



**CONTRACT BETWEEN
METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY
AND
ARTIST
FOR PURCHASE OF PUBLIC ART SERVICES**

This contract is initiated by and between **THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY** ("METRO") and **NAME OF ARTIST** ("ARTIST"). This contract consists of the following documents:

- ***This Contract Document,***
- ***Solicitation, Numbered xx-xx,***
- ***ARTIST'S RESPONSE***
- ***Exhibits:***
 - ***Exhibit A, Pricing,***
 - ***Exhibit B, Affidavits***
 - ***Exhibit C, ARTIST Supplied Insurance Forms,***
 - ***Exhibit D, MNAC Public Art Guidelines, including METRO Public Art Ordinance BL2000-250***
 - ***Exhibit E, ARTIST's Design Proposal***
 - ***Exhibit F, Project Schedule of Performance***

In the event of conflicting provisions, all documents shall be construed according to the following priorities:

- ***Any Properly Executed Contract Amendment (most recent with first priority),***
- ***This Document and All Exhibits,***

The parties hereby agree to the following terms and conditions:

- I. Duties and Responsibilities of ARTIST.*** ARTIST agrees to provide and METRO agrees to purchase the following services: **a site-specific public artwork for SITE.**

- A. ARTIST will fabricate and install an Artwork (tangible medium created for this project, not including the copyright embodied therein, referred to as “Artwork” or “Work” herein) in accordance with ARTIST’s Final Design Proposal (“Proposal”) to be submitted as a revision to Submitted Design Proposal (Exhibit E) on the Site (as the Site is described in RFP/Q or Exhibit E and the ARTIST’s Proposal). A design revision resulting from alterations in site plan that were made by the design team landscape architect or other alterations may be made, as necessary for safety, strength, structural integrity, compliance with laws, or as requested by METRO to address METRO’s concerns with risk.
- B. Once final Design Proposal has been approved by the MNAC Public Art Manager, the ARTIST must submit a detailed description in writing of any significant changes in the ARTISTic expression, design, dimension and materials of the Artwork that is not permitted by nor in substantial conformity with the already approved design. (A significant change is any change which materially affects installation, scheduling, site preparation, maintenance or the concept of the Artwork as represented in the Proposal, and may include alterations necessary for safety, strength, structural integrity, compliance with laws, or as requested by METRO to address METRO’s concerns with risk.) Such changes are subject to the written approval of the MNAC Public Art Manager.
- C. ARTIST shall understand that time is of the essence in the performance of ARTIST’s services under this agreement, and shall complete the Work in accordance with the schedule attached hereto as Exhibit F. The schedule can be revised with agreement between MNAC Public Art Manager or designee. Once submitted, amended schedule may not be amended again except by mutual written agreement of the Parties, as provided herein.
- D. Structural Drawings;. Prior to fabrication of the Artwork, ARTIST shall provide METRO with structural drawings detailing every physical feature of the construction of the Artwork and its integration with the Site. These drawings will be prepared, signed and stamped by a qualified engineer, licensed by the state of Tennessee and fully compensated by the ARTIST. These drawings and supplementary documents shall indicate any issues involved in the construction, integration and maintenance of the Artwork. The ARTIST shall also provide as-built drawings, certifying that the Artwork was installed in compliance with the structural drawings, except as alterations were necessary for strength and structural integrity. These drawings will be prepared, signed and stamped by a qualified engineer, licensed by the state of Tennessee and fully compensated by the ARTIST.
- E. METRO’s approval of the Plans shall not release ARTIST of the responsibility for the correction of mistakes, errors or omissions contained in the Plans, including any mistakes, errors or omissions which may be the result of circumstances unforeseen at the time the Plans were developed or approved.
- F. METRO and ARTIST agree that various elements of the Artwork are to be fabricated at locations away from the site. The parties acknowledge and agree

that METRO has the right to inspect each of the elements, prior to transporting to the site.

