

ASD PROJECT #: «ASD»	AIPP #: «AIPP»
AGENCY ACCT.# 50-505	ACTIVITY/ACCT.# _____
CONTRACT AMT: «CXT_Amount»	ASD CONTRACT # _____
	LINE ITEM <u>087</u>
	PROJ. COOR:

**STATE OF NEW MEXICO
DEPARTMENT OF CULTURAL AFFAIRS
NEW MEXICO ARTS DIVISION
ART IN PUBLIC PLACES PROFESSIONAL SERVICES CONTRACT**

THIS AGREEMENT is made and entered into by and between the State of New Mexico, Department of Cultural Affairs, hereinafter referred to as the "Agency", acting through Stuart Ashman, its Cabinet Secretary, hereinafter referred to as the "Secretary", **«Owner_Agency»**, hereinafter referred to as "Owner Agency", **«Business_Name»**, hereinafter referred to as "Artist" and The New Mexico Arts Division is hereinafter referred to as "NMAD".

WHEREAS, the Art in Public Places Act, Section 13-4A-1 NMSA 1978, authorizes the allocation of 1% of appropriations for capital expenditures to be set aside in a fund and used for the acquisition or commission of works of art to be used in, upon, or around public buildings;

WHEREAS, NMAD is authorized to administer the art in public places fund pursuant to the Art in Public Places Act;

WHEREAS, Definitions as used in this Contract are:

- a) "Artwork" means the Work of Art designed and created by the Artist and accepted by the Local Selection Committee and includes the Work of Art and the Work Base together;
- b) "Work Base" means the foundation upon which the Work of Art is mounted and is considered a component of the Artwork;
- c) "Work Location" means the building, area, and community in which the Artwork will be located;
- d) "Work Site" means the specific area of either the Owner or User Agency's site within, upon, or around the Work Location in which the Artwork is to be permanently attached or installed;
- e) "User Agency" is the agency assigned as occupant of the building in which the Artwork will be located. The "User Agency Representative" is the individual designated by the User Agency with authority to bind the User Agency with respect to this Contract;
- f) "Owner Agency" is the 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. The "Owner Agency Representative" is the individual designated by the Owner Agency with authority to bind the Owner Agency with respect to this Contract.

WHEREAS, **«Owner_Agency»**, Owner Agency, desires to commission a public Artwork to be located at **«Worksite_Location»** hereinafter referred to as the Owner/User Agency's "Work Site";

WHEREAS, in conformity with the rules of the Art in Public Places Act, the Artist's Artwork, described as **«Art_Description»**, was selected by the Owner/User Agency's Local Selection Committee; and

WHEREAS, NMAD, the Owner Agency, User Agency, and the Artist, for consideration and under the conditions hereinafter set forth, agree as follows:

Article 1. Scope of Services

1.1 *General Duties of Artist, Owner Agency, User Agency, and NMAD.*

a) The Artist shall perform all services and furnish all supplies, material and equipment as necessary for the design, execution, and fabrication of the Artwork, Work Base, and Project Plaque and transportation and installation of the Artwork, Work Base, and Project Plaque at the Work Site, except as otherwise agreed to in this Contract.

b) The Artist shall determine the artistic expression, scope, design, color, size, material, texture of the Artwork, as presented to and approved by the Local Selection Committee and subject to review and acceptance by the Owner/User Agency, as set forth in this Agreement. The Artist represents to the *Owner/User Agency*, and NMAD that the Work to be produced is a unique, original Artwork especially designed for the Work Site and has not and will not be duplicated by the Artist without the prior written permission of the Owner Agency, User Agency, and NMAD.

i) Notwithstanding the previous sentence, Owner/User Agency recognize that the unique work means the one installation at the User Agency, but that the design and concept are, have been, and may in the future be used by Artist in studies or series of studies or other work of Artist which may result in the sale of other similar but different unique works of the Artist. Artist may create such other and further uses in Artist's discretion without consent or prior written permission of NMAD. Artist hereby puts Owner Agency/Owner User on notice that Artist has aspirations of such future studies and uses. Artist shall also be free to use the image of the Unique Artwork, but in connection with such use will notify NMAD and include a credit in whatever form credit may take that the Unique Artwork is owned by Owner and displayed at the User Agency, such as, but not limited in Artist's publications. The Unique Artwork referred to herein is specifically limited to the work as it appears at the installation site at the User Agency. If the work is deinstalled for any reason other than repair or restoration for proximate re-use, it shall be deemed destroyed, and Owner shall forfeit any and all rights it has hereunder to Artist at no cost, expense, or charge to Artist.

