

NATIONAL CULTURAL DISTRICTS EXCHANGE



Public Art Agreements for Cultural Districts

Most often, if you want to commission artwork for a cultural district, you will need select and contract with an artist. Below is a sample agreement for the provision of public art within a cultural district. This is very similar to a standard public art agreement between a city and an artist. More information is also available from our Public Art Network.

<http://www.americansforthearts.org/by-program/networks-and-councils/public-art-network>

- DRAFT -

This is a standardized draft of a contract to commission an artist to complete a public art project under the Cultural Development Commission’s Cultural District Program. This document is applicable for projects that will be installed on a site owned by the city. It is a 3-party contract between the City of Indianapolis, the administrative/fiscal agent for the District, and the artist. This is ONLY a draft and since each project is different terms should be negotiated directly with the parties concerned.

Please direct all City Legal questions to Jeff Sirmin at JSirmin@Indygov.org. District representatives and artists should seek their own independent legal advice.

AGREEMENT FOR THE PROVISION OF PUBLIC ART

This agreement for the provision of public art (hereinafter “Agreement”), entered into on the dates indicated below, by and between the _____(name), Indianapolis, Indiana (hereinafter “Cultural District”), _____(name), _____(address) (hereinafter “Artist”), and the City of Indianapolis, Indiana, Department of _____(hereinafter “City”),

WITNESSETH THAT:

WHEREAS, the provision of art in public places, whether in the form of freestanding pieces such as sculptures or memorials, architectural embellishments, or other forms incorporated into areas accessible to the public, is an essential component of any great city and makes that city more interesting and vibrant for its residents and visitors; and

WHEREAS, the Cultural District and the City desire to facilitate the provision of art in a public place within the territory of the Cultural District; and

WHEREAS, the Cultural District has selected the Artist to be commissioned to design, fabricate, create and install in a public place within the Cultural District an original and appropriate work of art, all as described in this Agreement; and

WHEREAS, the Artist is qualified and able to perform the services, and is willing to accept the commission as described in this Agreement; and

WHEREAS, the City desires to own and maintain such work of art as provided herein;

NATIONAL CULTURAL DISTRICTS EXCHANGE



NOW, THEREFORE, in consideration of the mutual undertakings and covenants contained herein, the Cultural District, the Artist, and the City hereby agree as follows:

Part I. Term and Termination

- 1.01 This Agreement shall not become effective until signed by all parties.
- 1.02 This Agreement shall terminate upon the issuance of a written notice of acceptance by both the Cultural District and the City and transfer of ownership of the Artwork to the City pursuant to Part IV of this Agreement, unless earlier terminated as provided herein.
- 1.03 If the Artist fails to fulfill any of his or her obligations under this Agreement in a timely or proper manner, or if the Artist violates any of the covenants, agreements, or stipulations of this Agreement, the Cultural District or the City thereupon shall have the right to terminate this Agreement by giving the Artist 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 Artwork, supplies, or other objects which have been prepared by the Artist under this Agreement shall at the option of the City become the City's property, and the Artist shall be entitled to receive just and equitable compensation from the Cultural District for any work completed under this Agreement to the satisfaction of the Cultural District and the City. The Artist shall be liable to the Cultural District and the City for damages sustained by virtue of any breach of this Agreement by the Artist. The Cultural District may withhold any payments to the Artist for the purposes of set-off until such time as the exact amount of damages due the Cultural District or the City from the Artist is determined. Damages shall include all amounts paid pursuant to the Agreement. In addition thereto, the Cultural District has the right to recover attorney's fees, costs and expenses.
- 1.04 The Cultural District or the City may terminate this Agreement at any time by giving at least fifteen (15) days written notice to the Artist. If the Agreement is terminated by the Cultural District or the City as provided herein, the Artist will be paid by the Cultural District an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Artist which are required by this Agreement, less payments of compensation previously made.