- G. The ARTIST shall secure and purchase any and all required licenses, permits and similar legal authorizations as may be necessary for the installation of the Artwork at the Site.
- H. The ARTIST shall arrange the transportation and installation of the Artwork at the Site, in consultation with MNAC Public Art Manager.
- I. The ARTIST shall provide the MNAC Public Art Manager notice and contact information for any designated representatives during installation of Artwork.
- J. Appearance of the Site. ARTIST shall maintain a neat appearance to the work at the Site. ARTIST shall be responsible for any clean-up of the Site made necessary by the installation of the Artwork, including removal of equipment, materials and the repair of any portion of the Site or surrounding area damaged by the installation of the Artwork.
- K. METRO's designated representatives shall at all times have access to the Site, including the Artwork.
- L. ARTIST acknowledges that until written notice of final acceptance of the Artwork by METRO, any injury to property or persons caused by the ARTIST's Artwork or any damage to, theft of, vandalism to, complete destruction of, or acts of God or nature affecting the ARTIST's Artwork are the sole responsibility of the ARTIST, including, but not limited to, any loss occurring during the creation, storage, transportation or delivery of the ARTIST's Artwork regardless of where such loss occurs. The ARTIST and not METRO shall bear the risk of loss due to the foregoing.
- M. After ARTIST has completed installation, ARTIST will notify MNAC's Public Art Manager, and METRO's designees will undertake a final inspection of the Artwork within 30 days from written notification by ARTIST of installation completion.
- N. ARTIST shall furnish METRO separate releases of claims or claim waivers, in form specified by METRO, from each sub contractor ARTIST, supplier, or other person or entity who has or might have a claim against METRO regarding labor and/or materials contributed to or for the Artwork, before ARTIST is entitled to final payment.
- O. ARTIST will be available with reasonable advance notice for meetings, ceremonies and like events in Nashville, Tennessee, as necessary.

II. Duties and Responsibilities of METRO

- A. METRO will pay ARTIST an all-inclusive fixed fee of \$XXXXXX (See Exhibit A for details).
- B. Existing Site Specifications. Prior to ARTIST's provision of the drawings specified at Section I(D), METRO shall provide ARTIST with structural drawings of the existing Site, which drawings shall be prepared by an architect ("Base Drawings"). METRO acknowledges that ARTIST may rely on these Base

Drawings in fabricating and installing the Artwork. To that end, if any inaccuracy in the Base Drawings exists, is neither discovered by nor communicated to the ARTIST until after fabrication or installation, respectively, have been completed, and such inaccuracy requires that ARTIST modify the fabrication or installation of the Artwork, and ARTIST incurs increased costs by such modification, then METRO will reimburse ARTIST for the additional costs of modifying the fabrication or installation of the Artwork to the extent that they are directly necessitated by that inaccuracy. However, ARTIST must first notify METRO as to the necessity of such additional costs, the amount of same, and any other options for modifying the fabrication or installation, and obtain METRO's written consent to same, prior to undertaking such modifications.

- C. METRO will provide and install a plaque on or near the Artwork containing a credit to the ARTIST by name, specifying the date of installation, and a copyright notice indicating that the copyright to the Artwork is held by ARTIST.

III. Term.

A. The term of this contract will begin on the date this contract is signed by all required parties and filed in the office of the METROpolitan Clerk. METRO contemplates that the contract term will begin on or about July 1, 2013 (beginning date). The initial contract term will end sixty (60) months from the beginning date.

B. This contract may not be extended by contract amendment.

IV. Compensation. This contract has an estimated value of \$XXXXXXX over the life of the contract. The pricing details are demonstrated in Exhibit A. ARTIST shall be paid as work is completed and METRO is accordingly invoiced based as milestones as set forth in Exhibit A are completed and approved by METRO,

There will be no other charges or fees for the performance of this contract. METRO will make reasonable efforts to make payments within 30 days of receipt of invoice but in any event shall make payment within 60 days. METRO will make reasonable efforts to make payments to Small Businesses within 15 days of receipt of invoice but in any event shall make payment within 60 days.

V. Escalation/De-escalation. – Not applicable

VI. Electronic Payment. METRO requires as a condition of this contract that the ARTIST shall complete and sign METRO's form authorizing electronic payments to the ARTIST. This form will be attached to the ARTIST's vendor profile in METRO's iSupplier database.

VII. Taxes. METRO shall not be responsible for any taxes that are imposed on ARTIST. Furthermore, ARTIST understands that it cannot claim exemption from taxes by virtue of any exemption that is provided to METRO.

VIII. Documentation.

Prior to receipt of final payment, ARTIST shall provide photographic documentation of the Artwork, including:

- A. A set of three, digital, JPG or TIFF files, 300 dpi, of photographs of the Artwork, provided to METRO on a CD.
- B. The ARTIST shall also furnish METRO with a written narrative description of the Artwork.

IX. Maintenance: Repairs and Restoration

- A. The Artwork must be durable, taking into consideration that the Site is an unsecured public space that may be exposed to elements such as weather, temperature variation, and considerable movement of people and equipment. ARTIST must ensure that the Artwork's maintenance requirements will be reasonable in terms of time and expense.
- B. METRO and not ARTIST will provide for the maintenance of the Artwork. ARTIST understands that METRO's maintenance of the Artwork will be limited and determined in significant part by funding decisions of the METROpolitan Council and other officials and departments.
- C. The ARTIST shall take reasonable measures to protect or preserve the integrity of the Artwork, such as the application of protective or anti-graffiti coatings.
- D. The ARTIST warrants that foreseeable exposure to the elements and general wear and tear will not cause the Artwork to fall below an acceptable standard of public display.
- E. Prior to receipt of fourth payment, ARTIST shall provide a maintenance manual with a description of all materials, products and fabrication methods used in the Artwork and the required care and upkeep involved, including: (i) product data sheets for any material or finish used; (ii) the names and contact information of relevant manufacturers or producers; and, (iii) to the extent the Artwork incorporates products covered by a manufacturer's warranty, ARTIST shall provide copies of such warranties. The ARTIST warrants that reasonable maintenance of the Artwork will not require procedures substantially in excess of those described in the recommended maintenance manual.