c) If applicable, before creation of the Artwork and Work Base, the Artist will deliver to NMAD structural drawings certified by a New Mexico licensed professional engineer. The certified drawings will establish the engineering soundness of the Artwork and the proposed installation of the Artwork at the Work Site. If required by NMAD the proposed Artwork will be reviewed by a professional fine art conservator in the event the artwork is:

1) an exterior Artwork; 2) created with non-archival media; 3) exposed to adverse environmental conditions; and 4) questionable with regard to the durability of the proposed media and other maintenance concerns. The fine art conservator will also establish the durability of media and required periodic maintenance provided by the Artist. NMAD and the Owner/User Agency must approve the certified and reviewed drawings before any work is begun on creation of the Artwork.

d) The Owner/User Agency shall perform and be responsible for the following services in a satisfactory and proper manner as determined by NMAD, and is responsible and shall pay for the following:

1. Preparation of the Work Site, in collaboration with the Artist and Architect, which includes **necessary access to the worksite to install the artwork; all areas finished and ready to receive artwork when the artist is ready to install.** **«Preparation of Work Site»**

2. Provision for the Artist to have reasonable access to the Work Site for the execution and installation of the Artwork. The Owner/User Agency shall, in consultation with the Artist and NMAD, take reasonable precautions to secure the Work Site and its contents during the installation of the Artwork but shall have no liability to the Artist for damage to or loss of the Artwork.

1.2 *Change of Design.*

a) The Artist shall present to the Owner /User Agency and NMAD for their review and written approval any significant changes in the scope, design, color, size, material, texture, and/or location of the Artwork at the Work Site, or change of project intent of the Artwork that is not permitted by or in conformity with the Proposal approved by the LSC. These changes may affect the installation, scheduling, site preparation or maintenance for the Artwork or the concept of the Artwork as approved by the Local Selection Committee.

b) Any change submitted for Owner/User Agency and NMAD written approval shall be on NMAD's Proposed Change of Design Form 1.1. The Owner/User Representative shall indicate approval or disapproval for the proposed change(s) and submit the signed form to NMAD. NMAD shall return the approved form, or communicate the reasons for non-approval of the change, to the Artist and Owner/User Representatives. The Artist

shall not implement or proceed with any proposed change(s) in scope, design, color, size, material, texture, and/or location of the Artwork for which approval in writing by the Owner/User Representative, in consultation with NMAD, has not been obtained.

c) No non-artist party, nor anybody, shall have any right to make any artistic change to Artist's work without Artist's consent, which consent Artist may withhold in Artist's sole and absolute discretion. Furthermore, all parties recognize that a minor shift in scale from preliminary drawings and maquettes to a full-scale work may be required. The Artist reserves the right to make minor adjustments to the Work as the Artist deems aesthetically and structurally necessary.

1.3 *Delivery and Installation.*

a) **The installation date for the artwork is no later than «Install Deadline».** The Artist shall notify the Owner/User Agency, in writing, 30 days in advance, of the date when the Artwork is expected to be completed and when the Artist expects to deliver and install the Artwork at the Work Site.

b) The Artist shall ensure that the Artwork is installed with appropriate permanent and anti-theft measures and/or devices to protect the Artwork from undue wear and/or damage and/or loss.

c) The Artist shall provide a project identification plaque for the Artwork, which shall include the following information: the title of the Artwork, Artist's name, year of completion, and a statement that the Artwork was "Funded through the Art in Public Places Program of the State of New Mexico". The project plaque shall be delivered to the Owner/User Agency's Work Site and installed by the Artist at the time of installation of the Artwork where it shall permanently remain

