman, Secretary, Department of Cultural Affairs

Date

Legal Counsel—AS TO LEGAL FORM AND SUFFICIENCY

Date

Loie Fecteau, Director, New Mexico Arts

Date

OWNER:

«Owner_Signatory»

Date

ARTIST:

«Artist_First_Name» «Artist_Last_Name»

Date