F. Repairs and restoration of the Artwork, if any, are to be distinguished from maintenance of the Artwork, as addressed above. METRO shall determine when and how repairs and restoration to the Artwork will be made. However, at no cost to METRO whatsoever, and to the extent practicable, the ARTIST will have the opportunity to comment on and participate in all repairs and restoration that are made during the ARTIST's lifetime. METRO will give written notice to the ARTIST prior to undertaking repairs or restoration of the Artwork, and the ARTIST will have 30 days from the date that the notice is sent by METRO to advise METRO, as specified in the notice, of the ARTIST's wish to so comment and/or participate. Notice will only be sent by METRO to the address provided by ARTIST, in keeping with the Notices provision of this Agreement in Section XXIII where ARTIST is responsible for keeping METRO advised of ARTIST's current mailing address. ARTIST understands that METRO's repairs and restoration of the Artwork will be limited and determined in significant part by funding decisions of the METROpolitan Council and other officials and departments.

G. The provisions of this Section IX shall survive the termination of this Agreement.

X. ARTIST's Representations and Warranties

A. The ARTIST represents and warrants that:

1. The Artwork is solely the result of the ARTISTic effort of the ARTIST, and the ARTIST is the sole creator of the Artwork;
2. The Artwork is a unique and original creation of the ARTIST, which has not previously been created or sold in any form (except any model or illustration which may have been produced by ARTIST for METRO relating to the procurement of this Agreement);
3. The Artwork, or duplicate thereof, has not been accepted for sale elsewhere;
4. The ARTIST has not sold, assigned, transferred, licensed, granted, encumbered or utilized the Artwork or any element thereof or any copyright related thereto which may affect or impair the rights granted by this Agreement;
5. The Artwork is free and clear of any liens from any source whatsoever;
6. The ARTIST has the full power and authority, free of any rights of any nature by any other person, to enter into and perform this Agreement and to make the grants of rights contained in this Agreement;
7. All Artwork created or performed by the ARTIST under this Agreement, whether created by the ARTIST alone or in collaboration with others, shall be wholly original with the ARTIST and shall not infringe upon or violate the rights of any third party;
8. The Artwork is not in the public domain;

9. The Artwork does not and will not infringe upon any person's or entity's copyright or any proprietary right at common law; and
10. ARTIST will not enter into any agreement(s) with any other person or entity in conflict with the terms of this Agreement.

B. Warranties of Quality and Condition

1. The ARTIST represents and warrants that all work will be performed in accordance with professional workmanlike standards and free from defective or inferior materials and workmanship, including any defects consisting of inherent vice, or qualities that cause or accelerate deterioration of the Artwork.
2. The ARTIST represents and warrants that the Artwork and the materials used are not currently known to be harmful to public health and safety.
3. If within two years after acceptance of the Artwork METRO observes any breach of warranty that is curable by the ARTIST, the ARTIST shall, at the request of METRO, cure the breach promptly, satisfactorily and consistent with professional conservation standards, at no expense to METRO. METRO shall give notice to the ARTIST of such breach with reasonable promptness.
4. If within one year after acceptance of the Artwork METRO observes a breach of warranty described in this section that is either not curable by the ARTIST or not timely cured by the ARTIST, the ARTIST is responsible for reimbursing METRO for all damages, expenses and loss incurred by METRO as a result of the breach.

XI. Copyright, Trademark, Service Mark, or Patent Infringement.

ARTIST shall, at its own expense, be entitled to and shall have the duty to defend any suit which may be brought against METRO to the extent that it is based on a claim that the products or services furnished infringe a copyright, Trademark, Service Mark, or patent. ARTIST shall further indemnify and hold harmless METRO against any award of damages and costs made against METRO by a final judgment of a court of last resort in any such suit. METRO shall provide ARTIST immediate notice in writing of the existence of such claim and full right and opportunity to conduct the defense thereof, together with all available information and reasonable cooperation, assistance and authority to enable ARTIST to do so. No costs or expenses shall be incurred for the account of ARTIST without its written consent. METRO reserves the right to participate in the defense of any such action. ARTIST shall have the right to enter into negotiations for and the right to effect settlement or compromise of any such action, but no such settlement or compromise shall be binding upon METRO unless approved by the METRO Department of Law Settlement Committee and, where required, the METRO Council.