1.4 *Post-Installation Documentation.*

Within 30 days after the installation of the Artwork, the Artist shall furnish NMAD with the following relating to the Artwork as completed and installed:

- (1) A high resolution JPEG of the Artwork with a minimum of 350 dpi (dot per inch) resolution;
- (2) A full written description of the Artwork;
- (3) and, upon installation of the Artwork, the Artist shall provide to the Owner/User Agency's building manager and NMAD:
 - a) written instructions for appropriate maintenance and preservation of the Artwork, including a maintenance schedule; and
 - b) a comprehensive list of all materials used in the creation of the Artwork (ex: gauge and type of metal, adhesive materials, clay body and firing, etc).

1.5 *Final Acceptance.*

a) The Artist shall notify the Owner/User Agencies and NMAD, in writing, using the NMAD Final Payment Invoice form, when all Artist services required under this Contract have been completed.

b) The Owner Agency shall notify the Artist and NMAD, in writing, using the "Notice of Acceptance" signature area on the NMAD Final Payment Invoice form, of its final acceptance of the Artwork.

c) The Owner Agency's final acceptance shall be conditioned upon the Artist's disclosure of any outstanding or disputed claims against the Artist arising out of the Artwork, such as claims by subcontractors, suppliers or foundries, or upon the Artist's certification that no such claims exist.

d) If the Owner/User Agency determines and notifies the Artist and NMAD within 10 days of receipt of Artist's notice in 1.5(a) above that services which Artist is responsible for are incomplete or unsatisfactory, the Artist shall resolve the issues to the satisfaction of the Owner/User Agency and NMAD at no further cost to the Owner/User Agency or NMAD.

1.6 Risk of Loss.

The risk of loss or damage to the Artwork shall be borne by the Artist until final acceptance by the Owner Agency, and the Artist shall take such measures as are necessary to protect the Artwork from loss or damage until final acceptance by the Owner Agency. The Artist shall carry insurance to cover risk of damage to the Artwork until final acceptance by the Owner Agency.

1.7 Title.

Title to the Artwork shall pass to the Owner Agency upon receipt by NMAD of the Notice of Acceptance signed by the Owner Agency and final payment to the Artist. If the Owner Agency fails, within 10 days of installation of the Artwork by the Artist, to return to NMAD an executed *Final Payment Invoice* form, or to notify the Artist and NMAD of Artist services that are unsatisfactory, title and ownership of the Artwork will transfer from the Artist to the Owner Agency upon final payment to Artist.

a) The Owner/User Agency shall provide insurance for the Artwork upon the date final payment is due.

b) Title to the Artwork shall be owned by the Owner Agency in accordance with the terms hereof, subject to applicable inventory requirements set forth by the State of New Mexico.

Article 2. Term.

THIS CONTRACT SHALL NOT BECOME EFFECTIVE AND THE ARTIST MUST NOT COMMENCE WORK ON THE ARTWORK UNTIL THIS AGREEMENT HAS BEEN APPROVED BY THE DEPARTMENT OF FINANCE AND ADMINISTRATION. The Contract shall terminate on «**Term Date**» unless terminated pursuant to Article 11 herein. The services to be provided under this Contract shall be completed by that date unless extended as provided elsewhere herein.

It is agreed that any and all obligations arising under Article 1, Sections 1.5, 1.7, 1.7a, and Articles 5, 7, 8 shall survive the termination of this Contract, and such survival shall specifically include any other terms and provisions of the Contract necessary to give full force and effect to said provisions.

Article 3. Compensation and Payment Schedule.

