CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

ITEM: Resolution-Approval of Public Art Master Plan **DATE:** March 9, 2015

FINANCIAL IMPACT: None at this time

SYNOPSIS: Lynette Pohlman was hired on July 28, 2014 to update City's Public Art Master Plan. The Master Plan needed to be updated to reflect current and future vision, goals, priorities and practices which had not been done since the first Master Plan was done in 2008.

A public informational meeting on the draft plan was held on Tuesday, February 17, 2015, at the Raccoon River Park Nature Lodge. Lynette Pohlman, the consultant who prepared the Public Art Master Plan, will be attending the Council meeting to do a short presentation and respond to any questions.

BACKGROUND: Attached are the following:

1. The Resolution adopting the Public Art Master Plan.
2. The one page handout from the public meeting that summarizes the vision, mission and goals of the Public Art Master Plan.
3. The meeting notes from the public meeting held on February 17, 2015
4. A copy of the proposed Public Art Master Plan.

OUTSTANDING ISSUES None at this time.

RECOMMENDATION: Staff and the Public Art Advisory Commission recommend that the City Council approve the resolution for the Public Art Master Plan.

Lead Staff Member: Gary D. Scott, Director of Parks and Recreation

STAFF REVIEWS

Department Director	
Appropriations/Finance	
Legal	
Agenda Acceptance	

PUBLICATION(S) (if applicable)

Published In	
Dates(s) Published	

COMMISSION REVIEW (if applicable)

Commission	Public Art Advisory Commission		
Date Reviewed	February 26, 2015		
Recommendation	**Yes**		

Resolution Approving
Public Art Master Plan

WHEREAS, the City of West Des Moines is in need of a Public Art Master Plan; and,

WHEREAS, the Public Art Advisory Commission held a public informational meeting on the proposed plan on February 17, 2015; and

WHEREAS, THE Public Art Advisory Commission moved to recommend adoption of the Public Art Master Plan at their February 26, 2015 meeting

NOW, THERFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, IOWA, that the Public Art Master Plan is hereby approved.

PASSED AND APPROVED this 9th day of March, 2015.

_____
Steven K. Gaer, Mayor

ATTEST:

_____
Ryan Jacobson, City Clerk

West Des Moines Public Art Master Plan
Public Information Meeting Handout- February 17, 2015

Vision

The vision of the City of West Moines Public Art Program is the creation of a diverse collection of public works of art of high aesthetic and intellectual quality and excellence, and a program that promotes cultural expression and artistic appreciation. At the heart of the aspiration for public art in West Des Moines is the wish for an authentic, rich and diverse arts culture that is seen and understood as uniquely arising from the community – an arts culture that benefits and enriches all those who are fortunate enough to live, work in, and to visit West Des Moines.

Over time, and with the acquisition of additional public art, the City of West Des Moines Public Art Program will establish and build the City of West Des Moines Public Art Collection.

Mission

The mission of the West Des Moines Public Art Program is to create a city with successful public spaces incorporating public works of art that offer moments of serendipity and opportunities for reflection--a city with public art woven into the fine grain detail of the public infrastructure. The Public Art Program should champion excellence in art, design, architecture and landscape. The Public Art Program and Collection should be the most visible symbols of West Des Moines' commitment to creativity, encouraging diversity of ideas and expression, and promoting tolerance of multiple opinions. A creative city provides humane environments for its residents, business communities and visitors, extending opportunities for life-long learning and helps preserve community histories.

Goals, 2015-2020

The Public Art Program and Collection of the City of West Des Moines will strive to align public art with community interests. Topical areas of interest, as defined by the community, will be expressed and responded to in the public art program. The Public Art Program will include permanent acquisition and placement of public art, as well as temporary exhibitions of public art, and diverse educational programs investigating community interests as expressed in the Public Art Program.

Public Art Acquisition

The Public Arts Advisory Commission shall concentrate its primary resources on commissioning one major, site-specific and/or site-integrated public work of art annually. The time needed to commission, design, fabricate and install a significant public work of art may require an 18-24 month schedule for each project. By 2017, the Public Arts Advisory Commission should be dedicating a major public work of art each year. By 2020, the City of West Des Moines Public Art Program should have commissioned five major public works of art that are integrated into the city's infrastructure and accessioned into the permanent Public Art Collection.

Public Art Care and Maintenance

Annually, a member of the Public Arts Advisory Commission and City staff will physically visit each public work of art in the City of West Des Moines Public Art Collection. During this visit, they will complete a condition report including photo-documentation, note any care requirements, and schedule maintenance and conservation requirements.

Public Art Engagement (Education and Public Relations)

For each new Public Arts Advisory Commission project, there will be a minimum of two community engagement opportunities inviting community participation into the public artist/art selection process and public art proposal review to ensure the artist is informed of community values and aspirations.

Continue the *Art on Campus* temporary exhibition series, and utilize it as an instructional tool to engage West Des Moines residents in public art education.

Plan and implement regular public relations project(s) targeted to West Des Moines residents by utilizing City electronic and print media.

Each new public art project shall have a complementary education and public relations plan woven into the project schedule.

Public Art Administration

As part of assigned position responsibilities integrated into job descriptions, the City of West Des Moines shall assign duties and responsibilities to City staff to officially support the West Des Moines Public Arts Advisory Commission.

The Public Arts Advisory Commission will create a Public Art Collection Checklist and Object Archive for all existing and new public works of art owned by the City of West Des Moines. This checklist will be updated annually. The Object Archive will exist to file all information regarding each accessioned public work of art in the permanent Public Art Collection

When feasible and appropriate, the City of West Des Moines will integrate the recommendations of the Public Arts Advisory Commission into the City's capital improvement projects.

The Public Arts Advisory Commission's annual budget, and a two-year projected budget, will be annually presented to City Council to allow for multi-year Public Arts Advisory Commission contracts. Fiscal allocation guidelines should approximate the following:

- 70-75% Allocation for the commissioning of major public work(s) of art
- 10-15% Allocation for care and maintenance of public art in the permanent collection (Major conservation, when required, should be fiscally addressed by line-item city budget as part of deferred maintenance.)
- 15% Allocation for public art engagement (education and public relations)
- 5% Contingency

The Public Arts Advisory Commission will create gifting and deeding processes within City of West Des Moines that allows individuals and business partners to support the mission of the Public Arts Advisory Commission. Support may be expressed through fiscal donations and gifts of appreciated property (including works of art appropriate for public spaces). In the event of a gift of public art, all acquisition requirements of the Public Art Collecting Policy must be adhered.

NOTES/COMMENTS FROM:
Public Art Master Plan Informational Meeting

5:30pm
Tuesday, February 17, 2015
Raccoon River Nature Lodge
2500 Grand Avenue
West Des Moines, IA

Public: Ed Engler, Tina Dahl, Ryan Crane, Jim Miller and Nick Valdez
Commissioners: Rita Luther, Gary Hammers and TJ Lechtenberg
Staff: Gary Scott and Greg Hansen
City Council: Rick Messerschmidt
Consultant: Lynette Pohlman

1. **Introductions**
   Gary Scott introduced Lynette Pohlman, Consultant and the Public Arts Commission Members present: Rita Luther (Chair), Gary Hammers, and TJ Lechtenberg.

2. **Brief history of public art, the Public Art Commission, and the Public Art Fund in West Des Moines**
   Gary Scott gave of an overview of the history of the public art in the City. The first commissioned works were the structures at the entrance to Raccoon River Park in 1999 followed up shortly thereafter with the ceramic tiles on the walls inside the Nature Lodge. In 2005 City Council recognized the importance of Public Art and approved the first master plan in 2008. The Public Arts Advisory Commission was formed in 2011 in parallel with the creation of the Public Art Fund using monies from the City's hotel/motel tax revenues. The Railroad Avenue sculptures were the most recent works of public art commissioned by the City in 2011

3. **Vision and Mission of the Public Art Advisory Commission's Master Plan**
   Chairperson Rita Luther thanked everyone for attending and reviewed the vision and mission statement from the handout.

4. **Master Plan Review, Lynette Pohlman, Consultant**
   Consultant Lynette Pohlman reviewed the following items from the handout: public art acquisition, public art care and maintenance, public art engagement (education and public relations) and public art administration.

   She highlighted the goal of having five major public works of art by 2020 which included care and maintenance of pieces. She next emphasized the importance of public engagement and the community's involvement. Administration of the program was the

last topic summarized which included fiscal allocation and guidelines. The specific details can be found on the handout.

5. **Questions from the Public**
(NOTE: The format below is to serve as a means of gathering information to forward to the Public Arts Commission for review. These are not direct quotes, rather a summary of the questions and comments made.)

Nick Valdez: *Will the pieces be purchased or created?*
Lynette Pohlman: It is the understanding that these pieces would be created, not studio art, but we cannot rule it out if something is found and it fits.

Ed Engler: *Does it have to be solid pieces? Could it be plants, landscape or performance?*
Lynette Pohlman: The master plan relates to Fine Arts and those could be included. Non-commercial is key and we would want to strive for a world class collection. Also remember the maintenance and care of the "piece".

Ed Engler: *Can it be inside or outside?*
Lynette Pohlman: It could be both. The key is public access. Do not want to limit access.
Scott: Needs to be within the boundaries of the City of WDM.

Nick Valdez: *Has the old Phenix School been considered?*
Scott: Explained that it could be, but at this point in time no specific locations have been determined.

Ed Engler: *Valley Junction considered?*
Rita Luther: Valley Junction is on the list and that might be considered, we're not that far yet.

Ed Engler: *Who's trained to pick the sites? Could I-235 & 8th Street or Highway 28 coming in from I-235 considered?*
Lynette Pohlman: The commission considered 78 different sites.
Gary Hammers: Needs to be on public property with high visibility. At this point in time we don't have any specific details, but I would like to see something in the west part of town, my preference.
Gary Scott: No specific sites have been selected, rather areas such as Valley Junction.

Councilman Messerschmidt: *How much does one piece cost?*
Lynette Pohlman: $2,000 to several millions. Hard to say at this point in time. Each piece will vary.
Gary Scott: The funding would need to come out of the Public Art Fund, not a million there.

Ed Engler: *Railroad Avenue was supposed to have more pieces, will those be completed?*
Gary Scott: Due to the funding and timing of that process, the first phase is complete. Commission could decide to do more, it would be their and the City Council's decision.
Nick Valdez*: Will there be traffic studies? Number of users on the trails?*
Gary Scott: Raccoon River Park had over 325,000 visitors this past year. Traffic studies and other related matters would be considered.
Nick Valdez: *I have some concerns about traffic at certain locations.*
Tina Dahl: *Agreed*
Nick Valdez: *What about public spaces around Mills Civic?*
Scott: We'd have to look more into that (traffic concerns) if that space was selected. There would be a process.
Lynette Pohlman: Council Bluffs is a good example of the process. They had several meetings and really did a good of job of getting the community involved with their projects. They've now created a collection of 8-12 solid projects over the past 10 years. Creating a collection is something you want to do.

Nick Valdez*: Any specific examples/evidence of public art increasing foot traffic or attracting people to move here?*
Lynette Pohlman: Seattle is good example, but even better is Council Bluffs. Look at the projects they have done and how it's improved their community.
Jim Miller: *Council Bluffs is a great example, it's changed their community.*

Ed Engler: *Does the plan allow for private donations to be made?*
Lynette Pohlman: Yes, that would be allowed. The City may have a certain process to follow, but is should be allowed.

Gary Scott: Art incorporated in to renovations and/or new construction of city buildings could also be an option, something we've not mentioned yet. The upcoming renovations at the Community Center is an example the commission may consider.

6. **Conclusion**
Gary Scott and Lynette Pohlman thanked everyone for attending and encouraged them to contact the Parks and Rec. Office if they had any other questions or concerns.

Meeting concluded at 6:40 pm

Notes submitted by Greg Hansen, Superintendent of Recreation

City of West Des Moines
Public Art Master Plan

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History of the City of West Des Moines Public Arts Advisory Commission

In 2014, the West Des Moines Public Arts Advisory Commission, City of West Des Moines (WDM) contracted Lynette Pohlman to: meet with the Public Arts Advisory Commission; develop an abbreviated Master Public Art Plan that condensed the 2008 Plan; add priority public art sites; and make recommendations for initial public art projects.

In 2011, the City of West Des Moines established a Public Arts Advisory Commission to advise and assist the WDM City Council in the promotion of public art within the city's physical environment and public spaces. (For additional information on service terms, organization, qualifications, powers and duties, reference Ordinance 1904, 1-24-2011.)

In 2008, the West Parks Foundation commissioned and hired public art consultant Jerry Allen to develop, author and submit a City of West Des Moines Public Art Program Plan. This extensive Public Art Program Plan provided basic fundamental elements used in this Master Public Art Plan (2014), and serves as an excellent resource of public art information and direction for the City of West Des Moines.

Vision

The vision of the City of West Moines Public Art Program is the creation of a diverse collection of public works of art of high aesthetic and intellectual quality and excellence, and a program that promotes cultural expression and artistic appreciation. At the heart of the aspiration for public art in West Des Moines is the wish for an authentic, rich and diverse arts culture that is seen and understood as uniquely arising from the community – an arts culture that benefits and enriches all those who are fortunate enough to live, work in, and to visit West Des Moines.

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Public Arts Advisory Commission Work Schedule, 2015-2020

Each public art project work schedule may be modified. Special attention should be given to the schedule following the public artist selection process which requires different schedules for proposal development, review, fabrication and installation.

Year 2015

In July 2015, the project work schedule should be amended based upon progress from January-June.

Jan-Feb	Review, amend, and approve 3-5 Year Plan; present it in public hearings and to City Council for review and approval
Feb-March	Identify three public art projects to be initiated in 2015, 2016, and 2017 with fiscal budget for each project. For each public art project, select/appoint public art selection panels (composed of WDM citizens, representatives of Public Arts Advisory Commission (2), city staff, and others as appropriate. Define project scope, public art statement, public artist selection process and fiscal allocation.
April-June	Identify public artist solicitation process for the initial 2015 project; invite finalist(s). Engage public relations on project. Plan and implement education and community engagement activities for the public art project.
June	Contract Negotiations.
July-Dec.	Fabrication and possible visits to public artist's studio to view progress. Mediate, manage and motivate issues between artist, design team and Public Art Commission. Monitor and track project progress and status. Control change orders and eliminate unnecessary costs. Maintain schedule, confirm scale of work and appropriateness for site. Review and monitor details. Facilitate transportation of public art to site. Coordinate site construction/installation; monitor subcontractors; verify insurance, indemnification. Confirm copyright and transfer of ownership of public art from artist to City. Monitor and complete project documentation. Finalize and dedicate the public art project. Extend notes of appreciation to public artist, selection panels, contractors, and others as appropriate. Evaluate project and process, and incorporate improved processes in upcoming public art projects.
Dec. 2015	Define second (2016) public art project scope and repeat/implement above checklist.
June 2016	Define third (2017) public art project scope and repeat/implement above checklist.

Public Art Program and Collection Guidelines, Principles, and Procedures[1]

1.0 Purpose

The purpose of these public art guidelines and principles is to establish procedures for the implementation of the Public Art Program and Collection for the City of West Des Moines.

2.0 Goals

The primary goals of the Public Art Program and Collection are to develop an aesthetically interesting environment, to integrate public works of art into public spaces and to promote tourism and economic vitality of West Des Moines through the enhancement of public spaces.