XII. Intellectual Property: Rights and Waivers

A. *Rights to Artwork; Copyright.*

- i) Ownership. The Artwork created under this Agreement shall be the property of METRO. Ownership of the Work shall be transferred from the ARTIST to METRO upon METRO's issuance of the notice of final acceptance. METRO shall retain copies of the proposal and all written documentation regarding the Work. Upon final acceptance, METRO shall have the right to a copy of all plans, drawings, sketches, designs, and other work of ARTIST pertaining to the Artwork for maintenance, repair, and historical documentation purposes only, unless otherwise specified below.
- ii) Copyright. ARTIST shall retain all copyrights not otherwise granted to METRO herein. ARTIST is responsible for registering the Artwork in his name with the U.S. Register of Copyrights, at no additional cost to METRO.
- iii) Reproductions.
 - a) By ARTIST. ARTIST shall not create or display three-dimensional reproductions of the Artwork at any location other than METRO, nor shall ARTIST grant permission for others to create or display three-dimensional reproductions, except with written permission of METRO.
 - b) Exclusive License to METRO for Non-Commercial Reproductions. ARTIST grants METRO the exclusive right to publicly display and reproduce images of the Work by photographic, electronic, digital, mechanical, or any other method that may become available following the installation of the Work, for educational, procurement, public relations, arts promotional, tourism, and other non-commercial purposes. On any such reproductions, METRO will acknowledge the ARTIST's authorship and provide copyright notification substantially in the following form: ARTIST's name and date of publication. In the event METRO wishes to use the Artwork for commercial purposes, METRO shall contact ARTIST to negotiate a separate agreement.
- iv) Publicity. METRO shall have the right to use ARTIST's name, likeness, and biographical information, in connection with the display or reproduction and distribution of the Artwork.
- v) Credits. ARTIST agrees that any reproduction of the Artwork made by the ARTIST for publicity purposes shall refer to "METRO Nashville Arts Commission, Nashville, Tennessee."
- vi) Notice of Claims. ARTIST hereby agrees that the ARTIST shall give METRO written notice prior to asserting any claim pertaining to the

Artwork which may arise relating to 17 U.S.C. §§ 101, et seq. METRO shall have at least 90 days from the date of receipt of such notice in which to evaluate and, if so decided by METRO, to cure such claim.

- vii) Third Party Infringement. METRO is not responsible for any third party infringement of ARTIST's copyrights, and is not responsible for protecting the intellectual property rights of ARTIST.

B. VARA Rights; Safety Modification; Future Transfer and Relocation.

- i) ARTIST and METRO acknowledge that the ARTIST may have certain rights under the federal Visual ARTISTS Rights Act of 1990 (VARA). Pursuant to 17 USC Section 106A, ARTIST agrees that the rights reserved by METRO as provided in this Section 8-B shall not constitute a distortion, mutilation, or other modification of the work which would be prejudicial to his or her honor or reputation as contemplated by VARA.
- ii) To the extent that the Work is a Joint Work, this Agreement waives the rights of all authors of the Work.
- iii) Notwithstanding any other provision of this Agreement:
 - i. If METRO believes that the Work presents an imminent threat or hazard to the public health or safety, METRO may authorize the immediate relocation, removal, modification, or destruction of the Work without providing the ARTIST prior notice or opportunity to buy back the Work.
 - ii. In the event that the Work comes into conflict with laws or regulations, METRO may modify the Work so as to come into compliance with such laws or regulations.
- iv) ARTIST understands and agrees that METRO may remove, move, or destroy, the Work, and METRO may sell, trade, or otherwise transfer the Work, and that any such action by METRO may subject the Work to damage or destruction, distortion, mutilation, or other modification but shall not constitute a distortion, mutilation, or other modification of the work which would be prejudicial to his or her honor or reputation as contemplated by VARA..
 - i) However, in the event that METRO decides to take any such action, METRO will first give the ARTIST an opportunity to buy back (purchase) the Work from METRO, by payment of the total Compensation provided for by this Agreement. If ARTIST buys back the Work, the ARTIST will be responsible for all costs associated with the removal of the Work from the Site, clean-up of the Site, and relocation of the Work.

