



Letter of Agreement for Concept Consultancy

June 2010

prepared by Larry Kirkland, PAN Council Member

and

The Law Office of Sarah Conley

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Concept Consultancy Letter Agreement Introduction¹

This Concept Consultancy Letter Agreement is intended to cover a specific situation – one in which an agency, program or private developer is interested in exploring the potential of an art project for a specific location. Often the first step in assessing this potential is a one-, two- or three-day intense creative session called a charrette. This charrette can involve one or more artists, other design professionals (such as architects, landscape architects and engineers), community members and agency employees. These ideation and design sessions are intended to produce many responses that could address what is possible for a specific site or circumstance. The charrette may result in the suggestion of a specific process for further development of the ideas (i.e. a Design Agreement) or a detailed procedure (such as a design competition) to select an artist whose work may be appropriate for the project.

The ideas generated during the charrette are verbal and illustrative expressions and may not necessarily be fixed in a tangible medium. They are ideas – and as such cannot be legally owned or copyrighted.² This issue must be clearly understood and accepted by all participants. If the art project progresses beyond the consultancy stage the next step is a Design Agreement with a specific artist, allowing for refinement of the concepts through a detailed design procedure and approval process. The Design Agreement is a comprehensive document to which specific ownership issues attach and through which the scope of work for a project and joint responsibilities of artist and agency are thoroughly defined.

Regardless of who ultimately owns the copyright in the finished work, there should be an understanding that any artists involved at any stage - from the charrette to the completed work - will not create "substantially similar" work in another context. This is a somewhat nebulous standard that is tricky to definitively ascertain, but "substantial similarity" is the standard required by copyright law and ultimately can only be determined in court. Nevertheless, it is important for administrators to understand that artists often have a style of working that is evident in many if not all of their projects; and it is important for artists to understand when work is "substantially similar" they risk damage their professional reputation. All parties should be dedicated to good faith adherence to the principles of aesthetic integrity.

Attached is a draft form of a Concept Consultancy Letter Agreement, drafted by Sarah S. Conley, an attorney from Los Angeles who represents creative professionals.

¹ Introduction prepared by Larry Kirkland, Janet Kagen, Sarah Conley and Georganne Sahaida.

² § 102 of the Copyright law says in part: *In no case does copyright protections for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle or discovery...*

DATE: [Date]

TO: [Artist]

FROM: [Name of Project Committee]

RE: Concept Charrette for [The Project]

Invited to participate: [Insert list of all participant's names, titles, affiliations and contact information, name of primary liaison to the participant]

Dear Artist,

This letter is to confirm the Project Committee's invitation to you to participate as a Concept Consultant with regard to the public art project being developed for [project name & location] (the "Project"). The Project Committee is authorized to initiate this project under [municipal code, State law, development information]. Please review the schedule and terms for this consultancy set out in this Letter Agreement, and if you agree to these terms, please sign and date at the bottom of both copies of this letter. Return one to us in the enclosed envelope, and keep the other for your reference and files. If you have questions about any aspect of this letter, please call us as soon as possible to discuss your concerns. Time is of the essence regarding this project; we would appreciate receiving your confirmation by [date].

The first meeting on the Project will be held at [time, date, location]. Please confirm by [date] that you are able to attend.

For your participation in this Project, you will be paid [an all-inclusive flat fee of [\$X flat fee]] [a flat fee of \$X plus your travel expenses [not to exceed \$Y]]. You will not receive any additional compensation, costs or fees beyond this amount unless both parties agree and you receive written confirmation from the Project Committee.

Your participation shall include attendance at all Project meetings as determined by the Project Committee [not to exceed --- meetings]; contribution of ideas for developing the nature and scope of the Project; and suggestions regarding potential artists, fabricators, installers or any other appropriate party for involvement in the realization of the Project.

At the conclusion of this concept charrette, the Project Committee shall be free to use any and all of the ideas generated throughout this process without further compensation to you. The use of these ideas may result in a separate, future agreement which could commit you to further develop and refine the ideas generated during the charrette; the Committee also reserves the right to invite another artist to further and fully develop the Project. In either case, the Project Committee fully recognizes the value of your participation. You may not claim any ownership or intellectual property rights in the ideas you personally contribute or suggest on behalf of the Project during your consultancy. We understand that you may at some point choose to develop your ideas in

another context, however, you may not use any of the work product generated during this consultancy, or the eventually realized Project, to create anything that is substantially similar to what is generated here.

You are free to list your experience as a Concept Consultant to the Project Committee in your resume or marketing materials as “Service to the Field.” You may also use photographs of the completed Project for your own portfolio and marketing purposes as long as you include all credits to the team that developed the work, and as necessary, to the artist and owner as determined in the design process that may follow your consultancy.

We look forward to working with you on this Project. Thank you so for your time and willingness to lend your artistic expertise to this process.

Sincerely,

The Project Committee

I have read and agree to the terms set out in this letter regarding my participation in this Project as a Concept Consultant.

Dated this ____ day of _____.

[Artist Signature]