Specifically, the City seeks to develop a Public Art Program and Collection that:

1. Creates a collection of public works of art that reflects a unique municipal aesthetic vision.
2. Reflects West Des Moines' diverse history, citizenry and natural beauty.
3. Promotes the integration of public art with the community, architecture and landscape of the City of West Des Moines.
4. Enables significant, professionally accomplished, local and regional artists to create in the public sector, while also involving public artists with national or international reputations.
5. Advances imaginative design as a component of the city's community development goals.
6. Involves the community directly through participation in the public art processes (acquisition, care, education) and through community engagement.
7. Fosters innovation and promotes artistic excellence.
8. Strengthens community identity and pride.

3.0 Funding

The Public Art Program budget is primarily and annually funded through allocation of the City of West Des Moines, as appropriated in the City's public art ordinance. Grant funds and private gifts of appreciated property and cash may also be sought for special projects and to augment the public art budget.

Public art funds may be pooled/accrued and expended on appropriate City projects, unless specifically prohibited by law or funding source.

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[1] Jerry Allen and Associates, *City of West Des Moines, Public Art Program Plan*, November 11, 2008. Excerpts from pages 34-53 were adapted for this Master Plan (2015).

Public Arts Advisory Commission projects may also be funded through allocations from the Capital Improvement Program of the City, including buildings, parks, decorative or commemorative structures, parking facilities, bridges, viaducts or pedestrian overpasses, interstate highways, street construction or reconstruction, streetscapes, road beautification, bikeways, trails, transit and aviation facilities, and above-grade utilities.

The City Capital Improvement Program is reviewed annually by the Public Arts Advisory Commission and the City's public art staff, in conjunction with city departments and the respective budget offices, for recommendations on public art allocations to the WDM City Council, as part of the presentation of the annual Public Works of Art Plan. This plan shall include the proposed public art projects for the upcoming year, with budgets and conceptual approaches.

The Public Work of Art Plan presentation by the Public Arts Advisory Commission shall take place on a schedule that coincides with the adoption of the City capital budget each year. The Public Arts Advisory Commission shall also give a written report of the status of all ongoing public art projects and projects completed within the last year. With the passage of the annual work plan, monies shall be transferred to a Public Art Fund. The Fund's budget shall be managed by the City's public art staff. The Public Arts Advisory Commission may from time to time during the course of the year modify the annual work plan. The City Council shall review any significant changes that are proposed.

4.0 Use of Public Art Funds

Monies in the Public Art Fund may be used for public artist design services and the acquisition or commissioning of public works of art for the West Des Moines Public Art Collection. Monies may be expended for public artist design fees; proposals/drawings/maquettes; artist travel and expenses; art purchases and commissions; art fabrication and/or materials; shipping and crating; insurance; the preparation, installation or placement of public works of art; public programs; and/or other purposes as decided by the Public Arts Advisory Commission for the implementation of the Public Art Program and Collection.

Fifteen percent of the dollars allocated for public art monies should be utilized for program administration and community engagement, artist selection processes, community outreach and public relations, project documentation and other appropriate and/or related purposes deemed necessary by the Public Arts Advisory Commission. Ten to fifteen percent of the public art monies, to the extent permitted by law and funding sources, should be set aside in a separate account within the Public Art Fund for curatorial and conservation services and for the preservation and maintenance of the Public Art Collection.

5.0 Eligible Public Works of Art

In general, all forms of artistic expression created by professional public artists (see sec. 5.1) are eligible for inclusion in the Public Art Program and Collection. These may be in a wide variety of styles, media and genre. They may include freestanding works of art, as well as art that has been integrated into the underlying architecture or landscape of a site. They may include permanently installed works of art, as well as temporary installations, if such projects contribute to the community understanding and participation. They may also include public artist-designed infrastructure elements, such as sound walls and utility structures, as well as public artist designed street furniture, such as benches, bus stops, tree grates, etc.

5.1 West Des Moines Public Art Definition and Collecting Statement

What is public art? As all artistic definitions expand, contract and evolve over time, so has the contemporary view of public art. Today, public art has moved beyond that of permanence and solidity, seeking to engage the community in a manner that, while not excluding the methods of the past, brings them to life as part of the community. Contemporary public art is not simply an aspect of the landscape, expanding to examine the ideas of personal and community engagement, the context and recontextualization of place and fomenting the exchange of ideas and identity within a community.[2]

The Public Arts Advisory Commission, in collaboration with each Public Art/Artist Selection Panel, will define the specific outcomes of each Public Arts Advisory Commission acquisition by writing a public art statement that is derived by community engagement in each public art project.

Overall, the City of West Des Moines Public Arts Advisory Commission desires to concentrate on commissioning site-specific and site-integrated public works of art for municipal locations throughout the city. Professional public artists, with previous accomplishment as revealed/identified in professionally juried and curated regional, national and international exhibitions and public collections, will be given priority.

5.2 Public Art Sites and Zones

5.2.1 Priority Public Art Sites and Zones, 2015-2020 are: *(Listed in alpha order)*

1. City/School Campus
2. Grand Prairie Parkway Bridge and I-80 Interchange/Gateway
3. I-35 Mills Civic Parkway Interchange/Gateway
4. Major trail entrances in West Des Moines
5. Raccoon River Park
6. Valley Junction

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[2] Forecast Public Art website. Public Art Toolkit: *What is Public Art?* (2011). Accessed February 8, 2015. http://forecastpublicart.org/toolkit/didactic.html

5.2.2 Proposed Public Art Zones:

- New building projects and major renovations projects that are City of West Des Moines facilities
- All main road business corridors throughout city

5.3 Public Art Collection Ownership, Accessioning into the Permanent Collection

It is the desire of the Public Arts Advisory Commission to commission/acquire public art owned by the City, and formally accessioned into the City of West Des Moines Permanent Collection public works of art. The permanent Public Art Collection is specific and unique to WDM, and accessioning of public works of art into the permanent collection must be recommended by the Public Arts Advisory Commission to the City Council. Only accessioned public works of art in the permanent Public Art Collection will receive care, maintenance, conservation, community engagement (education), and other resources as defined under the City of West Des Moines Public Art Program and Collection.

Each accessioned public work of art should be uniquely numbered with a permanent collection accession number (never to be reused, even if the object itself is deaccessioned from the permanent collection). The permanent collection accession number should utilize the year accessioned into the collection, followed by the serial, numerical number of objects accessioned in that year, example 2015.1, followed by 2015.2. The accession number should be physically and permanently applied to the public art. The accession number is the dominant designation for creating and maintaining the Public Art Collection Archive. (See Sec. 5.4)

5.4 Public Art Collection Checklist and Object Archive for the Permanent Record

It is the desire of the Public Arts Advisory Commission to develop an aesthetically and intellectually diverse, high-quality public art collection.

The following object information shall be collected and maintained as part of the permanent record for each public work of art accessioned into the Public Art Collection.

Artist, life dates, nationality
Title of public work of art, year of completed work of art
Dimensions
Media
Site of public art
Years of the public art project, from beginning through installation and dedication
Artist's statement regarding public art
Selection Panel's Public Art Statement
Members of commissioning Selection Panel and Public Arts Advisory Commission during project

The City's public art staff will establish and maintain a permanent file for each accessioned public work of art into the permanent Public Art Collection. The archive record should include the following: budget, commissioning contracts, procurement documents and title; all

correspondence regarding the communication related to the commissioning, fabrication, installation of the public work of art; public art statement; artist statement of the public works of art; artist's recommended care/maintenance statement; annual condition reports; photo-documentation fully documenting the work of art with date and image identification; public artist's professional resume; and, any relevant information relating to the public work of art. This Public Art Collection Archive is intended to be an expanding archive for each public work of art.

6.0 Responsibilities

6.1 The Public Arts Advisory Commission shall:

- Be responsible for the ongoing oversight of the Public Art Program and Collection.
- Establish policy and procedures under which the Public Art Program and Collection operates.
- Advise on the acquisition, siting/placement, maintenance and recommend removal of all exterior public art on property of the City of West Des Moines, regardless of funding source. These Public Arts Advisory Commission recommendations will be made the City Council.
- Advise on the acquisition, siting/placement, maintenance and removal of all interior public art which is funded by the Public Art Fund. These Public Arts Advisory Commission recommendations will be made to the City Council.
    - Privately funded interior art may be installed and/or removed without the Public Arts Advisory Commission's review and recommendation.
    - No existing exterior public art or interior public art funded by the Public Art Fund on City property shall be removed without review and recommendation by the Public Arts Advisory Commission.
- Oversee the management of the Public Art Collection.
- Review and recommend to the City Council the annual Public Work of Art plan and the proposed annual budget for public art.
- Make recommendations regarding the care, maintenance, conservation of the Public Art Collection to the city's public art staff.
- Identify pool(s) of potential Public Art Selection Panel members.
- Act as liaisons to the individual public artist selection panels.
- Ensure community engagement and citizen participation in the Public Art Program.
- Review and recommend proposed gifts of public art to the City, as well as loans and long term exhibitions of public art on City-owned property.
- Review and recommend accessioning and deaccessioning of public works of art to and from the Public Art Collection.
- Periodically review and recommend changes to the Public Art Program guidelines, policies and procedures.

- Recommend permanent text plaques identifying each public work of art accessioned into the Public Art Collection. Plaque text should include object information: artist name, nationality, life dates, title of public art, year of completion, medium, dimensions, donor, collection identification, and object interpretation.
    - Example:

Artist: Mac Adams, (British-American, born 1943)
Title: ***The Moth***, 2008
Media: Vermont Marble
The term 'debug' used to describe fixing a problem with a computer, was actually a moth that landed on an early vacuum tube computer and rendered it temporarily inoperable. The artist has used the moth image as a metaphor embodying the concepts of invention, perception, precision and interactivity as relates to electrical and computer engineering. This sculpture requires participation of the viewer to locate the optimal spatial position from which to discover ***The Moth***. The image only exists as a virtual image and is a relational factor between the marble stones. When the viewer changes position, ***The Moth*** vanishes and the voids and sculptural elements acquire other meanings, as interpreted by the viewer, with ongoing narratives affected by the prevailing light conditions that offer surprises and new perceptions.

Funding: City of West Des Moines

Collection: This public work of art is in the Public Art Collection, City of West Des Moines, Iowa.
Accession number: 2015.1

- Be sensitive to the public nature of the project and the necessity for cultural diversity in the Public Art Program and Collection.

6.2 The City Public Art Staff shall:

- Steer the overall work objectives of the Public Art Program and Collection, such as staff project administration, artist project management, strategic planning and community outreach.
- Monitor the overall development of the Public Art Program and Collection, including ensuring that local, regional, national and international public artists are represented in the Public Art Collection and ensuring the Public Art Collection is reasonably balanced over time with respect to media and genre and artists' gender.
- Oversee an annual maintenance survey of the Public Art Collection and manage routine maintenance/care of public art.
- Make recommendations to the Public Arts Advisory Commission.
- Prepare and recommend the annual work plan to the Public Arts Advisory Commission. This plan shall include identification of eligible Capital Improvement Projects and funding appropriations.
- Oversee all public artists' contracts in association with the Public Art Program.
- Present approved recommendations to the West Des Moines City Council.
- Fabricate and install permanent plaques identifying public works of art.
- Oversee maintenance and care of the public art collection. Oversee conservation of the public art collection. When required the staff will consult with large object conservators for recommendation of treatment proposals and treatments for public art works of art.

6.3 The Public Art/Artist Selection Panels shall:

- Consist of approximately 5 to 8 members. Subject to additional members if the public art project warrants expanded representation.
- Be ad-hoc panels formed for a limited period of time and charged by the Public Arts Advisory Commission with recommending public artists for individual projects or groups of projects for specific public art sites.
- Consist of individuals broadly representative of the following categories: artists, arts professionals, community members, donors, project architects and/or engineers, landscape architects, project managers, and others as deemed appropriate.
- Author and approve a public art philosophy statement for each proposed public art project. The public art statement will outline community values, beliefs to be expressed by the public art project, and share this statement with the community and selected public artists. The public art statement must be officially approved by the Public Arts Advisory Commission prior to moving forward with public artist/art selection and public artist proposal submissions.
- Review professional credentials, prior work, proposals and other materials submitted by public artists for particular projects.
- Recommend to the Public Arts Advisory Commission public artist(s) to be commissioned for a project, or who will be engaged to join the design team for public art projects.
- Respond to the charges outlined in the public art project prospectus and project guidelines, concerning the requirements and concerns addressed within the particular project.
- Be sensitive to the public nature of the project and the necessity for cultural diversity in the Public Art Program and Collection.
- Continue to meet, when appropriate, to review the selected public artist's design concepts.

6.4 The Public Artist(s) shall:

- Submit professional public art credentials, visuals, proposals and/or project materials as directed for consideration by public artist/art Selection Panels.
- Conduct necessary research, including attending project orientation meetings and touring project sites, when possible and appropriate.
- If selected, execute and complete the public work of art, conceptual work or design work, and fabrication, or transfer title of an existing work of art, in a timely, fiscally sound and professional manner.
- Work closely with the project manager, City Staff, design architect and/or other design professionals associated with the project.
- Make presentations to the Public Arts Advisory Commission and other reviewing bodies at project milestones as required by contract.
- Make public presentations, conduct community education workshops or do a residency at appropriate times and forums in the community where the public work of art will be placed, as required by contract.

6.5 The City Departments (agencies where the public work of art is sited) shall:

- Determine, in consultation with the City public art staff, which projects are eligible for public art inclusion, the amount of eligible project costs available for public art, and whether the project is appropriate for public artist involvement.
- Provide the City public art staff with information on the Capital Improvement Program, budgets and schedules.
- Designate a departmental representative to participate in the public artist selection process.
- Include City public art staff on architectural or engineering services selection panels, where feasible.
- Review the maintenance needs survey for public works of art located at the site agency.
- Inform the project architect, landscape architect or engineer of the public artist involvement in the Capital Improvement Project and involve the project designers in artist selection.
- Designate, in consultation with the appropriate leadership, a City representative or project manager for the Capital Improvement Project to act as the Department's agent for all coordination issues related to public art and the overall project.

6.6 The City Council shall:

- Review and approve the annual work plan presented by the Public Arts Advisory Commission that shall include identification of eligible Capital Improvement Projects and funding appropriations.
- Appropriate monies for individual Capital Improvement Projects which shall be transferred into the Public Art Fund as part of the annual Capital Improvement Program budgeting process.
- Approve contracts with public artists as required by the City's purchasing policy.

6.7 The Advising Agencies (City Attorney, Finance Department, etc.) shall:

- Work with the Public Arts Advisory Commission on the development of the annual budget for program administration and budget allocations, including verification of eligible construction projects.
- Review contracts for selected public artists and make recommendations regarding liability, insurance requirements and artists' rights.
- Provide consultation and information regarding particular needs and concerns of the Public Art Program.
- Coordinate with the Public Arts Advisory Commission City staff to determine program success.

6.8 The Construction Project Managers (City staff and/or Contractors) shall:

- Collaborate with the City public art staff on the development of public art projects.
- Coordinate with the Public Arts Advisory Commission's City staff on all issues related to the Public Art Program and the overall project including safety, liability, timeline, code requirements and installation deadlines, etc.