- ii) METRO will give written notice to the ARTIST prior to taking such action, and the ARTIST will have 30 days from the date that the notice is sent by METRO to advise METRO, as specified in the notice, that the ARTIST will buy back the Work. The ARTIST must then provide full payment to METRO as requested by METRO to buy back the Work. The ARTIST is responsible for keeping METRO, pursuant to the Notices provision of this Agreement, advised of ARTIST's current mailing address, and notice will only be sent by METRO to the address provided by ARTIST.
 - v) ARTIST's right to buy back the Work is a personal right which terminates upon ARTIST's death, and does not extend to ARTIST's heirs, successors, or assigns.
 - vi) Reputation. If METRO fails to maintain the Artwork in good condition, or if any significant change occurs to the ARTIST's Work after its final acceptance by METRO, whether such change is intentional, unintentional, or malicious, and if the ARTIST makes a written request to METRO that ARTIST's Work no longer be represented as the work of the ARTIST, then the Work will no longer be represented as the work of the ARTIST. ARTIST may request that all credits to the ARTIST be removed from the Artwork.
- C. **Filming of Artwork.** ARTIST understands and acknowledges that the METROpolitan Government, pursuant to applicable local laws, regulations, and policies, often issues film permits to persons and entities wishing to film in METROpolitan Nashville and Davidson County, whether still, motion picture, or otherwise. Notwithstanding any other provision of this Agreement, ARTIST recognizes and permits the METROpolitan Government to issue such permits to persons and entities, to include the Artwork and surrounding site, and ARTIST holds METRO harmless therefore. ARTIST will not hold or seek to hold METRO liable in any way for the acts of any person or entity utilizing such a film permit, or for their filming or use of the Work.
- D. **Public Records.** ARTIST understands and acknowledges that the METROpolitan Government must comply with applicable public records laws, and that any and all communications, documents, and materials provided to or obtained by METRO pursuant to this Agreement are likely to be public records, potentially open to inspection, duplication, and publicity by third parties, and ARTIST holds METRO harmless therefore. ARTIST will not hold or seek to hold METRO liable in any way for the acts of any such person or entity inspecting, duplicating, or using such communications, documents, and materials.
- E. **The provisions of this Section XII shall survive the termination of this Agreement.**

XIII. Termination

- a. *Breach.* Should ARTIST fail to fulfill in a timely and proper manner its obligations under this contract or if it should violate any of the terms of this contract, METRO shall have the right to immediately terminate the contract. Such termination shall not relieve ARTIST of any liability to METRO for damages sustained by virtue of any breach by ARTIST.
- b. *Notice by METRO.* METRO may terminate this contract at any time upon thirty (30) days written notice to ARTIST and a reasonable reconciliation of costs incurred to date.
- c. *Lack of Funding.* Should funding for this contract be discontinued, METRO shall have the right to terminate the contract immediately upon written notice to ARTIST.

XIV. Maintenance of Records. ARTIST shall maintain documentation for all charges against METRO. The books, records, and documents of ARTIST, insofar as they relate to work performed or money received under the contract, shall be maintained for a period of three (3) full years from the date of final payment and will be subject to audit, at any reasonable time during those years and upon reasonable notice by METRO or its duly appointed representatives. The records shall be maintained in accordance with generally accepted accounting principles.

XV. Monitoring. The ARTIST's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by METRO, the Department of Finance, the Division of Internal Audit, or their duly appointed representatives.

XVI. METRO Property. Any METRO property, including but not limited to books, records and equipment that is in ARTIST's possession shall be maintained by ARTIST in good condition and repair, and shall be returned to METRO by ARTIST upon termination of the contract. All goods, documents, records, and other work product and property produced during the performance of this contract are deemed to be METRO property.

XVII. Modification of Contract. This contract may be modified only by written amendment executed by all parties and their signatories hereto. All change orders, where required, shall be executed in conformance with section 4.24.020 of the METROpolitan Code of Laws.

XVIII. Partnership/Joint Venture. Nothing herein shall in any way be construed or intended to create a partnership or joint venture between the parties or to create the relationship of principal and agent between or among any of the parties. None of the parties hereto shall hold itself out in a manner contrary to the terms of this

paragraph. No party shall become liable for any representation, act or omission of any other party contrary to the terms of this paragraph.

XIX. Waiver. No waiver of any provision of this contract shall affect the right of any party thereafter to enforce such provision or to exercise any right or remedy available to it in the event of any other default.

XX. Compliance with Laws. ARTIST agrees to comply with all applicable federal, state and local laws and regulations. **Exhibit B.**

XXI. Contingent Fees. ARTIST hereby represents that ARTIST has not been retained or retained any persons to solicit or secure a METRO contract upon an agreement or understanding for a contingent commission, percentage, or brokerage fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business. Breach of the provisions of this paragraph is, in addition to a breach of this contract, a breach of ethical standards which may result in civil or criminal sanction and/or debarment or suspension from being a ARTIST or sub contractor ARTIST under METRO contracts. **Exhibit B.**

XXII. Nondiscrimination. It is the policy of the METRO not to discriminate on the basis of age, race, sex, color, national origin, or disability in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities. With regard to all aspects of this contract, ARTIST certifies and warrants it will comply with this policy. No person shall be excluded from participation in, be denied benefits of, be discriminated against in the admission or access to, or be discriminated against in treatment or employment in METRO's contracted programs or activities, on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal or Tennessee State Constitutional or statutory law; nor shall they be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of contracts with METRO or in the employment practices of METRO's ARTISTS. Accordingly, all Proposers entering into contracts with METRO shall, upon request, be required to show proof of such nondiscrimination and to post in conspicuous places that are available to all employees and applicants, notices of nondiscrimination. **Exhibit B.**