3.1 Fixed Fee.

NMAD shall pay the Artist a fixed fee of **«CXT_Amount»**, including gross receipts tax, from the allocation for the Art in Public Places program which shall constitute full compensation for all services, taxes, insurance, filing fees, engineering fees, professional conservator fees, materials, shipping or mailing charges, travel for the Artist or the Artist's subcontractors or employees to be furnished by the Artist under this Contract. The fee shall be paid in the installments that correspond to phases of completion of the Artwork upon receipt by NMAD of a Payment Invoice form signed by the Owner/User Agency Representative and the Artist. Each installment's payment shall constitute full and final payment for all services and materials required prior to submission of the Payment Invoice form.

a) *Payment Invoice - Phase I*: **«Phase I_Amount»**, for completion of the planning and design of the Artwork as approved by the Local Selection Committee.

b) *Payment Invoice - Phase II*: **«Phase II_Amount»**, for 50% completion of the Artwork by the Artist, consisting of **«Phase II Stipulations»** as approved by photos submitted to the Owner/User Agency Representative and NMAD and/or a site visit by NMAD and/or the Owner/User Agency Representative.

c) *Payment Invoice-Phase III*: **«Phase III_Amount»**, for 100% completion of fabrication of all artwork components, as approved by photos submitted to the Owner/User Agency Representative and NMAD and/or a site visit by NMAD and/or the Owner/User Agency Representative.

d) *Final Payment Invoice*: **«Phase III_Amount»**, including any applicable gross receipts tax, for final completion and installation of the Artwork at the Owner/User Agency's Work Site. Final completion of the Artwork will consist of **written notification to NMAD by the Artist, verified by the Owner and/or User Agency Representative(s). Notification and verification will consist of the following:**

- 1) Submission of the *Final Payment Invoice* form to NMAD. The form must be filled out and *signed by the Artist* at the "Artist Signature" area, *signed by the Owner/User Agency Project Director* at the "Project Director or Verification Signature" area, and *signed by the Owner Agency Representative* at the "Notice of Acceptance" area to confirm completion and acceptance, installation and receipt of maintenance instructions and Project Plaque. The Owner Agency Representative may sign for the User Agency Representative; the forms must be signed by the same individuals who initially signed this Contract.
- 2) Installation of the Project Plaque as described in Article 1. Section 1.3c of this Contract.
- 3) Documentation of the Artwork as described in Article 1. Section 1.4 of this Contract.

3.2 Taxes.

The Artist shall be responsible for any and all applicable state or federal taxes, including payment of gross receipts tax, arising or resulting from the performance of services under this Contract.

Article 4. Time of Performance.

4.1 Duration.

The services to be performed by the Artist set forth in Article 1 shall be completed as agreed to by the Artist, the Owner/User Agency and NMAD and in accordance with the phases of completion set forth in Article 3.

4.2 *Extension of Time.*

NMAD shall grant a reasonable extension of time to the Artist in the event that there is a reasonable delay on the part of the Owner/User Agency in performing its obligations under this Contract, or if conditions beyond the Artist's control or Acts of God render timely performance of the Artist's services impossible. Failure to fulfill contractual obligations due to conditions beyond either party's reasonable control will not be considered a breach of Contract provided that such obligations shall be suspended, with prior notice to and approval by NMAD, only for the duration of such conditions.

All requests by the Artist or the Owner/User Agency for time extensions shall be made in writing to NMAD at least 90 days prior to the term described in Article 2. NMAD will review all written requests and notify the Owner/User Agency and the Artist of its decision within 10 days of receipt of the written request. All dates herein shall be deemed extended by each extension granted hereunder, including the termination date.

Article 5. Warranties.

5.1 *Warranties of Title.*

The Artist represents and warrants that the Artwork to be created: (a) is solely the result of the artistic effort of the Artist; (b) is unique and original, except as otherwise disclosed in writing to NMAD and the Owner/User Agency, (c) is not a duplicate thereof, has not been accepted for sale elsewhere disclosed in writing; (d) does not infringe upon any copyright; and (e) is free and clear of any liens or claims from any source whatsoever. **Notwithstanding the preceding, the Artwork is a part of a series and may be used by Artist in the future, but not the installed piece, which is unique to the contract.**

5.2 *Warranties of Quality and Condition.*

The Artist represents and warrants that: (a) the execution and fabrication of the Artwork will be performed in a professional manner; (b) the Artwork, as fabricated and installed, will be free of defects in material and workmanship, including any defects or qualities which cause or accelerate deterioration of the Artwork; and (c) reasonable maintenance of the Artwork will not require procedures substantially in excess of those described in the maintenance recommendations to be submitted by the Artist to NMAD and the *Owner/User Agency* hereunder.