- Provide the Public Arts Advisory Commission's City staff and public artist with the appropriate documentation necessary for project compatibility and completion (i.e., architectural/engineering design drawings and specifications, as-built drawings, structural drawings, mechanical drawings, electrical drawings, materials to support public outreach efforts, etc.).

7.0 Public Art/Artist Selection Process

7.1 Goals

The overarching goal of the public art/ artist selection process is to acquire public work(s) of art of the highest aesthetic quality. Selecting a public artist whose skill, experience, expression, style, commitment to collaboration, and community facilitation skills match the needs of the project is critical to the success of any project. Specifically, the goals of the selection process are to:

- Encourage the highest level of creative engagement and vibrant thinking with regard to individual works of public art or those in tandems with public or private architectural projects.
- Select a professional public artist or artists whose existing public works of art or past collaborative efforts have maintained a level of quality and integrity.
- Implement the goals of the overall Capital Improvement Program or private development project through an appropriate public artist selection.
- Further the mission and goals of the Public Art Program and Collection, and the Public Arts Advisory Commission.
- Identify the optimal approach to public art that is suitable to meet the demands of the particular capital project.
- Select a public artist or artists who will best respond to the distinctive characteristics of the site and the community it serves.
- Select a public artist(s) who can work successfully as members of an overall project design team.
- Ensure the selection process represents and considers the interests of all parties concerned, including the public, the arts community and the City department involved.

7.2 Methods of Selecting Public Artists

The method of selection for individual public art projects shall be determined by City of West Des Moines Public Arts Advisory Commission's City staff, in consultation with the Public Arts Advisory Commission, in accordance with the adopted Public Art Program guidelines and principles. Any of the following methods may be used, depending upon the requirements of a particular project.

The following recruitment and public art acquisition methods are all legitimate forms for seeking the best public art as well as talented and qualified public artists. Each process has advantages and limitations; deciding with methods to use is dictated by the vision and criteria set forth by the Public Artist /Art Selection Panel for each individual public art project.

Open Competition: An open competition is a call for public artists for a specific project in which artists are asked to submit evidence of their past public works of art, proposal concept and/or completed projects. Any public artist may submit credentials and/or proposals, subject to any

limitations established by the Art/Artist Selection Panel or the Public Arts Advisory Commission. Calls for entries for open competitions will be sufficiently detailed to permit public artists to determine whether their art is appropriate for the project under consideration. This type of competition involves public advertisement, requests for qualifications, letters of interest, and applications or proposals.

Limited or Invitational Competition: A limited number of public artists shall be invited by the public artist/art Selection Panel to submit professional credentials and/or proposals for a specific project. Artists shall be invited, based on their past public art projects (proposed and/or completed) and demonstrated ability to successfully respond to the conditions posed by the particular public art project (i.e., water features, light works, paintings, sound works, landscape works, design team efforts, etc.), or based on other non-aesthetic Public Art Program goals (i.e., artists who reside in a particular community or neighborhood where a project is occurring, local, regional or national artists, etc.).

Direct Selection: At times the Public Arts Advisory Commission may elect to recommend a direct selection in which it contracts with a specific public artist for a particular project. Such an election may occur for any reason, but will generally occur when circumstances surrounding the project make either an open or limited competition unfeasible (for example; project timeline, community or social considerations, client demand, etc.). This type of commission is often used when the project is such that after a period of research and review of a specific public artist's art is exclusively appropriate and meets the goals of the specific public art project.

Public Art Consultant: The Public Arts Advisory Commission may contract with a public art consultant with expertise in public art curating and administration to recommend a short list of potential public artists for the Public Arts Advisory Commission and Selection Panels' consideration/review of a particular public art project. This type of artist selection process is often time efficient, and assures a high quality pool of public artists to select from that fits the project. (Over time, public artists presented in these consultant reviews create a future list of potential artists for invitation for other public art projects, and affords an opportunity for time and project savings).

Purchase of Existing Art: The purchase of existing works of art may be rare for the West Des Moines Public Art Collection, but may be suitable under certain circumstances. The approach may limit or omit the involvement of commissioning public artists if a project is multi-phased and requires design development. Purchased works of art may be designed and conceived into a public space that reflects community values, and thus may be site-specific.

Mixed Process: A mixed process may include any combination of the above approaches.

Pre-Qualified Public Artists List: The Public Arts Advisory Commission may, from time to time, use an Artist Selection Panel to create a pool of pre-qualified artists who can be utilized by Public Arts Advisory Commission to select artists for small, community-based projects where a separate artist selection panel may not be warranted. The pre-qualified artists list should be reviewed annually by the Public Arts Advisory Commission. The pre-qualified artist list may include

emerging public artists, and/or professional studio artist seeking entry-level Public Arts Advisory Commissions' acquisitions. The Public Arts Advisory Commission and Selection Panels may also utilize the Iowa Arts Council's Public Art Registry as an educational tool for committee members, and to become informed on pre-qualified artists known to the Iowa Arts Council.

7.3 Criteria for Selection of Public Artists or Public Works of Art

- *Qualifications:* Professional public artists shall be selected based on their professional qualifications as demonstrated by previously completed public works of art and/or proposals, and the appropriateness of their concepts to the particular project. Quality standards will be reviewed and based upon previous, professionally curated and/or juried art competitions at significant, non-profit fine art institutions.
- *Quality:* Of highest aesthetic priority are the intellectual, expressive and design capabilities of the artist and the inherent quality of art.
- *Media:* All forms of visual arts shall be considered, subject to any requirements set forth by the public art project prospectus.
- *Style:* Artists whose art is representative of all schools, styles, expressions and tastes shall be considered.
- *Appropriateness to Public Site:* Public art designs shall be appropriate in scale, material, form and content to the immediate social and physical environments with which they relate.
- *Permanence:* Consideration shall be given to structural and surface integrity, permanence and protection of the proposed public art against theft, vandalism, weathering and excessive maintenance and repair costs.
- *Elements of Design:* Consideration shall be given to public art as a genre that is created in a public context and must be judged by standards that include factors in addition to the aesthetic. Public art may also serve to establish focal points; terminate areas; modify, enhance or define specific spaces; establish identity; address specific issues of urban design; and/or commemorate.
- *Community Values:* While free artistic expression shall be encouraged, consideration must be given to the appropriateness of public works of art in the context of local community and social values.
- *Public Liability:* Safety conditions or risk factors that may bear on public liability must be considered in selecting a public artist or work of art.
- *Diversity:* The Public Art Program shall strive for diversity of style, scale, media and artists, including ethnicity and gender of artists selected. The program shall also strive for an equitable distribution of public works of art throughout the City.
- *Communication:* The ability of public artists to effectively communicate (verbal, written, and electronic) with a variety of groups, including other design professionals, public officials and community members, should be taken into consideration.

8.0 Collection Review

At least once in every five-year period, the Public Art Collection should be evaluated by the Public Arts Advisory Commission staff or an independent agency, for the purposes of collection management and in order to assess the Public Art Program and Collection's future. The City, with the advice of the Public Arts Advisory Commission, shall retain the right to deaccession any public

work of art in the City of West Des Moines Public Art Collection, regardless of the source of funding for the particular public work of art.

8.1 Objectives

- To establish a regular procedure for evaluating art in the Public Art Collection.
- To establish standards and best practices for the acquisition of public works of art by the Public Arts Advisory Commission.
- To ensure that deaccessioning is governed by careful, best practice procedures.
- To insulate the deaccessioning process from fluctuations in taste – whether on the part of the Public Arts Advisory Commission, the City, or the public.

8.2 Public Art Acquisition Review Standards

- Acquisitions should be directed toward public works of art of the highest quality.
- Acquisition of art into the Public Art Collection implies a commitment to the ongoing preservation, protection, maintenance and exhibition and education of the art for public benefit.
- Acquisition of public art, whatever the source of funding, should imply permanency within the City of West Des Moines Public Art Collection, so long as physical integrity, identity and authenticity are retained, and so long as the physical sites for the public art remain intact.
- Public works of art will be acquired/accessioned into the Public Art Collection without legal or ethical restrictions as to future use and disposition. The public work of art must be solely owned/titled to the City of West Des Moines, without restriction.

8.3 Deaccessioning Review Standards

Any proposal for deaccessioning, including the destruction or removal of a public work of art in the collection – or relocation of a public work of art shall be reviewed by the Public Arts Advisory Commission according to the policy and procedures contained herein, and shall be as deliberate as those practiced during the initial selection. The deaccession process should operate independently from short-term public pressures and fluctuations in artistic or community taste. During the review process, the public work of art shall remain accessible to the public in its original location. The final decision with respect to deaccessioning of public works of art shall reside with the Public Arts Advisory Commission.

Deaccessioning should be a seldom-employed action that operates with a strong presumption against removing public art from the City of West Des Moines permanent Public Art Collection.

Public art may be considered for review toward deaccessioning from the Public Art Collection if *one or more* of the following conditions apply:

- The condition or security of the public art cannot be reasonably guaranteed.
- The public work of art requires excessive maintenance, has faults of design or workmanship, and repair or remedy is impractical or unfeasible.
- The public art has been damaged and repair is impractical or unfeasible.
- The public art's physical or structural condition poses a threat to public safety.

- No suitable site is available, or significant changes in the use, character or design of the site have occurred which affect the integrity of the public work of art.
- Significant adverse public reaction has continued unabated over an extended period of time (at least five years).
- Deaccessioning is requested by the artist.
- The site and/or agency housing the public work of art is undergoing privatization.

Whenever an public work of art in the collection is being considered for deaccessioning, the artist shall, whenever practical, be given the first right of refusal to purchase the work at current fair market value.

9.0 Public Works of Art Donations and Loans

From time to time, private individuals, organizations and agencies make donations of art (or funding to acquire or commission art) to the City for general or specific purposes. This policy outlines the procedures that the City will follow in accepting donations of art. This policy shall also apply to art that is proposed for long-term loan to the City.

Acceptance of a public work of art into the City of West Des Moines Public Art Collection implies a commitment of its long-term care and preservation, as well as education program. Therefore, the acceptance of such donations must be deliberate, maintain high aesthetic standards and further the goals of the City of West Des Moines. Recognizing that West Des Moines' public spaces are a valuable and limited public resource, each proposed public work of art must add significant and long-term value to the space in which it is proposed to occupy.

The purposes of this policy are to:

- Provide uniform procedures for the review and acceptance of donations or loans of public works of art to the City.
- Vest in a single agency the responsibility of insuring the management and long-term care of donated public works of art.
- Facilitate planning for the placement of public works of art on City-owned property.
- Preserve the City's public spaces for the greatest enjoyment of the citizens and visitors.
- Maintain high aesthetic standards for public works of art exhibited and/or installed in City facilities.
- Provide for appropriate recognition for donors of public works of art to the City.

9.1 Public Art Donation Policy

Any time a donation or long-term loan (2-5 years) of a work of art is proposed for the City of West Des Moines, the City agency or department that operates or maintains the site of the proposed public work of art shall consult with the Public Arts Advisory Commission, which shall have final responsibility of reviewing and approving such proposed public art donation or long-term loan.

The City of West Des Moines may place public works of art on loan for a period of two years, renewable for up to five years. The City of West Des Moines Public Arts Advisory Commission does not engage in permanent loans (over five years) of public art.

9.2 Donations Guidelines

9.2.1 When a donation or long-term loan (2-5 years) of a work of art has been proposed, the City department or agency receiving the proposal shall notify the Public Arts Advisory Commission and City staff. The Public Arts Advisory Commission shall contact the prospective donor to inform the donor of the City's donation policy and gather information about the proposed donation.

9.2.2 Under the guidance of the Public Arts Advisory Commission, the prospective donor and the Department shall meet with City public art staff and prepare written and visual documentation of the proposed donation.

This documentation shall include, at a minimum, the following:

- Images, slides, drawings, photographs or a model of the proposed art
- Biography and professional resume of the public artist
- List of professional fine art exhibitions, public and private collections
- Provenance of the work of art
- Proposed site and installation plans
- Budget for site preparation and installation
- Ongoing operating costs for the art, if applicable
- Maintenance requirements for the public work of art
- Conditions or limitations on the loan as proposed by the lender
- Contact information for the donor, lender and the artist
- Fair market value of art to be determined by an independent professional appraisal
- Plans for the creation of a maintenance endowment for the purpose of caring for the public work of art over time

9.2.3 The Department shall:

- Inform the Public Arts Advisory Commission of the relationship of any advisory boards to the department.
- Confer with City public art staff concerning the financial and practical responsibilities for maintaining or operating the public work of art.
- Refer proposals for donation of art to the advisory board which shall in turn make a recommendation to the department head and the Public Arts Advisory Commission.
- Convey the department's or advisory board's recommendation to the Public Arts Advisory Commission in writing.

9.2.4 The Public Arts Advisory Commission shall review the donation proposal and determine whether they will accept or reject the donation.

The Public Arts Advisory Commission and the advisory panel shall consider the following criteria in making their decision:

- *Aesthetic Considerations:* To ensure art of the highest quality, proposed donations must be accompanied with a detailed written proposal and visual documentation, the artist's professional resume and, if appropriate, a current certified appraisal of the work of art.
- *Financial/Legal Considerations:* Based on the cost of installation, the proposal should identify sources of funding for the project and the projected cost of operation, maintenance and repair of the work of art over the expected life of the art. Careful consideration should be given to any proposed donation that will create substantial, ongoing costs for the maintenance and/or operation of the work of art.
- *Liability:* The proposal should discuss susceptibility of the work of art to damage and vandalism, any potential danger to the public, and any special insurance requirements and City liability.
- *Environmental Considerations:* The proposal should address appropriateness of the public work of art to the site, and the scale and nature of the work of art in relation to its immediate physical and social context.
- *Maintenance Considerations:* The proposal should identify resources needed for the long-term maintenance of the art and should be accompanied with a commitment to provide an endowment for such maintenance.

9.2.5 Upon reviewing the proposed donation, the Public Arts Advisory Commission shall decide to accept the donation or reject the donation. The Public Arts Advisory Commission shall not accept donations with contractual limitations on the future use, exhibition or disposal of the public work of art. When appropriate, the Public Arts Advisory Commission shall ask the donor to provide funds to permanently endow the maintenance of the work of art. If a specific City department operates and maintains the site of the public work of art, City public art staff shall consult with the department head to discuss the financial and practical responsibilities of maintaining or operating the public work of art.

9.2.6 If the Public Arts Advisory Commission chooses to accept the public work of art as a donation or a loan, the Public Arts Advisory Commission shall obtain either a legal instrument of conveyance of title or an executed loan agreement as appropriate. Any conditions the City or donor place on a loan shall be stated in writing and attached to the instrument of conveyance.

9.2.7 Once the public work of art has been accepted and the City becomes the legal owner, the City public art staff shall coordinate all processes relating to the installation, maintenance, removal or relocation of public work of art on City-owned property. The Public Arts Advisory Commission will recommend siting/placement of all exterior public works of art on City of West Des Moines property to the City Council.

9.2.8 Proposed public art donations shall be submitted to the City Council for final acceptance.

9.2.9 The Public Arts Advisory Commission, working with the department head and the donor, shall provide for appropriate recognition of the donor's contribution to the City.