XXIII. Ethical Standards. It shall be a breach of ethical standards for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or

procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter, pertaining to any program requirement of a contract or subcontract or to any solicitation or proposal therefore. It shall be a breach of ethical standards for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime ARTIST or higher tier subcontractor or a person associated therewith, as an inducement for the award of a subcontract or order. Breach of the provisions of this paragraph is, in addition to a breach of this contract, a breach of ethical standards which may result in civil or criminal sanction and/or debarment or suspension from being a contractor or subcontractor under METRO contracts.

XXIV. Insurance. During the term of this Contract, ARTIST shall, at its sole expense, obtain and maintain in full force and effect for the duration of the Agreement and any extension hereof the types and amounts of insurance identified (**Exhibit C**) below by a checked box and in the solicitation:

- A. Products Liability Insurance in the amount of one million (\$1,000,000.00) dollars (If the vendor will be shipping to a receiving department of METRO)
- B. General Liability Insurance in the amount of one million (\$1,000,000.00) dollars
- C. Professional Liability Insurance in the amount of one million (\$1,000,000.00) dollars
- D. Automobile Liability Insurance in the amount one million (\$1,000,000.00) dollars (if vendor will be making on-site deliveries).
- E. Worker's Compensation Insurance with statutory limits required by the State of Tennessee or other applicable laws and Employer's Liability Insurance with limits of no less than one hundred thousand (\$100,000.00) dollars, as required by the laws of Tennessee. (Not required for companies with fewer than five (5) employees.)
- F. Other Insurance ...
- G. Such insurance shall:
 - 1. Contain or be endorsed to contain a provision that includes METRO, its officials, officers, employees, and volunteers as additional insureds with respect to liability arising out of work or operations performed by or on behalf of the ARTIST including materials, parts, or equipment furnished in connection with such work or operations. The coverage shall contain no special limitations on the scope of its protection afforded to the above-listed insureds.
 - 2. For any claims related to this agreement, ARTIST's insurance coverage shall be primary insurance as respects METRO, its officers, officials, employees,

and volunteers. Any insurance or self-insurance programs covering METRO, its officials, officers, employees, and volunteers shall be excess of ARTIST's insurance and shall not contribute with it.

3. Automotive Liability Insurance including vehicles owned, hired, and non-owned. Said insurance shall include coverage for loading and unloading hazards. Insurance shall contain or be endorsed to contain a provision that includes METRO, its officials, officers, employees, and volunteers as additional insureds with respect to liability arising out of automobiles owned, leased, hired, or borrowed by or on behalf of ARTIST.
4. Worker's Compensation (If applicable), ARTIST shall maintain workers' compensation insurance with statutory limits as required by the State of Tennessee or other applicable laws and employers' liability insurance. ARTIST shall require each of its subcontractors to provide Workers' Compensation for all of the latter's employees to be engaged in such work unless such employees are covered by ARTIST's workers' compensation insurance coverage.
5. Other Insurance Requirements. ARTIST shall:
 - a. Prior to commencement of services, furnish METRO with original certificates and amendatory endorsements effecting coverage required by this section and provide that such insurance shall not be cancelled, allowed to expire, or be materially reduced in coverage except on 30 days' prior written notice to:

**DEPARTMENT OF LAW
INSURANCE AND RISK MANAGEMENT
METRO COURTHOUSE
1 PUBLIC SQUARE, SUITE 108
NASHVILLE, TENNESSEE 37201**
 - b. Provide certified copies of endorsements and policies if requested by METRO in lieu of or in addition to certificates of insurance.
 - c. Replace certificates, policies, and/or endorsements for any such insurance expiring prior to completion of services.
 - d. Maintain such insurance from the time services commence until services are completed and attach the certificates of insurance in the METRO system. Failure to maintain or renew coverage or to provide evidence of renewal may be treated by METRO as a material breach of lease.
 - e. Place such insurance with insurer licensed to do business in Tennessee and having A.M. Best Company ratings of no less than A-. Modification of this standard may be considered upon appeal to the METRO Director of Risk Management Services.

- f. Require all subcontractors to maintain during the term of the agreement Commercial General Liability insurance, Business Automobile Liability insurance, and Worker's Compensation/ Employers Liability insurance (unless subcontractor's employees are covered by ARTIST's insurance) in the same manner as specified for ARTIST. ARTIST shall file subcontractor's certificates of insurance in METRO's system.
- g. Any deductibles and/or self-insured retentions greater than \$10,000.00 must be disclosed to and approved by METRO prior to the commencement of services.
- h. If the ARTIST has or obtains primary and excess policy(ies), there shall be no gap between the limits of the primary policy and the deductible features of the excess policies.

XXV. Indemnification and Hold Harmless. ARTIST will indemnify and hold harmless METRO, its officers, agents and employees from:

- a. Any claims, damages, costs and attorney fees for injuries or damages arising, in part or in whole, from the negligent or intentional acts or omissions of ARTIST, its officers, employees and/or agents, including its sub or independent contractors, in connection with the performance of the contract, and,
- b. Any claims, damages, penalties, costs and attorney fees arising from any failure of ARTIST, its officers, employees and/or agents, including its sub or independent ARTISTs, to observe applicable laws, including, but not limited to, labor laws and minimum wage laws.
- c. METRO will not indemnify, defend or hold harmless in any fashion the ARTIST from any claims arising from any failure, regardless of any language in any attachment or other document that the ARTIST may provide.
- d. ARTIST shall pay METRO any expenses incurred as a result of ARTIST's failure to fulfill any obligation in a professional and timely manner under this Contract.

XXVI. Attorney Fees. ARTIST agrees that in the event either party takes legal action to enforce any provision of the contract or to obtain a remedy for any breach of this contract, and in the event METRO prevails in such action, ARTIST shall pay all expenses of such action incurred at any and all stages of the litigation, including costs, and reasonable attorney fees for METRO.

XXVII. Assignment--Consent Required. The provisions of this contract shall inure to the benefit of and shall be binding upon the respective successors and assignees of the parties hereto. Except for the rights of money due to ARTIST under this contract, neither this contract nor any of the rights and obligations of ARTIST hereunder shall

be assigned or transferred in whole or in part without the prior written consent of METRO. Any such assignment or transfer shall not release ARTIST from its obligations hereunder.

NOTICE OF ASSIGNMENT OF ANY RIGHTS TO MONEY DUE TO ARTIST UNDER THIS CONTRACT MUST BE SENT TO THE ATTENTION OF:

**METRO'S CHIEF ACCOUNTANT
DIVISION OF ACCOUNTS
DEPARTMENT OF FINANCE
FINANCIAL OPERATIONS
700 2nd Ave South, Suite 310
P.O. Box 196300
Nashville, TN 37219-6300**

XXVIII. Entire Contract. This contract sets forth the entire agreement between the parties with respect to the subject matter hereof and shall govern the respective duties and obligations of the parties.

XXVIX. Force Majeure. No party shall have any liability to the other hereunder by reason of any delay or failure to perform any obligation or covenant if the delay or failure to perform is occasioned by *force majeure*, meaning any act of God, storm, fire, casualty, unanticipated work stoppage, strike, lockout, labor dispute, civil disturbance, riot, war, national emergency, act of Government, act of public enemy, or other cause of similar or dissimilar nature beyond its control.

XXX. Governing Law. The validity, construction and effect of this contract and any and all extensions and/or modifications thereof shall be governed by the laws of the State of Tennessee. Tennessee law shall govern regardless of any language in any attachment or other document that the ARTIST may provide.

XXXI. Venue. Any action between the parties arising from this agreement shall be maintained in the courts of Davidson County, Tennessee.

XXXII. Severability. Should any provision of this contract be declared to be invalid by any court of competent jurisdiction, such provision shall be severed and shall not affect the validity of the remaining provisions of this contract.

XXXIII. Notices and Designation of Agent for Service of Process.

A. All notices to METRO shall be mailed or hand delivered to:

Department: Division of Purchases
Attention: Jeff L. Gossage, METRO Purchasing Agent
Address: 730 2nd Avenue South
Lindsley Hall, Suite 112
Nashville TN 37210

B. Notices to ARTIST shall be mailed or hand delivered to:

ARTIST:
Address:

Phone:

E-mail:

C. ARTIST designates the following as the ARTIST's agent for service of process and will waive any objection to service of process if process is served upon this agent:

Designated Agent: same as above

XXXIV. Effective Date. This contract shall not be binding upon the parties until it has been signed first by the ARTIST and then by the authorized representatives of the

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METROpolitan Government and has been filed in the office of the METROpolitan Clerk.

<p>THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY</p> <p>APPROVED AS TO PROJECT SCOPE:</p> <p>_____</p> <p>Department Head</p> <p>APPROVED AS TO COMPLIANCE WITH PROCUREMENT CODE:</p> <p>_____</p> <p>Purchasing Agent</p> <p>APPROVED AS TO AVAILABILITY OF FUNDS:</p> <p>_____</p> <p>Director of Finance</p> <p>APPROVED AS TO PROOF OF INSURANCE:</p> <p>_____</p> <p>Risk Manager</p> <p>APPROVED AS TO FORM AND LEGALITY:</p> <p>_____</p> <p>METROpolitan Attorney</p> <p>FILED IN THE OFFICE OF THE METROPOLITAN CLERK:</p> <p>_____</p> <p>Date: _____</p>	<p>ARTIST</p> <p>Company: _____</p> <p>BY: _____</p> <p>Print: _____</p> <p>Title: _____</p> <p>Sworn to and subscribed to before me, a Notary Public, this _____ day of _____, 200 __, by _____, the _____ of ARTIST and duly authorized to execute this instrument on ARTIST's behalf.</p> <p>_____</p> <p>Notary Public</p> <p>My Commission Expires _____</p>
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Exhibit A **Pricing**

The pricing model for this contract is as follows:

METRO shall pay the ARTIST an all-inclusive fixed fee of **\$XXXXXXXX** which shall constitute full compensation for all services, materials, travel, delivery, insurance, licenses, taxes and installation to be furnished under the terms of this Agreement.

Such fee shall be paid in installments as follows:

1 st payment:	\$ xxx	To be paid upon execution of this contract by all parties, approval of final design and an appropriate invoice from the ARTIST.
2 nd payment	\$xxx	To be paid upon receipt of stamped engineered/structural drawings (see 1.D.) and receipt of appropriate invoice from the ARTIST.
3 rd payment:	\$ xxx	To be paid upon 50 % completion of fabrication and receipt of an appropriate invoice from the ARTIST.
4 th payment:	\$ xxx	To be paid upon completion of all work by the ARTIST, including installation and written notice of conditional acceptance of the project by METRO, provision of maintenance manual, and receipt of an appropriate invoice from the ARTIST.
5 th payment:	\$ xxx	To be paid upon receipt of all final project documentation, including photographic documentation, submissions of releases of claim or claim waivers from each subcontractor, supplier or other persons or entities who has or might have a claim against METRO, as-built drawings and receipt of an appropriate invoice from the ARTIST. All punch list items must be completed before final payment is issued. Upon inclusion in METRO's fixed asset and insurance records and processing of all payments, METRO will issue a written notice of final acceptance of the Artwork.

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Exhibit B
Affidavits

State of _____ in the County of _____

As used herein, "Offeror" will include bidders and proposers.

Compliance with Laws: After first being duly sworn according to law, the undersigned (Affiant) states that he/she is the _____ (Position Title) of _____ (Offeror's Firm/Organization), and that Offeror is presently in compliance with, and will continue to maintain compliance with, all applicable laws.

Taxes and Licensure: Thus, Affiant States that Offeror has all applicable licenses, including business licenses, copies of which are attached hereto. Finally, Affiant states that Offeror is current on its payment of all applicable gross receipt taxes and personal property taxes. M.C.L.4.20.065

Nondiscrimination: Offeror, after being first duly sworn, affirms that by its employment policy, standards and practices, it does not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying off of any individual due to race, creed, color, national origin, age or sex, and are not in violation of, and will not violate, any applicable laws concerning the employment of individuals with disabilities. With regard to all aspects of this contract, Offeror certifies and warrants it will comply with this policy. M.C.L.4.28.020

Employment Requirement: Offeror, declares that neither the prime, subcontractors, sub-consultants, nor providers of day laborers employ any person who is not a legal resident of the United States. Any contractor who knowingly violates the provisions of this section is subject to debarment or suspension. M.C.L.4.40.60

Contingent Fees: It is a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a METRO contract upon an agreement or understanding for a contingent commission, percentage, or brokerage fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business. After first being duly sworn according to law, the undersigned (Affiant) states that the Offeror has not retained anyone in violation of the foregoing. M.C.L.4.48.080

And Further Affiant Sayeth Not:

By: _____
Title: _____
Address: _____

Sworn to and subscribed before me on this _____ day of _____ (Month), 2011.

Notary Public My commission expires: _____

The provision of false information is a material breach.

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Exhibit C
Insurance Forms

This Exhibit shall house the proof of insurance in the amounts and form set required by the contract.

In the Description of Operations/Locations/Vehicles/Exclusions added by Endorsement/Special Provisions section provide the following language:

METROpolitan Government of Nashville and Davidson County its officials, officers, employees and volunteers are named as additional insureds per general liability additional insured endorsement numbered _____: and automobile liability additional insured endorsement numbered _____.
See attached descriptions.

In the Certificate Holder box for address please use the following METRO address:

**Metropolitan Government of Nashville and Davidson County
METRO Courthouse
Nashville, TN 37201**

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EXHIBIT D

MNAC Public Art Guidelines can be found at <http://www.artsnashville.org/pubartprogram/pubartguide.php> and are a part of this contract.

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EXHIBIT E
Design Proposal

Insert description of site, images from design proposal/concept

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EXHIBIT F
Schedule of Performance

Insert schedule for design development, approval, fabrication, installation.