The warranties described in this Section 5.2 shall survive for a period of five (5) years after the final acceptance of the Artwork, with periodic required maintenance, by the Owner Agency, according to directions provided by the Artist. The Owner/User Agency shall give written notice to NMAD and the Artist of any breach of the Artist's warranty within ninety (90) days of the breach during a five-year period after final acceptance of the Artwork. The Artist shall, at the request of the NMAD and the Owner/User Agency, and at no cost to the Owner/User Agency or NMAD, cure reasonably and promptly the breach of any such warranty which is repairable by the Artist and which repair is consistent with accepted practices of professional conservation (including, for example, repair by means of restoration, refurbishing or re-creation of part or all of the Artwork).

Article 6. Insurance.

6.1 *General.*

a) Until such time that final acceptance by the Owner Agency, the Artist is responsible for maintaining insurance coverage for claims and losses for both personal injury and property damage arising from performance under this Contract.

b) The Artist's insurance coverage shall be with a company authorized to do business in New Mexico and in any other state(s) in which the Artwork will be created. Such coverage shall include the Artist's subcontractors and employees, workmen's compensation insurance, automobile liability insurance and public liability insurance in the amount of \$1,000,000.

c) NMAD and the Owner/User Agency shall be named as additional insureds with respect to the Artist's insurance coverage. The Artist shall provide NMAD and the Owner/User Agency with a certificate of insurance or other evidence of adequate insurance coverage. Such insurance policy shall provide for at least ten (10) days prior notice of change or cancellation of the policy.

d) The Owner/User Agency shall insure the Artwork for the total commissioned amount or any other greater amount, at its/their discretion after final acceptance.

Article 7. Reproduction Rights.

7.1 General.

The Artist retains all rights under The Copyright Act of 1976, 17 U.S.C. 101 et seq., and all other rights in and to the Artwork, except ownership and possession and except as such rights are limited by this Contract. Because its final form is unique, the Artist shall not make any 2- or 3-dimensional replication of the final Artwork, nor shall the Artist grant permission to others to do so except with the written permission of NMAD and the Owner/User Agency for the lifetime of the Artwork. If the Artwork is one in a series of prints, photographs, castings or fabrications or has been previously reproduced and accepted for sale elsewhere, the Artist will notify NMAD and the Owner/User Agencies of this as required in [Article 5, Section 5.1](#). The Artist grants to NMAD and the Owner Agency and its successors an irrevocable license to make 2-dimensional reproductions of the Artwork for non-commercial purposes, including but not limited to reproductions used in advertising, brochures, media publicity, and catalogues or other similar publications.

7.2 Artist Credit.

All reproductions by the Owner/User Agency shall credit the Artist and include a copyright notice substantially in the following form: "©[Artist's name], installation date, date of publication, Funded through the Art in Public Places Program of New Mexico Arts, a division of the New Mexico Office of Cultural Affairs".

7.3 Artist Reproduction Credit.

Artist is hereby granted permission by NMAD and the Owner/User Agency to reproduce the Artwork in a limited edition, the Artist agrees to include on or in any form of reproduction of the Artwork initiated or authorized by the Artist a credit to NMAD in the following form: "Collection of the New Mexico Arts' Art in Public Places Program."

Article 8. Artist's Rights.

8.1 General.

In all matters pertaining to the Artwork and its maintenance, including but not limited to the Articles in this Contract, the provisions of the Federal Visual Artists' Rights Act of 1990 (VARA) shall apply.