9.3 Exception to the Guidelines for Donation of Public Works of Art

Gifts of state presented to the City by foreign governments or by other political jurisdictions of the United States – municipal, state or national – which may be accepted by the Mayor, City Council or City Manager shall be reviewed as follows:

- Permanent placement of art suitable and accessible for public display shall be determined jointly by the appropriate City department and the Public Arts Advisory Commission.
- Appropriate recognition and publicity shall be the responsibility of the City department with jurisdiction over the site of permanent placement, in consultation with the Public Arts Advisory Commission.
- If not provided by the donor, maintenance of the art shall be the responsibility of the department with jurisdiction over the site.

9.4 Acquisition of Art by City Agencies outside the Public Art Program and Collection

Recognizing that many City facilities were developed without a public art project, City departments are encouraged to allocate funds on a voluntary basis beyond the formal or codified process to enhance their offices and facilities through utilization of the Public Art Program's annual work plan.

Proposed art acquisitions by city departments of *interior works of art* shall not be reviewed by the Public Arts Advisory Commission, and exhibition, care and other related duties are not part of the charge of the Public Arts Advisory Commission.

The Public Arts Advisory Commission will review, advise on and recommend all exterior public works of art for acquisition, including siting/placement and maintenance, regardless of funding source, by the City of West Des Moines, and make recommendations to the City Council. No public art shall be installed or existing work of public art removed without a review and recommendation by the Public Arts Advisory Commission to the City Council.

Proposed exterior public art acquisitions by City Departments shall be reviewed by the Public Arts Advisory Commission. Proposed exterior public art acquisitions shall be accompanied by the following information:

- Images, slides, photos or a model of the proposed art
- Biography and professional resume of the artist
- Proposed site and installation plans
- Cost of the art and budget for installation
- Maintenance requirements for the art.

Art proposed for long-term loan (up to five years) to a City department shall be subject to the same considerations outlined above. Art proposed for placement in private offices or in non-public areas of City facilities shall not be subject to the Public Arts Advisory Commission review.

10.0 Conservation and Maintenance of the Public Art Collection

The Public Arts Advisory Commission shall survey the entire Public Art Collection annually in order to meet the following objectives:

- Provide for the regular inspection of public works of art.
- Establish a regular procedure for effecting necessary repairs to public works of art.
- Ensure regular maintenance of public works of art.
- Ensure that all maintenance of public art is completed with the highest standards of professional care and conservation.

10.1 Responsibilities

10.1.1 **The Artist shall:**

- Guarantee and maintain the public work of art against all defects of material or workmanship for a period of five years, or as defined by the Public Arts Advisory Commission, following installation, within the terms of the contract.
- Provide the Public Arts Advisory Commission with: detailed drawings of the installation; detailed specification list of all products and materials used in fabricating the public work of art; a minimum of 24 images depicting the fabrication through installation of the public work of art; and, with detailed instructions regarding routine maintenance/care of the public work of art.
- As City of Wes Des Moines planning evolves in future decades, the artist shall be given the opportunity to comment on, and participate in, all relocating, repairs and restorations that are made during his/her lifetime, provided the artist has supplied the City with current contact information.
- Hold the copyrights for all works of art (preparatory and final) and designs created under City contracts, provided that the artist shall grant the City an irrevocable license to reproduce the work in two-dimensional form for the purposes of education and promoting the City of West Des Moines and the Public Art Program and Collection and other non- commercial purposes.
- Provide current contact information to the City.

10.1.2 **The City Department shall:**

- Be responsible for routine maintenance of public art, upon the advice of City's public art staff, and shall perform all maintenance work in a manner that is consistent with care and conservation requirements supplied by the artist.
- Be responsible for reporting to the Public Arts Advisory Commission any damage to a work of art at a site over which it has jurisdiction.
- Not intentionally destroy, modify, relocate or remove from exhibit any work of art without prior consultation with the Public Arts Advisory Commission and artist.
- Not cause or undertake any non-routine maintenance or repairs to works of art without prior consultation with the Public Arts Advisory Commission.

10.1.3 **The Public Arts Advisory Commission shall:**

- Provide oversight for conducting an annual comprehensive maintenance survey of the Public Art Collection. This survey shall include a report on the location and condition of

each public work of art, photographic documentation, prioritized recommendations for the care, restoration or repair or maintenance of art and estimated costs.

- Communicate with the artist directly to report any necessary modifications to his or her public work of art.
- On the basis of the condition report, the Public Arts Advisory Commission may, for those works of public art in need of attention, recommend:
    1) That no action be taken
    2) That City staff work to ensure the work of art is properly restored
    3) That a professional conservator be engaged to evaluate the condition of the work, provide a treatment proposal, or effect repairs/conservation to the public work of art
    4) That the artist be asked to repair the art for a fair market value fee
    5) That the public work of art be considered for deaccessioning

Public Art Program Principles

1.0 Artist Rights

The City of West Des Moines Public Arts Advisory Commission is committed to a climate wherein artists will thrive and receive the economic benefits of, and recognition for, their work(s) and art. For that reason, it is important that artists retain reasonable control over the integrity of their art and receive equitable compensation for their creative endeavors. At the same time, the Public Arts Advisory Commission must also stay aware of the City's need to balance artists' rights with the necessity of making changes from time to time to City-owned buildings and structures that house public art or have public art incorporated into them.

1.1 Principles

The City of West Des Moines Public Arts Advisory Commission should assure the following rights to artists, which should be embodied in artist contracts for the commissioning or purchase of works of art.

- Recognizing that successful public art is generally inseparable from the site for which it is created, the Public Arts Advisory Commission should encourage the City to acknowledge artists' rights under the federal Visual Artists Rights Act (VARA) and should encourage City departments or site agencies not to move or remove a work of art unless its site has been destroyed, the use of the space has changed, or compelling circumstances require relocation of the work of art. Should it become necessary to move or remove a public work of art, the Public Arts Advisory Commission should encourage the City to make reasonable efforts to consult with the artist before effecting any removal or relocation. However, the Public Arts Advisory Commission and the City should reserve the right to move or remove the public work of art without notification under emergency circumstances where an immediate threat to property or public safety is present.

- Although the City, in its contract with an artist, may ask the artist to waive his or her federal and state rights in order to protect the City's interests, if a public work of art is significantly altered, modified, or destroyed, whether intentionally or unintentionally, the artist retains the right under VARA to disclaim authorship of the public work of art. Should an artist choose to exercise this disclaimer, the Public Arts Advisory Commission should, upon artist's request, officially request that the City department or site agency remove any plaques, labels or other identifying materials that associate the work with the artist.

- The integrity of a work of art depends upon regular conservation and maintenance. The Public Arts Advisory Commission is committed to inspect periodically the public works of art in its collection and make reasonable efforts to ensure that each object is properly and professionally maintained.

- The Public Arts Advisory Commission should use its best efforts to ensure that all maintenance of and repairs to public works of art are accomplished in accordance with any maintenance and repair instructions the artist has provided to the Public Arts Advisory Commission at the time of accession, and that all such maintenance and repairs adhere to the highest professional standards of public art conservation. The Public Arts Advisory Commission should make reasonable efforts to notify the artist before the City departments or site agencies undertake repairs or restorations to the art during the lifetime of the work of art. Where practical, the Public Arts Advisory Commission should seek to ensure that the artist be consulted and given an opportunity to accomplish the repairs or restorations at a reasonable fee for the lifetime of the work of art. The Public Arts Advisory Commission and the City department or site agency reserve the right to make emergency repairs without prior notification to the artist, if an immediate threat to property or public safety is present.

- The artist shall retain all copyrights associated with public works of art accessioned into the permanent collection under this program, including those acquired for the City. The Public Arts Advisory Commission agrees that it should not copy or reproduce the works of art in any way without prior written permission of the artist, except those rights which should be obtained when the artist and City enter into their agreement. Notwithstanding this policy, the Public Arts Advisory Commission and the City reserve the right to make photographs or other two-dimensional representations of the public works of art for public, noncommercial purposes, such as catalogues, brochures, guides and electronic media/social media and websites.

2.0 Artistic Freedom of Expression

The Public Arts Advisory Commission recognizes that free expression is crucial to the making of public works of art of enduring quality. At the same time, public art must be responsive to its immediate site in community settings, its relatively permanent nature, and the sources of its funding.

2.1 Principle

It is the policy of the Public Arts Advisory Commission to encourage free expression by artists participating in the Public Art Program and Collection, consistent with due consideration of the values and aspirations of the citizens of West Des Moines. Community representatives will be invited to serve on Artist/Art Selection Panels to ensure discussion of community sensibilities. Artists selected to participate in the program will be required to engage the community directly in the process of developing their artistic concepts and designs.

3.0 Community Participation and Outreach

The purpose of the Public Art Program and Collection is to serve the citizens of West Des Moines. By building a regular program of educational and promotional activities, a sense of community ownership can be instilled and cultivated. Such activities can generate broader community appreciation of public art and recognition of the role of public art in reflecting the community's culture.

3.1 Principles

The Public Arts Advisory Commission shall make community participation a part of each public art project, as well as of the Public Art Program and Collection as a whole. This goal will be met by utilizing community-based advisory committees, community representation on artist selection panels, and artist interaction with the community.

The Public Arts Advisory Commission will develop a comprehensive approach to educational outreach concerning the Public Art Program and Collection. Elements of this ongoing educational policy shall include programs in public schools, the city library, the parks and recreation department and special events, such as exhibitions, public art tours, artist-in-residence programs, education and/or school programs, publications, brochures, films/videos, social media, websites and public meetings. In addition, avenues such as print and broadcast media will be cultivated in order to give access to the Public Art Program and Collection to the widest possible audience.

In order to implement this policy, the Public Arts Advisory Commission shall create an *ad hoc* community outreach committee to oversee efforts to increase community understanding and participation in the Public Art Program.

4.0 Conflicts of Interest

The Public Arts Advisory Commission recognizes it is essential for local artists and other related professionals to serve as members of the Public Arts Advisory Commission, its subcommittees and selection panels. It further recognizes that artists and other related professionals may have a real or perceived conflict of interest when serving in such a capacity while competing for projects. In general, a conflict of interest may arise whenever a Public Arts Advisory Commission member, advisory committee or panel member has a business, familial or personal relationship that would make it difficult to render an objective decision or create the perception that an objective decision would be difficult. A conflict may also arise whenever a Public Arts Advisory Commission, advisory committee or panel member possesses inside information or has a role in the decision-making process that could influence the outcome of a public art process or project. Therefore, the Public Arts Advisory Commission has established principles to govern service on the Public Arts Advisory Commission and its panels.

4.1 Principles

Members of the Commission

- Must disclose any real or potential conflict of interest.
- Are not eligible for any competition, commission or project during their tenure on the Public Arts Advisory Commission.
- Must withdraw from participating or voting on any competition, commission or project for which any family member or business associate has any financial interest or personal gain.
- Are ineligible for participation in any competition, commission or project of the Public Arts Advisory Commission for a period of one year following the end of an individual's term on the Commission and/or committee.
- Are ineligible for any competition, commission or project on which they voted during service on the Public Arts Advisory Commission, regardless of the length of time that has elapsed following Public Arts Advisory Commission service.

Members of Artist/Art Selection Panels

- Must disclose any real or potential conflict of interest.
- Must withdraw from participation, discussion and voting on any artist who is a family member, business associate or with whom the panel member has a gallery affiliation.
- May not enter any competition, commission or project on which they are serving as panelists or advisory committee members.

5.0 Balance of Local and Non-Local Artists

The Public Arts Advisory Commission recognizes that, while the primary objective of a program is the enhancement of public spaces in the City for the general benefit of its citizenry, a public art program can also be an important tool in developing the community of artists who reside in the city, county, state, region, and internationally.

5.1 Principles

The Public Arts Advisory Commission shall seek a balance over time in the awarding of contracts for public art projects among local, state, regional, national and international artists. Factors such as the size of the public art project, projected budget allocation and fiscal resources, the level of visibility of the public site, and the availability of overall funding, all may influence the decision on the part of the Public Arts Advisory Commission to seek artists from a local, state, regional or national pool of artists. Over time, the Public Arts Advisory Commission is committed to ensuring that a share of public art projects is awarded to local and regional artists, to the extent permitted by law.

6.0 Non-Discrimination

The Public Arts Advisory Commission recognizes the City of West Des Moines' diversity of citizens and seeks to be inclusive in all aspects of the Public Art Program and Collection.

6.1 Principles

The Public Arts Advisory Commission will not discriminate against any artist, program participant or community member, based on race, gender, age, ethnicity, socio-economic status, religious preference, sexual orientation, or political affiliation.

The Public Arts Advisory Commission will take all reasonable and appropriate steps to ensure that the City's public art collection is accessible to all persons, in accordance with the Americans with Disabilities Act.

Appendices

Appendix A

Sample project management schedule for public art projects.

Each public art project management schedule should be reviewed and customized.

The Public Arts Advisory Commission shall annually review and amend as needed a 3-5 Year Plan; and present in public hearings and to City Council for review and approval.

1. The Public Arts Advisory Commission shall identify public art projects/sites to be initiated with the fiscal budget for each project. Broad community engagement may be involved in site selection and fiscal determinations.

2. The Public Arts Advisory Commission shall for each public art project, select/appoint a public art/artist selection panel composed of citizens, representatives of Public Arts Advisory Commission (2), city staff, and others as appropriate.

3. The Artist/Public Art Selection Panel shall define the public art project scope, author the public art statement, and determine the public artist selection process and fiscal allocation. Broad community engagement beyond the selection panel may be involved. These determinations shall be reviewed and approved by the Public Arts Advisory Commission.

4. Finalize public artist solicitation process; invite and/or solicit finalist(s).
    i. Engage public relations on project.
    ii. Plan and implement education and community engagement activities for project.

5. Contract Negotiations with public artist and City procurement procedures.

6. Fabrication and possible visits to public artist's studio to view progress.

7. Mediate, manage and motivate issues between artist, design team, selection panel, community and Public Arts Advisory Commission.

8. Monitor and track project progress and status.

9. Control change orders and eliminate unnecessary costs.

10. Maintain schedule, confirm scale of work and appropriateness for site.

11. Review, project, and monitor details.

12. Facilitate transportation of public art to site.

13. Coordinate site construction/installation, monitor subcontractors, verify insurance, and indemnification.

14. Confirm copyright and transfer of ownership (title) of public art from artist to City.

15. Formally accession public work of art into the permanent Public Art Collection, and add accession number to the object.

16. Monitor and complete project documentation. Creation of object file/record, photo-documentation of object and update Public Art Collection checklist.

17. Finalize and dedicate the public art project.

18. Extend notes of appreciation to public artist, selection panels, contractors, and others as appropriate.

19. Evaluate public art project and process, and incorporate improved processes in future public art projects.

Appendix B

Sample contracts for Design Proposal; Implementation; Proposal and Implementation; and, Consultant are presented.[3]

Contracts should be reviewed and amended for each public art project with appropriate details added to the agreement.

[3] Contract models are derived from University Museums, Iowa State University and *Going Public, A field guide to developments in art in public places*; Jeffrey L. Cruikshank and Pam Korza, Arts Extension Service in cooperation with the visual Arts Program of the National Endowment for the Arts (North Adams, Massachusetts, 1988).