Part II. Engagement of the Artist; Designation of the Artwork

- 2.01 Subject to the terms and conditions of this Agreement, the Cultural District engages the Artist, and the Artist agrees to be so engaged, to design, fabricate, create and install the Artwork (collectively, hereinafter "the Work") as described in "Exhibit A", attached hereto and incorporated herein by reference. The Artist, at his or her sole expense, shall provide all labor, materials, and supplies necessary to complete the Work.
- 2.02 The Artist shall perform the Work in a satisfactory and competent manner, consistent with the best standards in the Artist's field, and the Artwork shall be designed, fabricated and installed in a

NATIONAL CULTURAL DISTRICTS EXCHANGE



manner that is structurally sound. If the Artist employs or engages a person or firm to perform a part of the Work, the Artist shall ensure that each such person or firm shall agree to perform such part of the Work in a satisfactory and competent manner, consistent with the best standards in such person's or firm's field. Notwithstanding the Artist's employment of a person or firm to perform a part of the Work as permitted under this Agreement, the Artist shall remain responsible to the Cultural District for the faithful performance, when due, of the Work, and no delegation or subcontracting of a part of the Work shall relieve the Artist of his or her duties under this Agreement.

- 2.03 Throughout the process of the Work, the Cultural District and the Artist shall advise and cooperate with each other with respect to any alteration or revision of the Artwork, including but not limited to a variation in component materials, method of construction, size, and/or appearance, from that which is provided in Exhibit A, or any alteration or revision to the proposed installation site. The Artist acknowledges that if the Work is materially altered or revised from that which is provided in Exhibit A and the Artist has failed to advise or cooperate with the Cultural District as provided herein, the Cultural District and the City may terminate this Agreement without penalty.
- 2.04 The Work shall be performed in a sequential manner according to the schedule provided in Exhibit A, or as otherwise agreed to in writing signed by each of the parties.

Part III. Installation of the Artwork

- 3.01 The Artwork shall be installed and incorporated into a public site within the territory of the Cultural District that has been agreed to and designated by the Cultural District and the City; such site is identified and described in Exhibit B, attached hereto and incorporated herein by reference. The Artist shall provide to the Cultural District and the City a written description of the manner in which the Artwork shall be installed, including a statement of details addressing any preparatory work which must be performed to prepare the site prior to installation.
- 3.02 The City shall cooperate with the Artist in the preparation of the site prior to installation; however, it shall be the responsibility of the Artist to apply for, pay for, secure, and comply with the conditions and requirements of any permits that may be required by law for such installation. The Artist shall satisfy the conditions of this Section 3.02 either personally or through the Artist's agent or Subcontractor when expedient or necessary, e.g., in the procurement of a right-of-way permit that can be issued only to a licensed contractor.
- 3.03 The Artist and the City shall consult and agree to the date and time for delivery of the Artwork to the site. The Artist shall be responsible for and bear the costs of transportation and installation of the Artwork, including but not limited to costs of permits, labor, and materials.

Part IV. Final Acceptance; Title of the Artwork to Vest in the City

- 4.01 Upon the completion of the Work and installation of the Artwork to the Artist's satisfaction, the Cultural District and the City shall inspect the work and present the Artist with a detailed listing of any observed flaws. When the Cultural District and the City are satisfied with the Work, they

NATIONAL CULTURAL DISTRICTS EXCHANGE



shall provide written notice to the Artist of their final acceptance of the Work, which notice shall state that the Work has been completed and the Artwork has been installed as agreed to by the parties and to the satisfaction of the Cultural District and the City.

- 4.02 Upon final acceptance, title to the Artwork shall pass from the Artist to, and vest in, the City. The Artist hereby donates and transfers to the City the Artist’s rights except those limited by this Agreement, title, and interest in and to the Artwork. Thereafter, the City shall retain all written documentation regarding the Artwork, and shall have, for maintenance and historical documentation purposes only, the right to a copy of all drawings, sketches and designs of the Artwork produced prior to final acceptance of the Work.
- 4.03 Upon final acceptance, the Artist shall be available for a public dedication of the Artwork; and, the City, in consultation with the Cultural District and the Artist, shall provide appropriate, on-site signage to identify the Artwork by the Artist’s name, the year of fabrication, and other information deemed appropriate by the City.