8.2 Maintenance.

The Owner/User Agency recognizes that maintenance of the Artwork on a regular basis is essential to the integrity of the Artwork. The Owner/User Agency shall reasonably assure that the Artwork is properly maintained and protected, in accordance with the requirements of this Contract any breach of which shall void Artist's warranties

8.3. Repairs and Restoration.

a) The Owner/User Agency and NMAD shall have the right to determine, after consultation with a professional conservator, when and if repairs and restorations to the Artwork will be made. During the Artist's lifetime, the Artist shall have the right to approve all repairs and restorations, provided, however, that the Artist shall not unreasonably withhold approval for any repair or restoration of the Artwork. If the Artist unreasonably fails to approve any repair or restoration, NMAD or the Owner/User Agency shall have the right to make such repair or restoration. To the extent practicable, the Artist, during the Artist's lifetime, shall be given the opportunity to make or personally supervise significant repairs and restorations as recommended by a professional fine art conservator and shall be paid a reasonable fee and expenses for any such services, provided that NMAD and the Owner/User Agency and the Artist shall agree in writing, prior to the commencement of any significant repairs or restoration, upon the Artist's fee for such services.

b) Repairs and restoration occurring five years after Owner Agency acceptance of the Artwork will be the responsibility of the Owner/User Agency.

c) De-accessioning of Artwork will occur if one or more of the following conditions exist during the life of the Artwork: 1) The Artwork is damaged where repair is impractical or costs exceed the value of the artwork; 2) The Artwork has faults that require repeated and excessive maintenance; 3) The Artwork endangers public safety; 4) Public protest has continued unabated over a period of five years and a public hearing has not led to a solution. VARA provisions regarding NMAD's notification of the Artist (90) days prior to the removal of the Artwork will be followed. All salvage costs to remove the Artwork from the site will be the responsibility of the Owner/User Agency.

d) All repairs and restorations shall be made in accordance with accepted practices of professional fine art conservation.

e) This Contract shall not be construed to restrict the Owner Agency's use or disposition of the property on which or in which the Artist's Artwork is located or adhered. The Owner Agency will give NMAD one hundred twenty (120) days' notice prior to any change in the Agency's property that will require removal or relocation of the Artist's Artwork. Permission or approval of NMAD or the Artist is not required in these instances.

f) The Owner/User Agency is responsible for adherence to the requirements of VARA.

Article 9. Artist as Independent Contractor.

The Artist, and his agents and employees, are independent contractors performing services for the NMAD and are not employees of the New Mexico Arts Division. The Contractor, his agents and employees,

shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the New Mexico Arts Division, as a result of this Contract.

Article 10. Subcontracting.

The Artist may subcontract portions of the services to be provided hereunder at the Artist's expense provided that said subcontracting shall not affect the design, appearance, intent or visual quality of the Artwork as approved by the Local Selection Committee and shall be carried out under the personal supervision and at the expense of the Artist.

Article 11. Termination.

a) The services to be performed under this Contract may be terminated by any party, subject to written notice submitted to NMAD thirty (30) days before termination, provided that reasonable attempts to reconcile the reason for termination have been undertaken but failed. If either the Artist or the Owner/User Agency shall willfully or negligently fail to fulfill in a timely and proper manner, or otherwise violate, any of the covenants, agreements or conditions material to the Contract, the other party shall thereupon have the right to terminate this Contract by giving thirty (30) days written notice to the defaulting party and NMAD of this intent to terminate, specifying the grounds for termination.

b) If this Contract is terminated by NMAD for failure of Artist to comply with the terms of this Contract, the Artist may be held liable for the return of any monies paid under the terms of this Contract for services not rendered.

c) If the Owner/User Agency and/or NMAD terminate this Contract for non-compliance on the part of the Artist, the Artist will be ineligible to apply for new Art in Public Places funding for a period of three (3) years.

d) NMAD shall have the right to terminate this Contract for non-compliance on the part of the Owner/User Agency for failure to comply with the terms of this Contract.

Article 12. Contract Administrator.

The administrator of this Contract, including responsibility for issuing payments to the Artist, shall be NMAD.

Article 13. Non-Discrimination.

In carrying out the performance of the services designated, the Artist shall not discriminate as to race, creed, religion, sex, age, national origin or any physical, mental or sensory disability, and the Artist shall comply with the equality of employment opportunity provisions of New Mexico and federal law as presently existing or hereafter amended.

Article 14. ADA Compliance.

In performing any services required hereunder, the Artist shall comply with all applicable requirements of the Americans with Disabilities Act of 1990 (the "ADA"). The Artist's responsibility to defend and indemnify NMAD, as provided in this Contract, includes but is not limited to claims arising from the Artist's, or Artist's agents' or employees' acts or omissions in violation of the ADA.