CITY OF WEST DES MOINES, PUBLIC ARTS ADVISORY COMMISSION
PUBLIC ART PROGRAM
[PROJECT TITLE]

DESIGN PROPOSAL

AGREEMENT BY AND BETWEEN OWNER AND ARTIST

THIS AGREEMENT is made on _____ between the City of West Des Moines, acting for City of West Des Moines, Public Arts Advisory Commission, hereinafter referred to as the OWNER, and _____ hereinafter referred to as the ARTIST. The OWNER'S REPRESENTATIVE shall be _____ her/his designee.

WHEREAS, the City of West Des Moines, Iowa desires to commission and acquire site-integrated and site-specific public works of art for the community of West Des Moines, Iowa, and,

WHEREAS, the OWNER desires the ARTIST to create a public work of art, hereinafter referred to as the PUBLIC WORK OF ART, in the ARTIST'S unique style, and expressed with community engagement.

NOW, THEREFORE, in consideration of the mutual promises and undertakings contained herein, the parties agree as follows:

Article 1. Scope of Services
1.1 General

a. The ARTIST shall perform all services and furnish all supplies, materials and equipment as necessary for the design, execution, fabrication, transportation and installation of the Public Work of Art at the site.

b. The ARTIST shall determine the artistic expression, scope, design, color, size, material, texture, of the Public Work of Art, subject to review and acceptance by the OWNER'S REPRESENTATIVE as set forth in this Agreement.

1.2 Proposal

a. As promptly as possible after the execution of the Agreement, the ARTIST shall carry out reasonable site inspections, interviews and research as may be necessary, including meetings with the Public Art Committee(s), city staff, the community, and the project designers, in order to prepare a design Proposal for the Public Work of Art. The OWNER'S REPRESENTATIVE shall make available to the ARTIST the necessary background materials and information on matters affecting the site and installation of the Public Work of Art including, where applicable, a written program of requirements and specifications for the Public Work of Art and the plans for any underlying capital project. It is the intent of the parties that the OWNER'S REPRESENTATIVE and the ARTIST establish a close and cooperative consultation throughout the duration of this Agreement.

b. The OWNER'S REPRESENTATIVE will arrange for the ARTIST to meet with representatives of the Public Art Committee(s) in order for the ARTIST to learn of their concerns.

c. If the inspections, interviews, research and meetings provided for in paragraphs (a) and (b) require more than two (2) trips by the ARTIST to City of West Des Moines, before approval of the Proposal, the OWNER shall reimburse the ARTIST for reasonable expenses for travel and lodging of additional trips as preapproved in writing by the OWNER'S REPRESENTATIVE.

d. Within ninety (90) days after the execution of this agreement, the ARTIST shall prepare and submit the Proposal to the OWNER'S REPRESENTATIVE. The Proposal shall specify such materials, dimensions, weights, finish and preliminary maintenance recommendations and proposed installation method and include such drawings and other documentations and models as are required to present a meaningful representation of the concept and design of the proposed Public Work of Art. The Proposal shall include a budget, not to exceed $ _____ , that includes estimated costs for design, execution, fabrication, transportation and installation and the ARTIST's fee.

e. The OWNER'S REPRESENTATIVE, shall within sixty (60) days following the ARTIST's submission of the Proposal, notify the ARTIST whether it approves or disapproves the Proposal. During this period the ARTIST shall be available as reasonably required to communicate with the OWNER'S REPRESENTATIVE regarding the Proposal.

f. If the OWNER'S REPRESENTATIVE determines that the Proposal is disapproved, it shall provide the ARTIST with a statement in writing of its reasons for disapproval. In such event, the OWNER'S REPRESENTATIVE shall determine if either the ARTIST shall submit a second Proposal for the Public Work of Art within a reasonable period of time specified by the OWNER'S REPRESENTATIVE, or terminate this agreement. Within sixty (60) days following a second Proposal submission by the ARTIST, the OWNER'S REPRESENTATIVE shall notify the ARTIST in writing whether it approves or disapproves the Proposal. If the OWNER'S REPRESENTATIVE shall determine that the second Proposal is disapproved, it shall provide the ARTIST with a statement in writing of its reasons for disapproval, whereupon this agreement shall terminate.

g. In the event of termination of this agreement pursuant to paragraph (f), the ARTIST shall retain the Proposal and all compensation theretofore paid and neither party shall be under any further obligation to the other in respect of the subject matter thereof.

1.3 Design Review

a. Within __ days after the OWNER'S REPRESENTATIVE approves the Proposal, the ARTIST shall, after consultation and collaboration with the OWNER'S REPRESENTATIVE and, city staff, Public Art Committee(s), and project designers, prepare and submit to the OWNER'S REPRESENTATIVE detailed working drawings of the Public Work of Art and the site, together with such other graphic materials as may be reasonably be requested by the OWNER'S REPRESENTATIVE in order to permit the OWNER to carry out structural design review and to certify the compliance of the Public Work of Art with applicable statues and ordinances. Upon request by the ARTIST, the OWNER'S REPRESENTATIVE shall promptly furnish all information, materials and assistance required by the ARTIST in connection with said submission.

b. The OWNER may require the ARTIST to make such revisions to the Proposal as are necessary for the Public Work of Art to comply with applicable statutes, ordinances, or regulations of any governmental regulatory agency having jurisdiction over the project.

c. The OWNER may also request revisions for other practical (non-aesthetic) reasons.

d. The ARTIST shall receive no revision or redesign fees.

e. Within ____ days after its receipt of the ARTIST's submission pursuant to this Section 1.3, the OWNER'S REPRESENTATIVE shall notify the ARTIST of its approval or disapproval of such submission and of all revisions made in the Proposal as a result thereof. Revisions made pursuant to this Section 1.3 become part of the Proposal.

f. Upon approval of the Proposal, the OWNER shall become OWNER of all the studies, sketches, drawings, paintings, diagrams and models or related products as presented in the Proposal to the Public Art Committee(s).

1.4 Risk of Loss. The risk of loss or damage to the Proposal shall be borne by the ARTIST until final acceptance by the OWNER, and the ARTIST shall take such measures as are necessary to protect the proposal from loss or damage until final acceptance.

1.5 Indemnity

a. The ARTIST agrees to indemnify and hold harmless the OWNER from any liabilities, willful or non-willful acts of negligence by the ARTIST or the ARTIST's agents, or any or all elements of loss, theft, mutilation, vandalism or other damage (including that caused by acts of God) that may befall the proposal during any activities related to the planning, creating, or delivery of the proposal.

b. Upon final acceptance of the Proposal, the OWNER shall, to the extent permitted by law, indemnify and hold harmless the ARTIST against any and all claims or liabilities then existing or arising thereafter in connection with the Public Work of Art, the site, the project of this agreement, except claims by the OWNER against the ARTIST and claims which may occur as a result of the ARTIST's breach of the warranties provided in Article 4.

c. The OWNER will require any subcontractor performing work in connection with the proposal produced under this agreement to hold harmless, indemnify and defend the OWNER and the ARTIST, their consultants and each of their officers, agents and employees from any and all liability claims, losses or damage arising out of the subcontractor's negligent acts, errors or omissions in the performance of the proposal, but not including liability that may be due to the acts of the OWNER, the ARTIST, their consultants or their officers, agents, and employees.

Article 2. Compensation and Payment Schedule

2.1 Fixed Fee. The OWNER shall pay the ARTIST a fixed fee of $ _____ , which shall constitute full compensation for all travel, lodging, design, fees, services, and materials to be performed and furnished by the ARTIST under this agreement. The fee shall be paid in the following installments, expressed as percentages of such fixed fee, each installment to represent full and final, nonrefundable payment for all services, expenses, and materials provided prior to the due date thereof. The ARTIST shall invoice the OWNER for each payment request.

a. 50 percent (50%) within thirty (30) days following the execution of this agreement.

b. 50 percent (50%) upon submission of the accepted Proposal to the OWNER'S REPRESENTATIVE payable within thirty (30) days.

2.2 Artist's Expenses. The ARTIST shall be responsible for the payment of all mailing or shipping charges on the Proposal to the OWNER'S REPRESENTATIVE and the costs of all travel by the ARTIST and the ARTIST's agents and employees necessary for the proper performance of the services required under this agreement.

Article 3. Time of Performance

3.1 Duration. The services to be required of the ARTIST as set forth in Article 1 shall be completed in accordance with the schedule for completion of the Public Work of Art as proposed by the ARTIST and approved by the OWNER'S REPRESENTATIVE pursuant Section 1.2, provided that such time limits may be extended or otherwise modified by written agreement between the ARTIST and the OWNER'S REPRESENTATIVE.

Article 4. Warranties

4.1 Warranties of Title. The ARTIST represents and warrants that: (a) the Public Work of Art is solely the result of the artistic effort of the ARTIST; (b) except as otherwise disclosed in writing to the OWNER'S REPRESENTATIVE, the Public Work of Art is unique and original and does not infringe upon any copyright; (c) that the Public Work of Art, or a duplicate thereof, has not been accepted for sale elsewhere; and (d) the Public Work of Art is free and clear of any liens from any source whatever.

Article 5. Insurance

The ARTIST and all employees of the ARTIST shall each effect and maintain insurance to protect the ARTIST from claims under workers compensation acts; claims for damages because of bodily injury including personal injury, sickness or disease, or death of any of their employees or of any person other than their employees; and from claims for damages because of injury to or destruction of tangible property; including loss of use resulting therefrom; and from claims arising out of their performance of professional services caused by errors, omissions, or negligent acts for which the ARTIST is legally liable.

Article 6. Reproduction Rights.

6.1 General. The ARTIST retains all rights under the Copyright Act of 1976, 17 U.S.C., 101 et. seq., and all other rights in and to the Public Work of Art except ownership and possession, except as such rights are limited by this Section 6.1. In view of the intention that the Public Work of Art in its final dimension shall be unique, the ARTIST shall not make any additional duplicate reproductions of the final Public Work of Art, nor shall the ARTIST grant permission to others to do so except with the written permission of the OWNER. The ARTIST grants to the OWNER and its assigns a royalty-free, irrevocable license to make two dimensional reproductions of the Public Work of Art for educational and/or non-commercial purposes, including but not limited to reproductions used in advertising, calendars, posters, brochures, media, publicity, catalogues, city, educational and development projects, or other similar publications, provided that these rights are exercised in a professional manner.

6.2 Notice. All reproductions by the OWNER shall contain a credit to the ARTIST and a copyright notice substantially in the following form: c [ARTIST's name], date of publication.

6.3 Credit to Owner. The ARTIST shall use best efforts to give a credit reading substantially, "an original Public Work of Art owned and commissioned by City of West Des Moines, Public Arts Advisory Commission, West Des Moines, Iowa" in any public showing under the ARTIST'S control of the proposal.

6.4 Registration. The ARTIST shall cause to be registered, with the United States Register of Copyrights, a copyright of the Proposal in the ARTIST'S name.

Article 7. Assignments, Transfers, Subcontracting

7.1 Neither this agreement nor any interest herein shall be transferred by the ARTIST. Any such transfer shall be null and void and shall be cause to annul this agreement.

7.2 Subcontracting by ARTIST. The ARTIST may subcontract portions of the services to be provided hereunder at the ARTIST'S expense provided that said subcontracting shall not negatively affect the design, appearance, or visual quality of the Proposal and shall be carried out under the personal supervision of the ARTIST. The ARTIST must obtain approval from the OWNER'S REPRESENTATIVE prior to hiring any subcontractor. If the OWNER'S REPRESENTATIVE does not approve the hiring of any subcontractor, another subcontractor must be submitted for approval by the OWNER'S REPRESENTATIVE.

Article 8. Termination

If either party to this agreement shall willfully or negligently fail to fulfill in a timely and proper manner, or otherwise violate, any of the covenants, agreements or stipulations material to this agreement, the other party shall thereupon have the right to terminate this agreement by giving written notice to the defaulting party of its intent to terminate specifying the grounds for termination. The defaulting party shall have thirty (30) days after receipt of the notice to cure the default. If it is not cured, then this agreement shall terminate. In the event of default by the OWNER, the OWNER shall promptly compensate the ARTIST for all services performed by the ARTIST prior to termination. In the event of default by the ARTIST, all finished and unfinished drawings, sketches, photographs, and other work products prepared and submitted or prepared for submission by the ARTIST under this agreement shall at the OWNER'S option become its property, provided that no right to fabricate or execute the Public Work of Art shall pass to the OWNER and the OWNER shall compensate the ARTIST pursuant to Article 2 for all services performed by the ARTIST prior to termination; or the ARTIST shall refund all amounts paid by the OWNER in exchange for all finished and unfinished related Public Work of Arts. Notwithstanding the previous sentence, the ARTIST shall not be relieved of liability to the OWNER for damages sustained by the OWNER by virtue of any breach of this Agreement by the ARTIST, and the OWNER may reasonably withhold payments to the ARTIST until such time as the exact amount of such damages due the OWNER from the ARTIST is determined.

Article 9. Compliance

The ARTIST shall be required to comply with Federal, State, and City statutes, ordinances and regulations applicable to the performance of the ARTIST'S services under this agreement.

Article 10. Entire Agreement

This writing embodies the entire agreement and understanding between the parties hereto, and there are no other agreements and understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby.

Article 11. Modification

No alternation, change, or modification of the terms of the agreement shall be valid unless made in writing and signed by both parties hereto and approved by appropriate action of the OWNER.

Article 12. Notices

All notices, requests, demands and other communications which are required or permitted to be given under this agreement shall be in writing and shall be deemed to have been duly given upon the delivery or receipt thereof, as the case may be, if delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, as follows:

A. if the OWNER, to: [name]
City of West Des Moines, Public Arts Advisory Commission
4200 Mills Civic Pkwy.
West Des Moines, Iowa 50265

Phone:
Email:

B. if the ARTIST, to:

Article 13. Additional Agreements
The ARTIST shall recognize the OWNER'S REPRESENTATIVE or designee as its duly authorized representative of the OWNER.

This agreement is executed on day and year first written above.

PUBLIC ARTIST:

_____ _____
[Name] Social Security Number

Recommended by:

_____
[Chairperson's name]
Chair, Public Art Selection Committee

_____
[Name]
[Title]
OWNER'S REPRESENTATIVE

_____
[Name]
[Title]
City of West Des Moines, Public Arts Advisory Commission

OWNER

_____
[Name]
[Title]
City of West Des Moines

ARTIST

_____ _____
(ARTIST name) Social Security Number

CITY OF WEST DES MOINES, PUBLIC ARTS ADVISORY COMMISSION
PUBLIC ART PROGRAM
[Project Title]

PROJECT IMPLEMENTATION

AGREEMENT BY AND BETWEEN OWNER AND ARTIST

THIS AGREEMENT is made on _____ between the City of West Des Moines, acting for City of West Des Moines, Public Arts Advisory Commission, hereinafter referred to as the OWNER, and _____ hereinafter referred to as the ARTIST. The OWNER'S REPRESENTATIVE shall be _____ [name] her/his designee.

WHEREAS, the City of West Des Moines, Iowa desires to commission and acquire site-integrated and site-specific public works of art for the community of West Des Moines, Iowa, and,

WHEREAS, the OWNER desires the ARTIST to create a public work of art, hereinafter referred to as the PUBLIC WORK OF ART, in the ARTIST'S unique style, and expressed with community engagement.