Part V. Compensation

- 5.01 The Cultural District shall pay to the Artist for performance of the Work and for the Artwork as provided in this Part of the Agreement; however, in no event shall the Artist be paid an amount in excess of the sum of _____ Dollars (\$_____). This amount shall constitute full and complete compensation for the Artist’s Work and Artwork; the Artist shall be solely responsible for all expenses necessary for the performance of this Agreement, including any cost overruns.
- 5.02 Payments shall be made to the Artist upon his or her submission of detailed statements of account to the Cultural District, according to the following schedule:
 - a. Upon execution of this Agreement, the Cultural District shall pay the Artist an amount not to exceed _____ Dollars (\$_____);
 - b. Upon completion of the fabrication of the Artwork and preliminary approval by the Cultural District, the Cultural District shall pay the Artist an amount not to exceed _____ Dollars (\$_____); and,
 - c. Upon installation of the Artwork and final acceptance by the Cultural District and the City under Part IV of this Agreement, the Cultural District shall pay the Artist an amount not to exceed _____ Dollars (\$_____);
- 5.03 Such statements of account shall include a description of the part of the Work completed, appropriate documentation thereof, and the amount due. Each statement of account shall be signed by the Artist.

Part VI. Warranty; Indemnification; and, Release

- 6.01 The Artist represents and warrants to the City that:

NATIONAL CULTURAL DISTRICTS EXCHANGE



- a. he or she is the sole creator of the Artwork, that the Artist has full power and authority to make this Agreement;
- b. the Artwork does not infringe upon any copyright or violate any property right or other rights; and,
- c. no lien or encumbrance exists against the Artwork and that following the transfer of title to the Artwork to the City, no individual or entity will have any right or interest in the Artwork that is prior or superior to the City's right and interest.

The Artist further represents and warrants that the Artwork, as fabricated and installed, will be structurally sound and free of defects in material and workmanship, including any defects consisting of "inherent vice" or qualities which cause or accelerate deterioration of the Artwork, and shall be designed so as routinely not to require extensive or extraordinary maintenance or conservation measures. These warranties shall be in effect for a period of one (1) year after final acceptance of the Artwork under Part IV of this Agreement and transfer of ownership to the City.

- 6.02 The Artist agrees to defend, indemnify, and hold harmless the Cultural District and the City, and their respective officials, agents, and employees from and against any and all claims, actions, suits, or proceedings of any kind brought against such parties for or on account of any matter arising from performance of the Work performed by the Artist pursuant to this Agreement.
- 6.03 Unless otherwise provided, the Artist acknowledges that until the ownership of the Artwork is transferred to the City pursuant to Section 4.02 of this Agreement, any injury to property or persons caused by the Artwork or any damage to, theft of, vandalism to, or acts of God affecting the Artwork are the sole responsibility of the Artist, including but not limited to any loss occurring during the creation, storage, transportation, delivery or installation of the Artwork, regardless of where such loss occurs.

Part VII. Insurance

- 7.01 The Artist shall procure and maintain during the life of this Agreement such comprehensive general liability insurance as will protect the Cultural District, the Artist, and the City, and each of their respective officers, agents, employees and subcontractors performing any of the Work covered by this Agreement, from claims for damages for personal injury including accidental death, as well as from claims for property damages, which may arise from operations or work under this Agreement, whether such operations or work be by the Cultural District, the Artist or the City, or any of their respective officers, agents, employees and subcontractors performing any of the Work. The amounts of insurance shall be not less than One Million Dollars (\$1,000,000) combined single limit for any one occurrence covering both body injury and property damage, including accidental death.
- 7.02 The insurance policy or policies procured as required by Section 7.01 shall name the Cultural District and the City as additional insured parties, and shall require a thirty-day mandatory cancellation notice.