Article 15. Compliance.

The Artist shall be required to comply with federal, state and city statutes, ordinances and regulations applicable to the performance of the Artist's services under this Contract.

Article 16. Entire Agreement.

This writing embodies the entire Contract and understanding between the parties hereto, and there are no other contracts, agreements and understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby **except those that make specific reference to this contract and are signed by Artist and one of NMAD, Owner, or User Agency.**

Article 17. Modification.

No alteration, change or modification of the terms of the Contract shall be valid unless made in writing and signed by all parties hereto and approved by appropriate action of the *Owner/User Agency* and NMAD.

Article 18. Waiver.

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

Article 19. Governing Law.

This Contract, regardless of where executed or performed, shall be governed by and construed in accordance with the laws of the State of New Mexico.

Article 20. Heirs and Assigns.

This Contract shall be binding upon and shall inure to the benefit of the *Owner/User Agency* and the Artist and their respective heirs, personal representatives, successors and permitted assigns.

Article 21. Written Notices.

a) All notices, requests, demands and other communications which are required or permitted to be given under this Contract shall be in writing and shall be deemed to have been duly given upon the receipt thereof.

b) For purposes of giving formal, written notice and/or to contact the Owner/User Agency or Representative, Artist, or NMAD, the following addresses apply:

**OWNER AGENCY &
SIGNATORY**

ARTIST

**NMAD CONTRACT
CONTACT**

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

c) For purposes of giving formal written notice to the Artist, Owner/User Agency, Owner/User Agency Representative, or NMAD, the addresses are as stated above. Until NMAD receives the *Final Payment Invoice* form with signed Notice of Acceptance, the Artist or Owner/User Agency Representative will provide NMAD with notice of any change in address within ten (10) days following that change. After the final payment in this Contract has been made, the Artist or Owner/User Agency will notify NMAD of any change in address within thirty (30) days following the change. Failure to do so will be a waiver of the Artist's or Owner/User Agency's rights described in this Contract, except for the Artist's copyright and reproduction rights. NMAD will notify Artist and Owner/User Agency of any change in address within five (5) days following that change.

Article 22. Conflict of Interest.

The Artist warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Contract. The Artist certifies that the requirements of the Governmental Conduct Act, Section 10-16-1 through 10-16-18 NMSA 1978, regarding Contracting with a public officer or state employee, have been followed.

Article 23. Bribes, Gratuities, Kickbacks, Applicable Law.

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

Article 24. Records and Audits.

The Artist shall maintain, for three years, records which indicate the date, time and nature of services rendered. These records shall be subject to inspection by NMAD, the Owner Agency, the Department of Finance and Administration, and the State Auditor. NMAD, the Department of Finance and Administration, the State Auditor, and the Owner Agency shall have the right to audit billings both before and after payment. Payment under this Contract shall not foreclose the right of NMAD and/or the Owner Agency to recover excessive and/or illegal payments.

Article 25. Required Signatures.

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

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

DEPARTMENT OF CULTURAL AFFAIRS:

Stuart Ashman, Secretary, Dept of Cultural Affairs _____ Date

Loie Fecteau, Executive Director, New Mexico Arts Division _____ Date

DCA General Counsel, As to legal form and sufficiency only _____ Date

OWNER AGENCY:

«Owner_Signatory_Name» _____ Date

OWNER AGENCY LEGAL REPRESENTATIVE (if required by Owner Agency):

Print name & title, then sign above _____ Date

ARTIST:

«Business_Name» _____ Date

STATE OF NEW MEXICO SIGNATURE LINE

The Attorney General has reviewed this Agreement which is \$200,000.00 or more.

By: _____ Date: _____
Attorney General

This Agreement has been approved by the Chief Information Officer.

By: _____ Date: _____
Chief Information Officer

THIS AGREEMENT HAS BEEN APPROVED BY THE DFA CONTRACTS REVIEW BUREAU:

By: _____ Date: _____
DFA Contracts Review Bureau

TAX & REVENUE DEPARTMENT (See Attached signature page, if required)