NOW, THEREFORE, in consideration of the mutual promises and undertakings contained herein, the parties agree as follows:

Article 1. Scope of Services

1.1 General

a. The ARTIST shall perform all services and furnish all supplies, materials and equipment as necessary for the design, execution, fabrication, transportation and installation of the Public Work of Art at the site.

b. The ARTIST shall determine the artistic expression, scope, design, color, size, material, texture, of the Public Work of Art, subject to review and acceptance by the OWNER'S REPRESENTATIVE as set forth in this Agreement.

1.2 Execution of the Work

a. After written approval of the submissions and revisions of the approved Proposal, the ARTIST shall furnish the OWNER'S REPRESENTATIVE a tentative schedule for completion of fabrication and installation of the Public Work of Art, including a schedule for the submission of progress reports, if any. After written approval of the schedule by the OWNER, the ARTIST shall fabricate, transport and install the Public Work of Art in accordance with such schedule. Such schedule may be amended by written agreement between the OWNER and the ARTIST.

b. The OWNER shall have the right to review the Public Work of Art at reasonable times during the fabrication thereof. The ARTIST shall submit to the OWNER progress reports in accordance with the schedule provided for in Section 1.2 (a).

c. The ARTIST shall complete the fabrication and installation of the Public Work of Art in substantial conformity with the approved Proposal.

d. The ARTIST shall present to the OWNER'S REPRESENTATIVE in writing for further review and approval any significant changes in scope, design, color, size material or texture of the Public Work of Art not permitted by or not in substantial conformity with the Proposal. A significant change is any change in the scope, design, color, size, material, texture or location of the site of

the Public Work of Art which affects installation, scheduling, site preparation or maintenance for the Public Work of Art or the concept of the Public Work of Art as represented in the Proposal.

1.3 Delivery and Installation

a. The ARTIST shall notify the OWNER'S REPRESENTATIVE in writing when the fabrication of the Public Work of Art is completed and the ARTIST is ready for its delivery and installation at the site.

b. The ARTIST agrees to notify the OWNER'S REPRESENTATIVE, no fewer than (30) days prior to the ARTIST'S intended time of delivery to determine the particulars of delivery time, location and agent designated by the OWNER.

c. The ARTIST shall deliver and install the completed Public Work of Art at the site in compliance with the schedule approved pursuant to Section 1.2 (a).

d. The ARTIST shall be responsible for all expenses, labor and equipment to prepare the site for the timely installation of the PUBLIC WORK OF ART, including footings, spot lighting and mounting devices.

1.4 Post Installation

a. Within 30 days after the installation of the Public Work of Art, the ARTIST shall furnish the OWNER'S REPRESENTATIVE with the following images/photographs of the Public Work of Art:

(i) a minimum of twenty-four (24) color images photographs which document the process and development of the Public Work of Art from beginning fabrication through completion;

(ii) A minimum of twelve (12) color images of the completed/installed Public Work of Art, one taken from at least three different viewpoints;

b. The ARTIST shall be notified of any dates and times for Public Art dedication or presentation ceremonies relating to the Public Art Program. The OWNER shall not be required to pay the ARTIST'S expenses to attend any such ceremonies.

c. The OWNER'S REPRESENTATIVE shall use its best efforts to arrange for publicity for the completed Public Work of Art in such publications and otherwise as may be determined between the OWNER and ARTIST as soon as practicable following installation.

d. Upon installation of the Public Work of Art, the ARTIST shall provide to the OWNER'S REPRESENTATIVE final, written instructions for appropriate maintenance and preservation of the Public Work of Art.

1.5 Final Acceptance

a. The ARTIST shall advise the OWNER'S REPRESENTATIVE in writing when all services in Sections 1.1 through 1.4 (d) have been completed in substantial conformity with the Proposal.

b. The OWNER'S REPRESENTATIVE shall notify the ARTIST in writing of its final acceptance of the Public Work of Art.

c. Final acceptance shall be effective as of: (1) the date of the OWNER'S REPRESENTATIVE'S notification of final acceptance; or, (2) the 30th day after the ARTIST has sent the written notice to the OWNER'S REPRESENTATIVE under Section 1.5 (a) unless the OWNER'S REPRESENTATIVE upon receipt of such notice and prior to the expiration of the 30 day period, gives the ARTIST written notice specifying and describing the services which have not been completed.

1.6 Risk of Loss. The risk of loss or damage to the Public Work of Art shall be borne by the ARTIST until final acceptance by the OWNER, and the ARTIST shall take such measures as are necessary to protect the Public Work of Art from loss or damage until final acceptance.

1.7 Indemnity

a. The ARTIST agrees to indemnify and hold harmless the OWNER from any liabilities, willful or non-willful acts of negligence by the ARTIST or the ARTIST'S agents, or any or all elements of loss, theft, mutilation, vandalism or other damage (including that caused by acts of God) that may befall the Public Work of Art during any activities related to the planning, creation or delivery of the Public Work of Art.

b. Upon final acceptance of the Public Work of Art, the OWNER shall, to the extent permitted by law, indemnify and hold harmless the ARTIST against any and all claims or liabilities then existing in connection with the Public Work of Art, the site, the project or this agreement, except claims by the OWNER against the ARTIST and claims which may occur as a result of the ARTIST'S breach of the warranties provided in Article 4.

c. The OWNER will require any subcontractor performing work in connection with the Public Work of Art produced under this Agreement to hold harmless, indemnify and defend the OWNER and the ARTIST, their consultants and each of their officers, agents and employees from any and all liability claims, losses or damage arising out of the subcontractor's negligent acts, errors or omissions in the performance of the Public Work of Art, but not including liability that may be due to the acts of the OWNER, the ARTIST, their consultants or their officers, agents and employees.

1.8 Title. Title of the Public Work of Art shall pass to the OWNER upon final acceptance.

Article 2. Compensation and Payment Schedule

2.1 Fixed Fee. The OWNER shall pay the ARTIST a fixed rate of $ ____, which shall constitute full compensation for all fees, services, expenses, and materials to be performed and furnished by the ARTIST under this agreement. The fee shall be paid in the following installments, expressed as percentages of such fixed fee, each installment to represent full and final, non- refundable payment for all services and materials provided prior to the due date thereof:

a. ___percent (%) within thirty (30) days upon execution of this agreement.

b. ____percent (%) within thirty (30) days after the ARTIST notifies the OWNER that the Public Work of Art is fabricated and ready for installation at the site.

c. Ten percent (10%) within thirty (30) days after final acceptance. If the ARTIST selects to utilize the OWNER'S services and materials during installation, those fees shall be deducted from the final payment due the ARTIST.

2.2 ARTIST'S Expenses. The ARTIST shall be responsible for the payment of all mailing or shipping charges on submissions to the OWNER'S REPRESENTATIVE, the cost of transporting the Public Work of Art to the site and the costs of all travel by the ARTIST and the ARTIST'S agents and employees necessary for the proper performance of the services required under this agreement.

2.3 Invoices. The ARTIST shall submit an invoice to the OWNER REPRESENTATIVE for each scheduled payment as described in section 2.1. The invoice shall be on ARTIST stationary, and may not be submitted electronically.

Article 3. Time of Performance

3.1 Duration. The services to be required of the ARTIST as set forth in Article 1 shall be completed in accordance with the schedule for completion of the Public Work of Art as proposed by the ARTIST and approved by the OWNER'S REPRESENTATIVE pursuant Section 1.2, provided that such time limits may be extended or otherwise modified by written agreement between the ARTIST and the OWNER'S REPRESENTATIVE.

3.2 Construction Delays. If, when the ARTIST completes fabrication or procurement of the Public Work of Art in accordance with the approved schedule and notifies the OWNER that the Public Work of Art is ready for installation, the ARTIST is delayed from installing the Public Work of Art within the time specified in the schedule as a result of the construction of the site not being sufficiently complete reasonably to permit installation of the Public Work of Art, the OWNER shall provide storage, or reimburse the ARTIST for reasonable transportation and storage costs incurred for the period between the time provided in the schedule for commencement of installation and the date upon which the site is sufficiently complete reasonably to permit installation of the Public Work of Art.

3.3 Early Completion of ARTIST Services. The ARTIST shall bear any transportation and storage costs resulting from the completion of the ARTIST'S services prior to the time provided in the schedule for installation.

3.4 Time Extensions. The OWNER'S REPRESENTATIVE may grant a reasonable extension of time to the ARTIST in the event that there is a delay on the part of the ARTIST in performing its obligations under this Agreement or in completing the underlying capital projects, or if conditions beyond the ARTIST'S control or Acts of God render timely performance of the ARTIST'S services impossible or unexpectedly burdensome. Likewise the ARTIST shall always grant a reasonable extension of time to the OWNER in the event that there is a delay on the part of the OWNER in performing its obligations under this Agreement, or if conditions beyond the OWNER'S control or Acts of God render timely performance of the OWNER'S services impossible or unexpectedly burdensome. Failure to fulfill contractual obligations due to conditions beyond either party's reasonable control will not be considered a breach of contract; provided that such obligations shall be suspended only for the duration of such condition.

Article 4. Warranties

4.1 Warranties of Title. The ARTIST represents and warrants that: (a) the Public Work of Art is solely the result of the artistic effort of the ARTIST; (b) except as otherwise disclosed in writing to the OWNER'S REPRESENTATIVE, the Public Work of Art is unique and original and does not infringe upon any copyright; (c) that the Public Work of Art, or a duplicate thereof, has not been accepted for sale elsewhere; and (d) the Public Work of Art is free and clear of any liens from any source whatever.

4.2 Warranties of Quality and Condition. The ARTIST represents and warrants, except as otherwise disclosed to the OWNER in writing in connection with the submission of the Proposal and pursuant to Article 1 that: (a) the execution and fabrication of the Public Work of Art will be performed in a high-quality, workmanlike manner; (b) the Public Work of Art, as fabricated and installed, will be free of defects in material and workmanship, including any defects consisting of inherent vice or qualities which cause or accelerate deterioration of the Public Work of Art; and (c) reasonable maintenance recommendations to be submitted by the ARTIST to the OWNER'S REPRESENTATIVE hereunder.

The warranties described in this Section 4.2 shall survive for a period of five years after the final acceptance of the Public Work of Art. The OWNER shall give notice to the ARTIST of any observed breach with reasonable promptness. The ARTIST shall, at the request of the OWNER, and at no cost to the OWNER, cure reasonably and promptly the breach of any such warranty which is curable by the ARTIST and which cure is consistent with professional conservation standards (including, for example, cure by means of repair or refabrication of the Public Work of Art).

Article 5. Insurance

The ARTIST and all employees of the ARTIST shall each effect and maintain insurance to protect the ARTIST from claims under workers compensation acts; claims for damages because of bodily injury including personal injury, sickness or disease, or death of any of their employees or of any person other than their employees; and from claims for damages because of injury to or destruction of tangible property; including loss of use resulting therefrom; and from claims arising out of their performance of professional services caused by errors, omissions, or negligent acts for which the ARTIST is legally liable.

Article 6. Reproduction Rights.

6.1 General. The ARTIST retains all rights under the Copyright Act of 1976, 17 U.S.C., 101 et. seq., and all other rights in and to the Public Work of Art except ownership and possession, except as such rights are limited by this Section 6.1. In view of the intention that the Public Work of Art in its final dimension shall be unique, the ARTIST shall not make any additional duplicate reproductions of the final Public Work of Art, nor shall the ARTIST grant permission to others to do so except with the written permission of the OWNER. The ARTIST grants to the OWNER and its assigns a royalty-free, irrevocable license to make two dimensional reproductions of the Public Work of Art for educational and/or non-commercial purposes, including but not limited to reproductions used in advertising, calendars, posters, brochures, media, publicity, catalogues, City of West Des Moines educational and development projects, or other similar publications, provided that these rights are exercised in a professional manner.

6.2 Notice. All reproductions by the OWNER shall contain a credit to the ARTIST and a copyright notice substantially in the following form: © [ARTIST'S NAME], date of publication.

6.3 Credit to Owner. The ARTIST shall use best efforts to give a credit reading substantially, "an original Public Work of Art owned and commissioned by City of West Des Moines, Public Arts Advisory Commission, West Des Moines, Iowa" in any public showing under the ARTIST'S control of reproductions of the Public Work of Art.

6.4 Registration. The ARTIST shall cause to be registered, with the United States Register of Copyrights, a copyright of the Public Work of Art in the ARTIST'S name.

Article 7. ARTIST'S Rights

7.1 Identification. The OWNER shall, at its expense, prepare and install at the site a plaque identifying the ARTIST, the title of the Public Work of Art, the year of completion, and the Public Art Program; and shall reasonably maintain such notice to the extent as may be practicable.

7.2 Maintenance. The OWNER recognizes that maintenance of the Public Work of Art on a regular basis is essential to the integrity of the Public Work of Art. The OWNER shall reasonably

assure that the Public Work of Art is properly maintained and protected, taking into account the instructions of the ARTIST provided in accordance with Section 1.4 (e).

7.3 Alteration of the Work or of the Site.

a. Except as provided under subsection 7.3(b), below, The OWNER agrees that it will not intentionally damage, alter, modify or change the Public Work of Art without the prior written approval of the ARTIST.

b. The OWNER reserves the right to alter the location of the Public Work of Art; relocate the Public Work of Art to another site; and remove the Public Work of Art from public display as necessitated by city development and planning, or as the OWNER determines as appropriate. The following provisions shall apply to relocation or removal:

(i) While the OWNER shall attempt to remove Public Work of Art in such a way as to affect the Public Work of Art, it is the parties understanding that such removal may result in damage, alternation, modification, destruction, distortion or other change of the Public Work of Art. The ARTIST acknowledges that this provision shall quality under 17 U.S. C. Section 113, (d) so as to waive rights under 17 U.S.C. Section 106A.

(ii) If, at the time of removal, it is determined that the Public Work of Art may be removed without damage, alteration, modification, destruction, distortion or other change, OWNER shall give notice as required by 17 U.S.C. Section 113 (d) (2) and (3). On completion of the Public Work of Art, the ARTIST agrees to file the records, including ARTIST'S identity and address, with the Register of Copyrights as provided under 17 U.S.C. Section 113 (d) (3). The ARTIST further agrees to update information with the Register of Copyrights so as to permit notification of intent to remove the Public Work of Art.

7.4 Permanent Record. The OWNER'S REPRESENTATIVE shall maintain on permanent file a record of this Agreement and the location and disposition of the Public Work of Art.

Article 8. ARTIST as Independent Contractor.

The ARTIST shall perform all work under this Agreement as an independent contractor and not as an agent or an employee of the OWNER. The ARTIST shall not be supervised by any employee or official of the OWNER, nor shall the ARTIST exercise supervision over any employee or official of the OWNER.

Article 9. Assignments, Transfer, Subcontracting

9.1 Neither this Agreement nor any interest herein shall be transferred by the ARTIST. Any such transfer shall be null and void and shall be cause to annul this Agreement.

9.2 Subcontracting by ARTIST. The ARTIST may subcontract portions of the services to be provided hereunder at the ARTIST'S expense provided that said subcontracting shall not negatively affect the design, appearance, or visual quality of the Proposal and shall be carried out under the personal supervision of the ARTIST. The ARTIST must obtain approval from the OWNER'S REPRESENTATIVE prior to hiring any subcontractor. If the OWNER'S REPRESENTATIVE does not approve the hiring of any subcontractor, another subcontractor must be submitted for approval by the OWNER'S REPRESENTATIVE.

