



Conceptual Design Development Agreement

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and

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CONCEPTUAL DESIGN DEVELOPMENT

AGREEMENT OVERVIEW

Title: Conceptual Design Development Agreement

Situation: An agency, program, municipality or private developer is interested in a developing a concept for an art project for a specific location.

Purpose: If the client is considering several artists, this is one way to have more information about each proposed artwork before making a decision. It is also a means for determining whether a particular idea is really appropriate for the situation and/or economically feasible.

Number of artists involved: One to five.

Cost involved: Generally \$3,000 - \$5,000 with reimbursable expenses up to \$1,000.

Finished product: Deliverables include drawings, small models, written narrative, material samples, presentation of lighting needs, discussion of structural requirements, other consultants that will need to be involved and a conceptual budget for the work.

A completed concept development will include information necessary to move onto a full design to include specifications for fabrication and installation of the artwork.

CONCEPTUAL DESIGN DEVELOPMENT AGREEMENT

This **AGREEMENT FOR CONCEPTUAL DESIGN ONLY** (together with all Schedules, the "Agreement") is made and entered into this ____ day of _____, by and between _____ ("Client"), and _____ ("Artist").

WHEREAS, Client is developing _____ ("Project") located at _____ ("Site");

WHEREAS, Client desires to obtain public art design services in connection with the development of a design for artwork to be installed at the Site.

WHEREAS, Artist is in the business of creating original works of art;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. **Scope of Services.** The Artist shall provide design services (the "Services") and deliverables ("Deliverables") as set forth in Schedule A, which is hereby incorporated by reference into this Agreement. The Services shall result in Deliverables embodying a conceptual design (the "Conceptual Design") for artwork (the "Artwork") from which a plan for fabrication and installation (the "Final Design") can be derived at a later date pursuant to a separate agreement, should Client select Artist's Design.
2. **Schedule of Performance.** The parties agree that time is of the essence. Artist shall adhere to the meeting schedule as set forth in Schedule A and shall provide the Conceptual Design to Client no later than _____ [DATE].
3. **Extension of Time.** The Client agrees to grant a reasonable extension of time to Artist in the event that there is a delay caused by the Client, conditions beyond Artist's control, or pursuant to those circumstances set out in Section (--) Force Majeure below. Extensions of time shall comply with the requirements of Section (--) (Modifications) of this Agreement.
4. **Compensation.** Client agrees to pay Artist \$_____ plus expenses for the Conceptual Design. The payment schedule is set forth in Schedule B, which is hereby incorporated by reference into this Agreement.
5. **Reimbursable Expenses.** Client will reimburse Artist for all reasonable expenses incurred in the performance of this Agreement. Reimbursable expenses shall be invoiced by Artist and shall include supporting documentation. These expenses include travel, lodging, food, materials, printing costs, postage and delivery costs.

Artist agrees that the total fees, plus expenses, shall not exceed \$_____ unless Artist obtains specific advance approval from Client in writing.

6. **Invoicing.** Invoices for Services and Reimbursable Expenses shall be submitted to: _____(name) (address). Payment as set forth under this Agreement will be made payable to Artist and will be remitted by check to the address indicated in Section X below “Notices.” Client will reimburse Artist within (30) calendar days of Client’s receipt of Invoice from Artist.
7. **Late Payments.** If payments are not made on or before thirty (30) calendar days following Client’s receipt of Artist’s Invoice, but no later than sixty (60) days late, the completion and delivery of the Conceptual Design may be delayed by an equal number of days or Artist may elect to receive _____% of the remaining amount on Schedule A and terminate this Agreement.
8. **Representations and Warranties.** Artist represents and warrants that the services rendered pursuant to this Agreement shall result in an original design that, to the best of Artist’s knowledge, does not infringe on any third party intellectual property rights. Client shall make available for Artist’s examination and use all information regarding the Site and Project, including but not limited to: plans, specifications, reports, narratives, publications, statistics, records and other information pertinent to Artist’s performance under this Agreement and represents and warrants the accuracy and completeness of the same. Further, Client shall provide its reviews and approvals of Artist’s design services in a prompt and timely manner.
9. **Approval Process.** Within ____ days of Artist’s delivery of the Conceptual Design to Client, Client shall notify Artist as to how Client wishes to proceed with regard to Artist’s Conceptual Design.
 - a. If Client would like to see additional development of the Conceptual Design prior to determining whether Client will proceed with the Final Design, the parties may execute an addendum to this Agreement setting additional compensation and requirements for such services.
 - b. If Client selects Artist’s Conceptual Design for development into a Final Design, subject to approval by _____ (City Council, art commission, or other public body) pursuant to Section 9 below, the parties shall enter into a separate agreement for the Final Design of the Artwork.
 - c. If Client does not select Artist’s Conceptual Design, Client may not use any part of Artist’s Conceptual Design for future development without the specific written approval of Artist.
10. **Further Approvals.** In the event that further approvals or reviews are necessary for Client to select Artist’s Design for Final Design, Artist, as part of this Agreement and for no further compensation except for Reimbursable Expenses, shall prepare the necessary materials for and be available to personally present the same to the appropriate body/bodies for approval to proceed with the Final Design of the Artwork. Client will give Artist no fewer than _____ days notice of the scope of materials needed and time and location of the meeting.