NATIONAL CULTURAL DISTRICTS EXCHANGE



Part VIII. Copyright and Reproduction Rights

- 8.01 The Artist expressly reserves every right available to the Artist under the Federal Copyright Act and other applicable statutes to control the making or dissemination of copies or reproductions of the Artwork, except the rights which are limited by this Agreement.
- 8.02 The Artist certifies that the Artwork created pursuant to this Agreement is a unique work of art and has not been and will not be substantially duplicated by the Artist without the prior written permission of both the Cultural District and the City, unless the Artwork is one in a series of editions, which shall be stated in this Agreement. Should the Artist decide to reproduce the Artwork in an edition or in any other way, the Artist shall first obtain the written permission of both the Cultural District and the City.
- 8.03 The Cultural District and the City each retain the right to publish and distribute photographs, drawings or other forms of reproductions of the Artwork as installed and formally accepted by the Cultural District and the City, for reference, promotional, educational and scholarly purposes. The Cultural District and the City agree to make no commercial use of the Artwork without the Artist's written consent. If such consent is obtained from the Artist, all reproductions of the Artwork by either the Cultural District or the City shall contain a credit to the Artist that states the Artist's name, year of creation, and the names of the Cultural District and City.
- 8.04 The Artist agrees to include on or in any form of reproduction of the Artwork initiated or authorized by the Artist, a credit to the Cultural District and City, stating that the Artwork was commissioned by the Cultural District and owned by the City.

Part IX. Maintenance, Repair, and Restoration

- 9.01 If, within the time period specified in Section 6.01 of this Agreement, the Artwork exhibits any structural or cosmetic defect or flaw in violation of the Artist's warranty, the Artist shall repair the Artwork or replace any defective component of the Artwork at no cost to the City. All repairs or cures to defects shall be consistent with professional conservation standards.
- 9.02 Except as provided in Section 9.01, after the written notice of final acceptance has been issued and transfer of ownership has occurred, the City shall maintain and protect the Artwork as it reasonably determines, being responsible for the care, custody, maintenance and security of the Artwork. Any required maintenance of the Artwork shall be carried out by the City with the intention of protecting the value, integrity, and authenticity of the Artwork.
- 9.03 After the expiration of the warranty period, the City will make a reasonable effort to consult with and gain the approval of the Artist in all matters concerning repairs and restoration of the Artwork.

Part X. Relocation or Removal of the Artwork

- 10.01 Upon final acceptance and transfer of title to the Artwork to the City, the City shall have the

NATIONAL CULTURAL DISTRICTS EXCHANGE



authority and sole discretion thereafter to remove, or remove and relocate, the Artwork from the original installation site. The City shall make a reasonable attempt to notify the Artist in writing if for any reason the City intends to remove the Artwork from the installation site and/or to relocate the Artwork at a new site. The Artist may advise or consult with the City regarding any such removal or relocation.

Part XI. Non-Destruction, Alteration, or Modification of the Artwork

- 11.01 To the extent required by applicable federal law or other applicable laws and regulations, the City shall not intentionally destroy or modify the Artwork in any way whatsoever during the Artist’s lifetime without first making a reasonable effort to locate and inform the Artist, and to obtain the Artist’s written permission, if possible; however, this section shall not apply to modifications caused by the passage of time, the inherent nature of the materials or the result of conservation, lighting or placement in connection with public presentation.
- 11.02 If any significant modification occurs to the Artwork after final acceptance by the Cultural District and the City under Section 4.02 of this Agreement, whether such change is intentional, unintentional, or malicious, and if the Artist makes a written request to the City that the Artwork no longer be represented as the work of the Artist, then the Artwork shall no longer be so represented.

Part XII. General Provisions

- 12.01 Independent Contractor. The parties agree that the Artist is an independent contractor as that term is commonly used and is not an employee of the Cultural District or the City. As such, the Artist is solely responsible for all taxes and none shall be withheld from the sums paid to him or her. The Artist acknowledges that he or she is not insured in any manner by the Cultural District or the City for any loss of any kind whatsoever. The Artist has no authority, express or implied, to bind or obligate the Cultural District or the City in any way.
- 12.02 Notices. All notices, requests and other communications that a party is required or elects to deliver pursuant to this Agreement shall be in writing and shall be delivered personally or by facsimile or electronic mail (with confirmation), or by a recognized overnight courier service or by United States mail, first-class, certified or registered, postage prepaid, return receipt requested, to the other party or parties at its or their address set forth below:

if to the Cultural District: *(name and address)*

if to the Artist: *(name and address)*

if to the City: *(name and address)*

NATIONAL CULTURAL DISTRICTS EXCHANGE



- 12.03 Governing Law. This Agreement shall be construed in accordance with the laws of the State of Indiana, and by all applicable municipal ordinances or codes of the City and of Marion County. Suit, if any, shall be brought in Marion County, Indiana.
- 12.04 Waiver. The delay or inaction of any party in the pursuit of such party's remedies as set forth in this Agreement, or available by law, shall not operate as a waiver of any of that party's rights or remedies.
- 12.05 Severability. If any provision of this Agreement is held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the provision shall be stricken, and all other provisions of this Agreement which can operate independently of such stricken provisions shall continue in full force and effect.
- 12.06 Non-discrimination. The Artist, and any person or firm engaged by the Artist to perform any of the Work pursuant to this Agreement, shall not discriminate against any employee or applicant for employment to be employed in the performance of this Agreement, with respect to her or his hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, because of her or his race, religion, color, sex, handicap, disability, national origin, ancestry, disabled veteran status, or Vietnam-era veteran status. Breach of this section shall be regarded as a material breach of this Agreement.
- 12.07 Conflict of Interest. The Artist certifies and warrants to the Cultural District and the City that neither he or she, nor any of his or her agents, representatives or employees who will participate in the performance of any part of the Work pursuant to this Agreement has or will have any conflict of interest, direct or indirect, with the Cultural District or the City.
- 12.08 Force Majeure. In the event that any party is unable to perform any of its obligations under this Agreement – or to enjoy any of its benefits – because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter “Force Majeure Event”), the party who has been so affected shall immediately give notice to the other parties and shall take commercially reasonable actions to resume performance. Upon receipt of such notice, all obligations under this Agreement shall be immediately suspended except for payment obligations with respect to service already provided. If the period of nonperformance exceeds sixty (60) days from the receipt of the Force Majeure Event, any party whose ability to perform has not been so affected may, by giving written notice, terminate this Agreement.
- 12.09 Successors and Assigns. The parties bind themselves and their partners, successors, executors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other parties, in respect to all covenants of this Agreement; except as otherwise provided herein, Artist shall not assign, sublet or transfer its interest in this Agreement without the written consent of the Cultural District or the City. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the Cultural District or the City.

NATIONAL CULTURAL DISTRICTS EXCHANGE



12.10 Entire Agreement; Amendment. This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, written or verbal, between The Cultural District, the Artist, and the City with respect to the subject matter of this Agreement. No statements, promises or agreements whatsoever, in writing or verbal, in conflict with the terms of the Agreement have been made by the Cultural District, Artist or City that in any way modify, vary, alter, enlarge or invalidate any of the provisions and obligations herein stated. This Agreement may be amended and modified only in writing signed by all parties.

12.11 Survival. The following provisions of this Agreement shall survive and be in full force and effect after the termination of this Agreement, for whatever cause: Parts VI, VIII, IX, X, XI and XII.

IN WITNESS WHEREOF, the Cultural District, the Artist, and the City hereby enter into this Agreement as of the dates indicated below:

_____ (“Cultural District”)

By: _____
Signature

Date: _____

Printed: _____

Title: _____

_____ (“Artist”)

Signature: _____

Date: _____

CITY OF INDIANAPOLIS, INDIANA
DEPARTMENT OF _____ (“City”)

By: _____
Signature

Date: _____

Printed: _____

Title: _____

NATIONAL CULTURAL DISTRICTS EXCHANGE



APPROVED AS TO FORM AND LEGALITY:

By: _____
Signature

Date: _____

Printed: _____

Title: _____

EXHIBIT A

Description of the Design, Fabrication,
Creation and Installation of the Artwork,
and
Schedule of Performance

NATIONAL CULTURAL DISTRICTS EXCHANGE



EXHIBIT B

Identification and Description of the Installation Site