Article 10. Termination

If either party to this agreement shall willfully or negligently fail to fulfill in a timely and proper manner, or otherwise violate, any of the covenants, agreements or stipulations material to this agreement, the other party shall thereupon have the right to terminate this agreement by giving written notice to the defaulting party of its intent to terminate specifying the grounds for termination. The defaulting party shall have thirty (30) days after receipt of the notice to cure the default. If it is not cured, then this agreement shall terminate. In the event of default by the OWNER, the OWNER shall promptly compensate the ARTIST for all services performed by the ARTIST prior to termination. In the event of default by the ARTIST, all finished and unfinished drawings, sketches, photographs, and other work products prepared and submitted or prepared for submission by the ARTIST under this agreement shall at the OWNER'S option become its property, provided that no right to fabricate or execute the Public Work of Art shall pass to the OWNER and the OWNER shall compensate the ARTIST pursuant to Article 2 for all services performed by the ARTIST prior to termination; or the ARTIST shall refund all amounts paid by the OWNER in exchange for all finished and unfinished related Public Works of Art. Notwithstanding the previous sentence, the ARTIST shall not be relieved of liability to the OWNER for damages sustained by the OWNER by virtue of any breach of this Agreement by the ARTIST, and the OWNER may reasonably withhold payments to the ARTIST until such time as the exact amount of such damages due the OWNER from the ARTIST is determined.

Article 11. Compliance

The ARTIST shall be required to comply with Federal, State, and City statutes, ordinances and regulations applicable to the performance of the ARTIST'S services under this agreement.

Article 12. Entire Agreement

This writing embodies the entire agreement and understanding between the parties hereto, and there are no other agreements and understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby.

Article 13. Modification

No alternation, change, or modification of the terms of the agreement shall be valid unless made in writing and signed by both parties hereto and approved by appropriate action of the OWNER.

Article 14. Notices

All notices, requests, demands and other communications which are required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given upon the delivery or receipt thereof, as the case may be, if delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, as follows:

a. if to the OWNER, to: [name]
City of West Des Moines, Public Arts Advisory Commission
4200 Mills Civic Pkwy.
West Des Moines, Iowa 50265

Phone:
E-mail:

b. if the ARTIST, to:

Article 15. Additional Agreements
The ARTIST shall recognize the OWNER'S REPRESENTATIVE or designee as its duly authorized representative of the OWNER.

This agreement is executed on day and year first written above.

PUBLIC ARTIST:

_____ _____
[Name] Social Security Number

Recommended by:

_____
[Chairperson's name]
Chair, Public Art Selection Committee

_____
[Name]
[Title]
OWNER'S REPRESENTATIVE

_____
[Name]
[title]
City of West Des Moines, Public Arts Advisory Commission

OWNER

_____
[Name]
[Title]
City of West Des Moines

CITY OF WEST DES MOINES, PUBLIC ARTS ADVISORY COMMISSION
PUBLIC ART PROGRAM
[PROJECT TITLE]

PROPOSAL AND PROJECT IMPLEMENTATION
AGREEMENT BY AND BETWEEN OWNER AND ARTIST

THIS AGREEMENT is made on _____ between the City of West Des Moines acting for City of West Des Moines, Public Arts Advisory Commission, hereinafter referred to as the OWNER, and _____ _____hereinafter referred to as the ARTIST. The OWNER'S REPRESENTATIVE shall be the [name] _____ her/his designee.

WHEREAS, the City of West Des Moines, Iowa desires to commission and acquire site-integrated and site-specific public works of art for the community of West Des Moines, Iowa, and,

WHEREAS, the OWNER desires the ARTIST to create a public work of art, hereinafter referred to as the PUBLIC WORK OF ART, in the ARTIST'S unique style, and expressed with community engagement.

NOW, THEREFORE, in consideration of the mutual promises and undertakings contained herein, the parties agree as follows:

Article 1. Scope of Services
1.1 General

a. The ARTIST shall perform all services and furnish all supplies, materials and equipment as necessary for the design, execution, fabrication, transportation and installation of the Public Work of Art at the site.

b. The ARTIST shall determine the artistic expression, scope, design, color, size, material, texture, of the Public Work of Art, subject to review and acceptance by the OWNER'S REPRESENTATIVE as set forth in this Agreement.

1.2 Proposal

a. As promptly as possible after the execution of the Agreement, the ARTIST shall carry out reasonable site inspections, interviews and research as may be necessary, including meetings with the Public Art Committee(s); city staff; and the project designers, in order to prepare a design Proposal for the Public Work of Art. The OWNERS REPRESENTATIVE shall make available to the ARTIST the necessary background materials and information on matters affecting the site and installation of the Public Work of Art including, where applicable, a written program of requirements and specifications for the Public Work of Art and the plans for their underlying capital project. It is the intent of the parties that the OWNERS REPRESENTATIVE and the ARTIST establish a close and cooperative consultation throughout the duration of this Agreement.

b. The OWNERS REPRESENTATIVE will arrange for the ARTIST to meet with representatives of the Public Art Committee(s) in order for the ARTIST to learn of their community values and concerns.

c. If the inspections, interviews, research and meetings provided for in paragraphs (a) and (b) require more than two (2) trips by the ARTIST to City of West Des Moines, before approval of the Proposal, the OWNER shall reimburse the ARTIST for reasonable expenses for travel and lodging of additional trips as pre-approved in writing and arranged for by the OWNER'S REPRESENTATIVE.

d. Within ninety (90) days after the execution of this Agreement, the ARTIST shall prepare and submit the Proposal to the OWNER'S REPRESENTATIVE. The Proposal shall specify such materials, textures, colors, dimensions, weights, finish and preliminary maintenance recommendations and proposed installation method and include such drawings and other documentation's and models as are required to present a meaningful representation of the concept and design of the proposed Public Work of Art. The ARTIST shall also prepare a narrative statement describing the relevance and meaning of the Proposal in relation to this Public Art Project, and provide written instructions for proposed and appropriate maintenance and preservation of the Public Work of Art. The Proposal shall include a budget, not to exceed $_____, that includes estimated costs for design, execution, fabrication, transportation and installation and the ARTIST'S fee.

e. The OWNER'S REPRESENTATIVE, shall within thirty (30) days following the ARTIST'S submission of the Proposal, notify the ARTIST whether it approves or disapproves the Proposal. During this period the ARTIST shall be available as reasonably required to communicate with the OWNER'S REPRESENTATIVE regarding the Proposal.

f. If the OWNER'S REPRESENTATIVE determines that the Proposal is disapproved, it shall provide the ARTIST with a statement in writing of its reasons for such disapproval. In such event, the OWNER'S REPRESENTATIVE shall determine if either the ARTIST shall submit a second Proposal for the Public Work of Art within a reasonable period of time specified by the OWNER'S REPRESENTATIVE, or to terminate this agreement. Within thirty (30) days following a second Proposal submission by the ARTIST, the OWNER'S REPRESENTATIVE shall notify the ARTIST in writing whether it approves or disapproves the Proposal. If the OWNER'S REPRESENTATIVE shall determine that the second proposal is disapproved, it shall provide the ARTIST with a statement in writing of its reasons for disapproval, whereupon this Agreement shall terminate.

g. In the event of termination of the Agreement pursuant to paragraph (f), the ARTIST shall retain the Proposal and all compensation theretofore paid and neither party shall be under any future obligation to the other in respect of the subject matter thereof.

h. Although the ARTIST shall have the responsibility and authority for all aspects of the Public Work of Art, the ARTIST shall give appropriate consideration to input received from the OWNER'S REPRESENTATIVE, the project designers; city staff and the Public Art Committee(s).

I. The ARTIST may provide input to the OWNER'S REPRESENTATIVE with respect to all of the other physical elements of the site locations: including [landscape, lighting, foundations, sidewalks, plant material, signs, roadways, etc.], but the OWNER shall have the final authority for all such other physical elements beyond the Public Work of Art.

1.3 Design Review

a. Within ____ days after the OWNER'S REPRESENTATIVE approves the Proposal, the ARTIST shall, after consultation and collaboration with the OWNER'S REPRESENTATIVE, city staff and project designers, prepare and submit to the OWNER'S REPRESENTATIVE detailed working drawings of the Public Work of Art and the site, together with such other graphic materials as may reasonably be requested by the OWNER'S REPRESENTATIVE in order to permit the OWNER to carry out structural design review and to certify the compliance of the Public Work of Art with applicable statutes and ordinances. Upon request by the ARTIST, the OWNER'S REPRESENTATIVE shall promptly furnish all information, materials, and assistance required by the ARTIST in connection with said submission.

b. The OWNER may require the ARTIST to make such revisions to the Proposal as are necessary for the Public Work of Art to comply with applicable statutes, ordinances, regulations or requirements of any governmental regulatory agency having jurisdiction over the project.

c. The OWNER may also request revisions for other practical (non-aesthetic) reasons.

d. The ARTIST shall receive no revision or redesign fees.

e. Within _____ days after its receipt of the ARTIST'S submission pursuant to this Section 1.3, the OWNER'S REPRESENTATIVE shall notify the ARTIST of its approval or disapproval of such submission and of all revisions made in the Proposal as a result thereof. Revisions made pursuant to the Section 1.3 become part of the Proposal.

f. Upon approval of the Proposal, the OWNER shall become owner of all the studies, sketches, drawings, paintings, diagrams, working drawings, graphic material, and models or related products as presented in the Proposal to the Public Art Committee(s).

1.4 Execution of the Work

a. After written approval of the submissions and revisions made pursuant to Section 1.3, the ARTIST shall furnish the OWNER'S REPRESENTATIVE a tentative schedule for completion of fabrication and installation of the Public Work of Art, including a schedule for the submission of progress reports, if any. After written approval of the schedule by the OWNER'S REPRESENTATIVE, the ARTIST shall fabricate, transport and install the Public Work of Art in accordance with such schedule. Such schedule may be amended by written agreement between the OWNER'S REPRESENTATIVE and the ARTIST.

b. The OWNER shall have the right to review the Art Work at reasonable times during the fabrication thereof. The ARTIST shall submit to the OWNER progress reports in accordance with the schedule provided for in Section 1.4 (a)

c. The ARTIST shall complete the fabrication and installation of the Public Work of Art in substantial conformity with the Proposal.

d. The ARTIST shall present to the OWNER'S REPRESENTATIVE in writing for further review and approval any significant changes in scope, design, color, size, material or texture of the Public Work of Art not permitted by or not in substantial conformity with the Proposal. A significant change is any change in scope, design, color, size, material, texture or location of the site of the Public Work of Art which affects installation, scheduling, site preparation or maintenance for the Public Work of Art or the concept of the Public Work of Art as represented in the Proposal.

1.5 Delivery and Installation

a. The ARTIST shall notify the OWNER'S REPRESENTATIVE in writing when the fabrication of the Public Work of Art is completed and the ARTIST is ready for its delivery and installation at the site.

b. The ARTIST agrees to notify the OWNER'S REPRESENTATIVE, no fewer than thirty (30) days prior to the ARTIST'S intended time of delivery to determine the particulars of delivery including time, location and agent designated by the OWNER.

c. The ARTIST shall deliver and install the completed Public Work of Art at the site in compliance with the schedule approved pursuant to Section 1.4.(a).

d. The ARTIST shall be responsible for all expenses, labor, and equipment to prepare the site for the timely installation of the Public Work of Art, including footings, spot lighting and mounting devices.

1.6 Post-Installation

a. Within 30 days after the installation of the Public Work of Art, the ARTIST shall furnish the OWNER'S REPRESENTATIVE with the following photographs/images of the Public Work of Art:

(i) a minimum of twenty-four (24) images which document the process and development of the Public Work of Art from beginning fabrication through completion. Images must be 600 dpi, and suitable for electronic and print publication.

(ii) a minimum of twelve (12) images of the completed and installed Public Work of Art, taken from at least three different viewpoints;

b. The ARTIST shall be notified of any dates and times for public art dedication or presentation ceremonies relating to the Public Art Program. The OWNER shall not be required to pay the ARTIST'S expenses to attend any such ceremonies.

c. The OWNER'S REPRESENTATIVE shall use its best efforts to arrange for publicity for the completed Public Work of Art in such publications as may be determined between the OWNER'S REPRESENTATIVE and the ARTIST as soon as practicable following installation.

d. Upon installation of the Public Work of Art, the ARTIST shall provide to the OWNER'S REPRESENTATIVE written, final instructions for appropriate maintenance and preservation of the Public Work of Art.

1.7 Final Acceptance

a. The ARTIST shall advise the OWNER'S REPRESENTATIVE in writing when all services required by Article 1, including those described in Section 1.6. (c) have been completed in substantial conformity with the Proposal.

b. The OWNER'S REPRESENTATIVE shall notify the ARTIST in writing of its final acceptance of the Public Work of Art.

c. Final acceptance shall be effective as the earlier of: (1) the date of the OWNER'S REPRESENTATIVE'S notification of final acceptance; or, (2) the 60th day after the ARTIST has sent the written notice to the OWNER'S REPRESENTATIVE under section 1.7. (a) unless the OWNER'S REPRESENTATIVE upon receipt of such notice and prior to the expiration of the 60-day period, gives the ARTIST written notice specifying and describing the services which have not been completed.

1.8 Risk of Loss

The risk of loss or damage to the Public Work of Art shall be borne by the ARTIST until final acceptance by the OWNER, and the ARTIST shall take such measures as are necessary to protect the Public Work of Art from loss or damage until final acceptance

1.9 Indemnity

a. The ARTIST agrees to indemnify and hold harmless the OWNER from any liabilities, willful or non-willful acts of negligence by the ARTIST or the ARTIST'S subcontractors or agents, for any loss, theft, mutilation, vandalism or other damage (including that caused by acts of God) that may befall the Public Work of Art during any activities related to the planning, creation, delivery or installation of the Public Work of Art, or for any failure of warranty as described in Article 4.

b. Upon final acceptance of the Public Work of Art, and to the extent permitted by Iowa law, the OWNER shall indemnify and hold harmless the ARTIST against any and all claims or liabilities arising thereafter in connection with the Public Work of Art, the site, the project or this agreement, caused by the OWNER'S negligence, except claims which may occur as a result of the ARTIST'S breach of the warranties provided in Article 4.

1.10 Title. Title to the Public Work of Art shall pass to the OWNER upon final acceptance.

Article 2. Compensation and Payment Schedule

2.1 Fixed Fee. The OWNER shall pay the ARTIST a fixed fee of $ ____, which shall constitute full compensation for all fees, services, expenses, and materials to be performed and furnished by the ARTIST under this agreement. The fee shall be paid in the following installments, expressed as percentages of such fixed fee, each installment to represent full and final, non-refundable payment for all services, expenses, and materials provided prior to the due date thereof. The ARTIST shall invoice the OWNER for each payment request.

a. ___percent (%) upon execution of this agreement, recognizing the ARTIST has already invested time and expense in preliminary design coordination with the OWNER.

b.__percent (%) within sixty (60) days after the OWNER notifies the ARTIST of its approval of the Proposal;

c.____ percent (%) within sixty (60) days after the OWNER notifies the ARTIST of its approval of the submission of detailed working drawings required under Section 1.3

d.____ percent (%) within thirty (30) days after the ARTIST notifies the OWNER that the Public Work of Art is fabricated and ready for installation at the site.

e. Ten percent (10%) within thirty (30) days after final acceptance. If the ARTIST selects to utilize the OWNER'S services and materials during installation, those fees shall be deducted from the final payment due the ARTIST.