- 11. Intellectual Property.** Artist retains all copyrights and other intellectual property interests in the Conceptual Design and in any plans, drawings, renderings, schematics, design studies and models and the like prepared by Artist in connection with this Agreement. The Artist is responsible, at his/her option, for registering any copyrightable material in his or her name with the U.S. Register of Copyrights, at no additional cost to Client. It is specifically understood that given the Artist's retention of all intellectual property rights, in the event Client elects not to proceed with Artist in the further development of the Conceptual Design, Client does not have the right to take the Conceptual Design to a third party for further development, including but not limited to fabrication and/or installation.
- 12. Transfer of Title.** Simultaneous with Artist's receipt of the final payment, Artist shall transfer title to the Deliverables to Client.
- 13. Indemnification.** Client agrees to indemnify and hold harmless Artist, his successors and assigns from any claim or suit arising or resulting from the breach by Client or its agents of any contractual obligations set forth in this Agreement including, but not limited to, Client's warranties set forth in Section 5(b) and from negligent conduct of Client, its agents, assigns. Artist agrees to indemnify and hold harmless Client, its successors and assigns from any claim or suit arising out of a breach by Artist of any contractual obligations set forth in this Agreement including, but not limited to, Artist's warranties set forth in this Agreement.
- 14. Independent Contractor.** Artist is furnishing his/her services hereunder as an independent contractor, and nothing herein creates any association, partnership or joint venture between the Parties hereto or any employer-employee relationship.
- 15. Modification.** Any modification of this Agreement shall be in writing and signed by all the parties.
- 16. Termination.** Either party may terminate this Agreement upon thirty (30) days written notice to the other party delivered by certified mail or in person. Termination of this Agreement for any cause shall be without prejudice to any obligations or liabilities of either party accrued prior to or because of such termination. Should Client elect to terminate the Agreement under this Section, Client does not have the right to commission any other party to create the Conceptual Design, or any part thereof, without the written approval of Artist. If this Agreement is terminated by Client, Client shall be liable under the payment provisions of this Agreement only for payment for services rendered before the effective date of termination. Artist may terminate this Agreement upon ten (10) days notice to Client if Client is in material breach of this Agreement and fails to cure the breach before the end of the ten (10) day notice period.
- 17. Death or Incapacity of Artist.** Should the Artist become ill, disabled, injured, or otherwise incapacitated at any time between the execution of this Agreement and the date of completion, the Artist or one of his representatives will notify Client promptly. In the event of Artist's physical incapacity or death prior to the

completion of the Agreement, all payments made up to the point of incapacity or death will be retained by Artist or Artist's estate and all work performed to date of incapacity or death will be compensated. If the Conceptual Design is substantially completed and it is feasible for the work to be fully completed without undue delay, Client may elect to proceed under the terms of this Agreement with the written consent of Artist's estate. In the event that Client elects to proceed with the completion of the Conceptual Design, all remaining work to be completed in accordance with this Agreement will be delegated to Artist's studio personnel.

- 18. Force Majeure.** The Parties will be excused from performing under this Agreement if performance is prevented by a condition beyond the control of the Parties such as acts of God, war, civil insurrection, government action or public emergency (but only for as long as such unforeseen occurrences exist). Both Parties will take all reasonable steps to assure performance of their contractual obligation when the unforeseen occurrences have ceased to exist, but resumption of performance will be subject to negotiation between the Parties if more than one (1) year has passed since either suspension of obligations under this Agreement or substantially changed circumstances.
- 19. Non-assignability.** Artist will not assign, transfer or subcontract the creative and artistic portions of the Design or the Artwork to another party without the prior written consent of Client. Client will assign its rights to the Artwork to an agency of the United States government promptly upon completion of the Memorial and will provide Artist with thirty (30) days notice of the date of that transfer. Upon Client's assignment of rights to the Artwork to an agency of the United States government it will also delegate all of its duties regarding the Artwork to the same agency to which it assigns its rights.
- 20. Severability.** Each paragraph and provision of this Agreement is severable from the entire Agreement, and if any provision is declared invalid, the remaining provisions will remain in effect.
- 21. Governing Law and Venue.** This Agreement and all matters arising out of or relating to this Agreement will be construed and enforced according to the laws of _____. Unless otherwise agreed, any litigation shall take place in the state or federal courts located in _____, and the Parties will accept the exclusive jurisdiction of these courts. Each Party agrees to service of process through the procedure defined in the Notices Section ___.
- 22. Notices.** All notice, submittals, requests, and reports required under this Agreement will be hand delivered or sent by certified mail as follows:

For Artist:

For Client:

Notice is deemed to have been received either upon the date recipient signs the return certificate, or five (5) days after the notice is transmitted to recipient, whichever is sooner. A change in the designation of the person or address to which

submittal, requests, notices and reports will be delivered is effective when the other party has received notice of the change by certified mail.

- 23. Dispute Resolution.** In the event of any disputes arising from the terms of or performance under this Agreement, the parties shall first attempt resolution through good faith discussion and/or mediation. If discussion and/or mediation do not resolve the dispute(s), the parties may resort to litigation and equitable relief to resolve disputes that still exist after good faith discussion and/or mediation. In addition, either party may seek equitable relief (injunction and/or specific performance) at any time when immediate enforcement or cessation of performance under this Agreement is required to avoid foreseeable damages to relief-seeking party's interests, including but not limited to intellectual property interests.
- 24. Attorney Fees and Costs.** There will be no recovery of fees or costs for mediation. The prevailing party in any court action or proceeding shall be entitled to receive from the other party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in connection with such action or proceeding.
- 25. Entire Agreement.** This Agreement constitutes the entire agreement between the parties and supersedes all previous agreements in this matter. There are no other written or oral agreements, representations or understandings with respect to the subject matter of this Agreement. This Agreement and its terms may be amended, modified, or waived only by written agreement, signed by both parties.
- 26. Non-waiver.** No waiver will be binding on a party unless it is in writing and signed by the party making the waiver. A party's waiver of a breach of a provision of this Agreement will not be a waiver of any other provision or a waiver of a subsequent breach of the same provision.
- 27. Execution by Counterpart and Facsimile.** This Agreement may be executed in counterpart and by facsimile.

ACCEPTED AND AGREED AS OF THE DATE FIRST SHOWN ABOVE:

CLIENT

By: _____

Title: _____

Date: _____

ARTIST

By: _____

Date: _____

SCHEDULE A: DESIGN SERVICES

1. Initial Design Development

Option A: Charrette

Artist will participate in a (date) charrette with (participants) to explore ideas for collaborative and individual efforts for the art program.

Based on the input received, the conceptual design ideas will be further developed by Artist.

Option B: Design Meeting

Artist will present Artist's exploration of design ideas for collaborative and individual efforts for the art program to a Committee consisting of (participants) on (date) (time) (location).

Artist is to present design ideas using the presentation format of Artist's choice sufficient to provide the Committee with a clear understanding of the proposed design; examples of acceptable presentation formats include drawings, images, photographs and written narratives.

Based on the input received from (Client/Committee), Artist will refine the design concept and present it for further review and discussion.

2. Conceptual Design

Artist will present the Conceptual Design to (participants) for review, discussion and/or approval at a meeting to be held at (location) on (date).

Presentation materials to illustrate the Conceptual Design may include:

- Drawings, sketches, models, images, computer renderings/animations, photographs
- location of artwork(s)
- annotated plans or site plans
- general size and scale of Artwork
- physical properties of Artwork
- narratives or other information related to the concept
- desired impact of artwork
- relationship to project goals
- public access to Artwork
- physical properties of Artwork
- potential materials and methods with samples as appropriate
- potential relationships and connections to other sites
- preliminary assessment of requirements for sub-consultants, such as structural, lighting, electrical, mechanical, hydraulic engineers/consultants
- preliminary discussion of safety and maintenance considerations

- preliminary assessment of installation methodology
- preliminary discussion of budget
- preliminary discussion of estimated schedule for fabrication and installation
- opportunities to integrate artwork into construction

SCHEDULE B: PAYMENT SCHEDULE

Conceptual Design fees will be paid pursuant to an invoice submitted by Artist to Client according to the following schedule:

First payment: (\$--) to be paid upon execution of this Agreement and receipt appropriate invoice from Artist

Second Payment: (\$--) to be paid upon presentation of complete Conceptual Design and receipt of appropriate invoice from Artist.

Reimbursable Expenses shall be paid as submitted pursuant to this Agreement.

TITLE OF CONTRACT

INTRODUCTION

IDENTIFICATION OF PARTIES

Client (Program, City, Private Developer)
Artist

RECITALS

Basis for Agreement
Desire to create artwork
Municipal Codes
Percentage for art requirements
Special skills and/or abilities of the parties

BODY OF AGREEMENT

SCOPE OF SERVICES

Description of design services either in body or in an attached Schedule

REPRESENTATIONS AND WARRANTIES

Originality of Artist's work
Accuracy and accessibility of all Client's Site and Project related information.

SCHEDULE OF PERFORMANCE

Time is of the essence
Extension of Time

COMPENSATION

Fee for services
Reimbursable Expenses
Invoicing
Time for Payment
Late Payment

DESIGN DECISIONS

Need for additional development
Acceptance of conceptual design, and decision to move forward to full design stage.
Rejection of conceptual design and Client's restriction from further use of concepts.

INTELLECTUAL PROPERTY

Artist retains copyright
Artist is responsible for registering copyright with Library of Congress

BOILERPLATE

INDEMNIFICATION

MODIFICATION

Requirement that modifications be in writing signed by both parties.

TERMINATION

For convenience

For cause

DEATH OR INCAPACITY OF ARTIST

GOVERNING LAW AND VENUE

NOTICES

DISPUTE RESOLUTION

ATTORNEY FEES

ENTIRE AGREEMENT