2.2 ARTIST'S Expenses. The ARTIST shall be responsible for the payment of all mailing or shipping charges on submissions to the OWNER'S REPRESENTATIVE, the cost of transporting the Public Work of Art to the site and the costs of all travel by the ARTIST and the ARTIST'S agents and employees necessary for the proper performance of the services required under this agreement.

Article 3. Time of Performance

3.1 Duration. The services to be required of the ARTIST as set forth in Article 1 shall be completed in accordance with the schedule for completion of the Public Work of Art as proposed by the ARTIST and approved by the OWNER'S REPRESENTATIVE pursuant Section 1.4, provided that such time limits may be extended or otherwise modified by written agreement between the ARTIST and the OWNER'S REPRESENTATIVE.

3.2 Construction Delays. If, when the ARTIST completes fabrication or procurement of the Public Work of Art in accordance with the approved schedule and notifies the OWNER that the Public Work of Art is ready for installation, the ARTIST is delayed from installing the Public Work of Art within the time specified in the schedule as a result of the construction of the site not being sufficiently complete reasonably to permit installation of the Public Work of Art, the OWNER shall provide storage, or reimburse the ARTIST for reasonable transportation and storage costs incurred for the period between the time provided in the schedule for commencement of installation and the date upon which the site is sufficiently complete reasonably to permit installation of the Public Work of Art.

3.3 Early Completion of ARTIST Services. The ARTIST shall bear any transportation and storage costs resulting from the completion of the ARTIST'S services prior to the time provided in the schedule for installation.

3.4 Time Extensions. The OWNER'S REPRESENTATIVE may grant a reasonable extension of time to the ARTIST in the event that there is a delay on the part of the OWNER in performing its obligations under this Agreement or in completing the underlying capital projects, or if conditions

beyond the ARTIST'S control or Acts of God render timely performance of the ARTIST'S services impossible or unexpectedly burdensome. Likewise the ARTIST shall always grant a reasonable extension of time to the OWNER in the event that there is a delay on the part of the ARTIST in performing its obligations under this Agreement, or if conditions beyond the OWNER'S control or Acts of God render timely performance of the OWNER'S services impossible or unexpectedly burdensome. Failure to fulfill contractual obligations due to conditions beyond either party's reasonable control will not be considered a breach of contract; provided that such obligations shall be suspended only for the duration of such condition.

Article 4. Warranties

4.1 Warranties of Title. The ARTIST represents and warrants that: (a) the Public Work of Art is solely the result of the artistic effort of the ARTIST; (b) except as otherwise disclosed in writing to the OWNER'S REPRESENTATIVE, the Public Work of Art is unique and original and does not infringe upon any copyright; (c) that the Public Work of Art, or a duplicate thereof, has not been accepted for sale elsewhere; and (d) the Public Work of Art is free and clear of any liens from any source whatever.

4.2 Warranties of Quality and Condition. The ARTIST represents and warrants, except as otherwise disclosed to the OWNER in writing in connection with the submission of the Proposal and pursuant to Article 1 that: (a) the execution and fabrication of the Public Work of Art will be performed in a high-quality workmanlike manner; (b) the Public Work of Art, as fabricated and installed, will be free of defects in material and workmanship, including any defects consisting of inherent vice or qualities which cause or accelerate deterioration of the Public Work of Art; and (c) reasonable maintenance and preservation instructions to be submitted by the ARTIST to the OWNER'S REPRESENTATIVE hereunder, shall adequately maintain and preserve the Public Work of Art.

The warranties described in this Article 4 shall survive for a period of five years after the final acceptance of the Public Work of Art. The OWNER shall give notice to the ARTIST of any observed breach with reasonable promptness. The ARTIST shall, at the request of the OWNER, and at no cost to the OWNER, cure reasonably and promptly the breach of any such warranty which is curable by the ARTIST and which cure is consistent with professional conservation standards (including, for example, cure by means of repair or refabrication of the Public Work of Art).

Article 5. Insurance

The ARTIST and all employees of the ARTIST shall each effect and maintain insurance to protect the ARTIST from claims under workers compensation acts; claims for damages because of bodily injury including personal injury, sickness or disease, or death of any of their employees or of any person other than their employees; and from claims for damages because of injury to or destruction of tangible property; including loss of use resulting therefrom; and from claims arising out of their performance of professional services caused by errors, omissions, or negligent acts for which the ARTIST is legally liable.

Article 6. Reproduction Rights.

6.1 General. The ARTIST retains all rights under the Copyright Act of 1976, 17 U.S.C., 101 et. seq., and all other rights in and to the Public Work of Art except ownership and possession, except as such rights are limited by this Section 6.1. In view of the intention that the Public Work of Art in its final dimension shall be unique, the ARTIST shall not make any additional duplicate

reproductions of the final Public Work of Art, nor shall the ARTIST grant permission to others to do so except with the written permission of the OWNER. The ARTIST grants to the OWNER and its assigns a royalty-free, irrevocable license to make two dimensional reproductions of the Public Work of Art for educational and/or non-profit purposes, including but not limited to reproductions used in advertising, calendars, posters, brochures, clothing, media, publicity, catalogues, city, educational and development projects, or other similar publications, provided that these rights are exercised in a professional manner, which license shall be assigned by the OWNER without the consent of the ARTIST.

6.2 Notice. All reproductions by the OWNER shall contain a credit to the ARTIST and a copyright notice substantially in the following form: © [ARTIST'S NAME], date of publication.

6.3 Credit to Owner. The ARTISTS shall use best efforts to give a credit reading substantially, "An original public work of art commissioned for _____ [project], City of West Des Moines, Public Arts Advisory Commission. In the permanent [Title]_____ Collection, Public Arts Advisory Commission, West Des Moines, Iowa" in any public showing under the ARTIST'S control of reproductions of the Public Work of Art.

6.4 Registration. The ARTIST shall cause to be registered, with the United States Register of Copyrights, a copyright of the Public Work of Art in the ARTIST'S name.

Article 7. IDENTIFICATION and ARTIST'S Rights

7.1 Identification. The ARTIST shall incorporate into the PUBLIC WORK OF ART text or plaque at the site identifying the ARTIST, the title of the Public Work of Art, the year of completion, and the City of West Des Moines Public Art Program, Public Arts Advisory Commission. The final wording shall be mutually agreed upon by ARTIST and OWNER'S REPRESENTATIVE.

7.2 Maintenance. The OWNER recognizes that maintenance of the Public Work of Art on a regular basis is essential to the integrity of the Public Work of Art. The OWNER shall reasonably assure that the Public Work of Art is properly maintained and protected, taking into account the instructions of the ARTIST provided in accordance with Section 1.6 (e).

7.3 Alteration of the Public Work of Art or of the Site.

a. Except as provided under subsection 7.3(b), below, The OWNER agrees that it will not intentionally damage, alter, modify or change the Public Work of Art without the prior written approval of the ARTIST.

b. The OWNER reserves the right to alter the location of the Public Work of Art; relocate the Public Work of Art to another site; and remove the Public Work of Art from public display as necessitated by city development and planning, or as the OWNER determines as appropriate. The following provisions shall apply to relocation or removal:

(i) While the OWNER shall attempt to remove Public Work of Art in such a way as to affect the Public Work of Art, it is the parties understanding that such removal may result in damage, alternation, modification, destruction, distortion or other change of the Public Work of Art. The ARTIST acknowledges that this provision shall qualify under 17 U.S. C. Section 113,(d) so as to waive rights under 17 U.S.C. Section 106A.

(ii) If, at the time of removal, it is determined that the Public Work of Art may be removed without damage, alteration, modification, destruction, distortion or other change, OWNER shall give notice as required by 17 U.S.C. Section 113 (d) (2) and (3). On completion of

the Public Work of Art, the ARTIST agrees to file the records, including ARTIST'S identity and address, with the Register of Copyrights as provided under 17 U.S.C. Section 113 (d) (3). The ARTIST further agrees to update information with the Register of Copyrights so as to permit notification of intent to remove the Public Work of Art.

7.4 Permanent Record. The OWNER'S REPRESENTATIVE shall maintain on permanent file a record of this Agreement and the location and disposition of the Public Work of Art.

Article 8. ARTIST as Independent Contractor.
The ARTIST shall perform all work under this Agreement as an independent contractor and not as an agent or an employee of the OWNER. The ARTIST shall not be supervised by any employee or official of the OWNER, nor shall the ARTIST exercise supervision over any employee or official of the OWNER.

Article 9. Assignments, Transfer, Subcontracting
9.1 Neither this Agreement nor any interest herein shall be transferred or assigned by the ARTIST. Any such transfer shall be null and void and shall be cause to annul this Agreement.

9.2 Subcontracting by ARTIST. The ARTIST may subcontract portions of the services to be provided hereunder at the ARTIST'S expense provided that said subcontracting shall not negatively affect the design, appearance, or visual quality of the Proposal or Public Work of Art, and shall be carried out under the personal supervision of the ARTIST. The ARTIST must obtain approval from the OWNER'S REPRESENTATIVE prior to hiring any subcontractor. If the OWNER'S REPRESENTATIVE does not approve the hiring of any subcontractor, another subcontractor must be submitted for approval by the OWNER'S REPRESENTATIVE.

Article 10. Termination
If either party to this agreement shall willfully or negligently fail to fulfill in a timely and proper manner, or otherwise violate, any of the covenants, agreements or stipulations material to this agreement, the other party shall thereupon have the right to terminate this agreement by giving written notice to the defaulting party of its intent to terminate specifying the grounds for termination. The defaulting party shall have thirty (30) days after receipt of the notice to cure the default. If it is not cured, then this agreement shall terminate. In the event of default by the OWNER, the OWNER shall promptly compensate the ARTIST for all services performed by the ARTIST prior to termination. In the event of default by the ARTIST, all finished and unfinished drawings, sketches, photographs, and other work products prepared and submitted or prepared for submission by the ARTIST under this agreement shall at the OWNER'S option become its property, provided that no right to fabricate or execute the Public Work of Art shall pass to the OWNER and the OWNER shall compensate the ARTIST pursuant to Article 2 for all services performed by the ARTIST prior to termination; or at the ARTIST'S election, the ARTIST shall refund all amounts paid by the OWNER in exchange for all finished and unfinished related Public Work of Arts. Notwithstanding the previous sentence, the ARTIST shall not be relieved of liability to the OWNER for damages sustained by the OWNER by virtue of any breach of this Agreement by the ARTIST, and the OWNER may reasonably withhold payments to the ARTIST until such time as the exact amount of such damages due the OWNER from the ARTIST is determined.

Article 11. Compliance

The ARTIST shall be required to comply with Federal, State, and City statutes, ordinances and regulations applicable to the performance of the ARTIST'S services under this agreement.

Article 12. Entire Agreement
This writing embodies the entire agreement and understanding between the parties hereto, and there are no other agreements and understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby.

Article 13. Modification
No alternation, change, or modification of the terms of the agreement shall be valid unless made in writing and signed by both parties hereto and approved by appropriate action of the OWNER.

Article 14. Notices
All notices, requests, demands and other communications which are required or permitted to be given under this agreement shall be in writing and shall be deemed to have been duly given upon the delivery or receipt thereof, as the case may be, if delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, as follows:

a. if the OWNER, to: [name]
City of West Des Moines, Public Arts Advisory Commission
4200 Mills Civic Pkwy.
West Des Moines, Iowa 50265

Phone:
E-mail:

b. if the ARTIST, to:

Article 15. Additional Agreements
The ARTIST shall recognize the OWNER'S REPRESENTATIVE or designee as its duly authorized representative of the OWNER.

This agreement is executed on day and year first written above.

PUBLIC ARTIST:

_____ _____
[Name] Social Security Number

Recommended by:

_____
[Chairperson's name]
Chair, Public Art Selection Committee

_____

[Name]
[Title]
OWNER'S REPRESENTATIVE

_____

[Name]
[title]
City of West Des Moines, Public Arts Advisory Commission

OWNER

_____

[Name]
[Title]
City of West Des Moines

City of West Des Moines
Public Art Program
Public Arts Advisory Commission

Consultant Agreement

This Agreement is made on [date]_____ between City of West Des Moines, and _____, hereinafter referred to as the CONSULTANT. The City of West Des Moines' representative shall be [name]_____or her/his designee.

Whereas, the City of West Des Moines desires to commission site-specific and site-integrated public art into the community, and

Whereas, City of West Des Moines desires the CONSULTANT to work with the [name of public art project]_____ in selecting one or more public artists who may be invited to commission public work(s) of art for the _____ [title of project/site].

Now, therefore, in consideration of the mutual promises and undertakings contained herein, the parties agree as follows:

SITE VISITS: The CONSULTANT agrees to visit the _____ [title of site], City of West Des Moines on _____ to view the project site, meet with Public Arts Advisory Commission representatives of the _____ and Public Art Selection Committee, and tour selected sites in the community. Prior to [date]_____, at some mutually agreed upon date, the CONSULTANT shall make a second site visit to City of West Des Moines to meet with all appropriate committees and community representatives. At that time the CONSULTANT shall present and recommended to the committee specific public artists (no fewer than ten), and provide visual images of recommended public artists' past work, resume, appropriate written support material about those public artists, and provide general consultation to the committee. The CONSULTANT also agrees to obtain from recommended public artists an expression of interest in being considered for this public art project. In the event that a selected public artist does not accept the _____[title of project/site] commission, the CONSULTANT agrees to continue working with the committee until a public artist has been contracted with City of West Des Moines for this project.

PAYMENT: The City of West Des Moines agrees to pay the CONSULTANT $_____ for two site and consultation visits and professional services. The consulting fee shall cover all expenses incurred by the Consultant, and includes all professional compensation for this project. Payment of the consulting fee shall be paid to the CONSULTANT as follows: $_____ shall be paid to the CONSULTANT within 30 days following the first site visit on _____; $_____ shall be paid to the CONSULTANT within 30 days of the second site visit, and $_____ shall be paid to the CONSULTANT within 30 days following the signing of a contract between City of West Des Moines and the successful public artist.

SUPPORT MATERIALS: It is expected that within twenty (20) days following the CONSULTANT'S final site visit, the CONSULTANT will provide a brief written summary of the site visits and a list of

the top final public artists that the CONSULTANT recommended to the committee. The public artists' list should include names, addresses, phone numbers and e-mails.

INDEMNITY: The CONSULTANT agrees to indemnify and hold harmless City of West Des Moines, its agents and employees for any liabilities, damages, claims, injuries or losses, including court costs and attorney fees, caused by the CONSULTANTS negligence. To the extent provided by Iowa Law, City of West Des Moines agrees to indemnify and hold harmless the CONSULTANT for any liabilities, damages, claims, injuries, or losses, including court costs and attorney fees, caused by the city of West Des Moines' negligence.

This agreement is executed on day and year first written above

CONSULTANT

_____ _____

(consultant) Social Security Number
(address)

Phone:
E-mail:

For City of West Des Moines

_____

[Name]
[Title]
City of West Des Moines, Public Arts Advisory Commission
4200 Mills Civic Pkwy.
West Des Moines, Iowa 50265

Phone:
E-mail: