

**STATE of MINNESOTA
MINNESOTA STATE COLLEGES AND UNIVERSITIES**



CENTRAL LAKES COLLEGE – BRAINERD CAMPUS

**REQUEST FOR QUALIFICATIONS (RFQ)
for
Public Art Design and Commission
Student Services Renovation**

October 29, 2024

SPECIAL NOTE: This Request for Qualifications (RFQ) does not obligate the Minnesota State Colleges and Universities system, hereinafter referred to as “Minnesota State”, its Board of Trustees, or Central Lakes College to award a contract or complete the proposed project and each reserves the right to cancel this RFQ if it is considered to be in its best interest. Submittals must be clear and concise. Submittals that are difficult to follow or that do not conform to the RFQ format may be rejected. Responding vendors must include the required information called for in this RFQ. Minnesota State reserves the right to reject a proposal if required information is not provided or is not organized as directed. Minnesota State also reserves the right to change the evaluation criteria or any other provision in this RFQ by posting notice of the change(s) on Minnesota State’s website, <http://www.minnstate.edu/vendors/index.html> under FACILITIES CONSULTANT & CONTRACTOR OPPORTUNITIES.

For this RFQ, written questions or communications regarding this RFQ shall be submitted via email and shall include the name of the questioner and their telephone number and e-mail address. Addendum to the RFQ will be posted on Minnesota State’s website. Vendors must acknowledge receipt of any addendum when submitting qualifications.

Table of Contents

Section I: Introduction.....	3
1.1 Purpose of this Request for Qualification (RFQ).....	3
1.2 General Description of Project.....	3
1.3 Description of the Art Opportunity.....	7
1.4 Art Project Budget and Artist Compensation.....	7
1.5 Selection and Implementation Timetable.....	7
1.6 Contract.....	8
Section II: Submission Materials.....	8
2.1 General Information.....	8
2.2 Informational Meeting.....	9
2.3 Information Contact.....	9
2.4 RFQ Response Delivery.....	10
2.5 RFQ Response Preparation.....	10
Section III: Artist Responsibilities.....	11
3.1 Selected Finalists’ Concept Proposals.....	11
3.2 Artist Duties and Responsibilities after Contract Award.....	12
3.3 Documentation and Records.....	12
Section IV: Submittal Evaluation.....	12
4.1 Criteria.....	12
4.2 Eligibility.....	13
Section V: General Requirements.....	13
5.1 Owner’s Rights.....	13
5.2 Affidavit of Non-Collusion.....	14
5.3 Insurance Requirements.....	14
5.4 State Audit.....	14
5.5 Conflicts of Interest.....	14
5.6 Disposition of Responses.....	14
5.7 Contingency Fees Prohibited.....	14

APPENDIX

- Attachment 1 - Affidavit of Non-Collusion
- Attachment 2 - Transmittal form
- Attachment 3 – Timeline and Budget
- Art.20 Public Art Design & Commissioning Contract Minnesota State Form

Section I: Introduction

The **Minnesota State** is the fourth-largest higher education system in the U.S. with 26 colleges and 7 state universities, Minnesota State is the largest provider of higher education in the state of Minnesota. Minnesota State's 54 campuses serve approximately 270,000 students each year. Sixty-three percent of the state's undergraduate resident students attend a Minnesota State college or university. For more information about Minnesota State Colleges and Universities, please view its website at <https://www.minnstate.edu/>.

The **Minnesota State** Board of Trustees, on behalf of **Central Lakes College (CLC)**, hereafter referred to as the "Owner," is soliciting statements of qualifications from interested, qualified artists, and intends to retain an artist to provide Design and Commissioning services for new exterior artwork as part of the Student Services and Athletics renovation project. Central Lakes College has convened an Art Committee to oversee the artist selection process.

1.1 Purpose of this Request for Qualification (RFQ)

The purpose of this RFQ is to evaluate and select a group of qualified artists to propose on the design and commission an original piece of artwork. The art will be located at the exterior of the south campus entrance, located at 501 West College Drive, Brainerd, Minnesota, 56401. The Art Committee will evaluate responses to the Request for Qualification (RFQ) in accordance with criteria set forth in Section IV of this RFQ. Respondents, whose proposed qualifications demonstrate, in the Art Committee's sole opinion, the qualifications that best fulfill the purposes of this RFQ, **will receive a Request for Proposal (RFP)**.

The Owner reserves the right to accept or reject proposals, in whole or in part, and to negotiate separately as necessary to serve the best interests of the Owner. The RFQ will not obligate the Owner to award a contract or complete the proposed project and the Owner reserves the right to cancel the RFQ if this action is considered to be in the Owner's best interest. This RFQ is undertaken by the Owner pursuant to the authority contained in provisions of Minnesota Statutes §16B.35, 136F.06, 136F.581, and other applicable laws.

1.2 General Description of Project

The project supports the Vision of Central Lakes College – *Central Lakes College inspires learning, advances innovation and transforms lives.*

The Student Services and Athletics Renovation provides over 45,000 square feet of space for students. This project is critical to the colleges ability to achieve its mission to "build futures".

The project has several primary goals:

- Removing barriers to student access and promoting CLC's ability to recruit students
- Increase enrollment and retention of students
- Enhance academic program spaces that impact a high number of students
- Enhance wayfinding on campus
- Improve the north entry to the building
- Renovate the Student Services spaces to streamline students access to services
- Update and renovate Athletic lockers rooms and their support spaces

A feature of the project will be creating new prominent entrances to the building on the first floor. All construction work for the project is occurring on the first floor of the area shown in orange. The north entrance will have a new canopy constructed and the south entrance will be enhanced with exterior artwork.

The new artwork should be timeless and a focal point near the south entrance. The hope is for the artwork to be a piece of art that is user-friendly and may be touched, sat on, stood next to and/or enjoyed beyond just a visual installation.



EXISTING SITE PLAN - CONTEXT



Photos of the existing south entrance area and path/garden:



The following are architectural renderings of some of the interior spaces after the renovation:

Interior Renderings



CLC CENTRAL LAKES PHASE 1

ARCHITECTURE ADVANTAGE

Interior Renderings



CLC CENTRAL LAKES PHASE 1

ARCHITECTURE ADVANTAGE

1.3 Description of the Art Opportunity

The Art Committee desires a timeless and focal piece(s) of exterior art that will be designed by the Artist in whichever medium they select.

Thematic examples may include the following:

Scholarship: We aim to foster student achievement and a culture where all are able to show up as their whole self

Metamorphosis: We aspire to create a transformational education for every student founded on belonging, curiosity, learning and support

Connections: We celebrate and encourage our college to be intertwined with the river & land, history & future and academics & athletics

Elements within the theme should be harmonious with the building and surrounding areas and complement the college's vision, mission and values.

Students, faculty, guests and other inspiration seekers will experience the artwork upon entering and exiting the building at the south entrance. The artwork will be ground mounted, may be lit (coordinated by the college), will be exposed to sunlight (which may create perceived movement with sun/shade) and exposed to all northern Minnesota weather conditions. The Art committee has identified the green space south of the South Entrance as the desirable area to be considered for the Art installation(s).

The intent of the committee is to obtain one or more pieces of artwork in this area as funds allow

1.4 Art Project Budget and Artist Compensation

The project is anticipated to be constructed from January 2025 – July 2025, with the art installation in August 2025.

The current funding provides for the Art Design and Installation with a budget of \$80,000 (inclusive of structural supports for artwork).

Compensation will be negotiated with the selected artist. The total Art Project budget includes:

I. Artist(s) stipend for proposals

II. Artist Compensation

Fees

Travel

Insurance

Installation supervision & Material

Studio and operating costs

III. Other Project Costs

Dimensioned Drawings

Installation

Labor, material and taxes

Public Notice plaque

1.5 Selection and Implementation Timetable

The following is the Owner’s intended schedule for the RFQ, RFP, and procurement process to select and contract with an Artist. The Owner reserves the right to modify this schedule if necessary.

<u>Event</u>	<u>Day and Date (2024)</u>	<u>Time</u>
RFQ Release Date	Tuesday, October 29	-
Informational Meeting Room C209	Wednesday, November 6	11:00 am (CST)
RFQ Questions Due	Wednesday, November 6	5:00 pm (CST)
RFQ Questions Answered	Friday, November 8	-
Deadline for RFQ Submittal	Tuesday, November 12	5:00 pm (CST)
Notify Artists to receive RFP/Presentation Information	Monday, November 25	-
Tentative RFP Presentation	Friday, December 13, 2024	TBD

It is expected that the art design process will begin immediately after contract award. It is hoped that the evaluation and selection will be completed within 60 business days after the RFQ deadline.

1.6 Contract

A contract or any part hereof entered into as a result of this RFQ and future RFP shall not be assigned, sublet, or transferred directly or indirectly without prior written consent of **Minnesota State**. A written contract and any modifications or addenda thereto, executed in writing by both parties constitutes the entire agreement of the parties to the contract. The Artist scope of services will be based upon **Art.20 Public Art Design - Commissioning Contract Form**. The successful Respondent will be required to enter into this contract. A sample of this contract is included in the Appendix. If you have questions about the contract, please ask at the informational meeting.

The artist is required to use Minnesota State’s internet-based enterprise project management system, e-Builder, in the participation or administration of the project. The functionality of this software may include, but is not limited to, the electronic filing and processing of:

- a) Contracts and contract modifications,
- b) Design documents,
- c) Invoices, and other financial correspondence,
- d) Submittals, schedules, product data, shop drawings, samples, and
- e) other Project related information.

Minnesota State will provide the artist with access to the software and initial training at no cost to the artist. Training can be done virtually or at the Minnesota State system office in downtown St. Paul, Minnesota. Except for electronic access and initial training, Minnesota State assumes no responsibility for any real or potential costs associated with the use of e-Builder by the artist.

Section II: Submission Materials

2.1 General Information

Qualifications that are difficult to follow may be rejected. Respondents must include all the required information called for in this RFQ. The Owner reserves the right to reject incomplete submittals. However, when such omissions or deviations are innocent or inadvertent in the opinion of the Owner, the Owner further reserves the right to waive them as informalities. The Owner reserves the right to change the evaluation criteria or any other provision in this RFQ provided all vendors are notified of the change.

This document, including attachments, constitutes a formal Request for Qualifications (RFQ) and is a competitive procurement. Therefore the Respondent shall carefully follow the instructions herein in order to be considered fully responsive to the RFQ.

All costs incurred by a Responder in replying to this RFQ shall be borne by the Responder.

2.2 Informational Meeting

Central Lakes College will hold an informational meeting on Wednesday, November 6, 2024, at 11:00 (CST) in Room C209 at Central Lakes College, Brainerd, MN.

It is recommended all potential or interested responders attend the meeting. Please register your attendance in advance by sending an email to Jeanne Qualley at JQualley@AFOconsultants.com. Because the building is an active campus, we will tour the area together. Answers to questions from the meeting will be posted as Addenda #1 to <http://www.minnstate.edu/vendors/index.html>.

2.3 Information Contact

The Owner's agent for purposes of responding to inquiries about the RFQ is:

Name:	Jeanne Qualley
Title:	Owner's Representative
Email:	JQualley@AFOconsultants.com
Phone:	(763) 202-9273

Other persons are not authorized to discuss RFQ requirements before the submittal deadline and the Owner shall not be bound by and Responders may not rely on information regarding RFQ requirements obtained from non-authorized persons. From the date of release of this RFQ until an artist is selected and a contract executed, Respondents must not communicate with the Owner's staff concerning the RFQ except through the above Owner Contact.

Requests for information or clarification by Respondents must be received no later than 5:00 PM (CST), Wednesday, November 6, 2024. Written questions or communications with the Owner regarding this RFQ must be submitted via email and shall include the name of the artist and email address. When emailing questions, please include the following in the subject line: "RFQ question from (Artist's name)". Responses (in the form of an addenda) will be posted at <http://www.minnstate.edu/vendors/index.html>.

2.4 RFQ Response Delivery

Qualifications must be emailed to the following addresses no later than **5:00 PM CST, on Tuesday, November 12, 2024:**

Email: jqualley@AFOconsultants.com
Name: Jeanne Qualley

AND

Email: Kari.Christiansen@clcmn.edu
Name: Kari Christiansen

Late Responses will not be considered. Submitting via email with a 'Read Receipt' is recommended.

A Respondent's response received after the deadline will not be accepted or considered. Receipt by the Owner of a proposal received after the closing date and time as stated herein shall not be construed as acceptance of their qualifications. Late submittals will be logged as to date/time received and thereafter returned to the late Respondent.

2.5 RFQ Response Preparation

A. Quantities

Provide **one (1)** electronic copy emailed in a combined .pdf format with a size less than 10 MB.

B. Format

The qualifications submission body shall be submitted in 8 ½ x 11 format. **The entire qualifications package cannot exceed ten (10) single sided pages excluding the Transmittal Form and mandatory attachment.**

C. Contents

1. **Transmittal Form.** Complete the transmittal form provided in the appendix. The transmittal form will identify all the materials being forwarded collectively and must be signed by the artist
2. **Artist's Biography, Statement, and Capacity.** Include an outline of your background and experience with particular emphasis on local, state, and federal government work. Include a brief artist statement. Describe your ability to complete the required tasks.
3. **Narrative Description.** Describe your artistic approach to the work and how you will develop the design with the Art Committee. Describe your plans for campus and community engagement, if applicable. Elaborate on your understanding of the project and what technical design considerations you think are important. Share your insights with preparing commissioned works of art.
4. **Experience/Design Management.** Include project examples, explanations, photographs, titles, materials information, or similar information showing a body of your original work relevant to the theme and the project. Include information regarding

project size and budget. Label all images. Provide a website address, if available.

5. **References.** Include name of contact, title, daytime telephone number, and email address of a minimum of one reference from past projects. Explain relation to project.
6. **Required Attachments**
 - a. Attachment 1 - Affidavit of Non-Collusion

Section III: Artist Responsibilities

3.1 Selected Preliminary Design Proposals

1. The Art Committee may invite two to four artists to provide a Preliminary Design Proposal or just select a single artist.
2. Preliminary Design Proposal stipend – The stipend for the preliminary design proposal is **\$1,000** per artist. The design proposal will be presented to the Art Committee. Teleconferencing may be considered.
3. Preliminary Design Proposal will consist of the following:
 - Drawing or model to convey a meaningful representation of the design concept.
 - Estimated Timeline and Budget - Exhibit A
A detailed account of the schedule for the work as well an estimated summary of all the anticipated expenses. The Timeline and Budget – Exhibit A is included in the Appendix. Additional information will be provided to the artist in the Request for Proposal.
4. Final selection of the Artist will be made after presentations of the Preliminary Design Proposals to the Art Committee for Central Lakes College.

3.2 Artist Duties and Responsibilities after Contract Award:

1. Design Development – The Artist shall finalize the preliminary design proposal in cooperation with the Art Committee. The Artist shall take direction from the Art Committee as necessary and modify the design to meet to the project budget. The artist shall submit an updated Timeline and Budget – Exhibit A to the design presentation. The design must be presented to the Owner at a formal meeting of the Art Committee at Central Lakes College.
2. Commission of the Work – Once the design has been **approved by the Art Committee**, the Owner will inform the Artist and production may begin on the commissioned work.
3. Provide documentation of the work in progress.
4. Coordinate major elements of design and/or construction with the campus’ schedules and activities to minimize disruptions.
5. Provide for the design and fabrication of the public notice plaque in an area appropriate for identification. The Owner will arrange for installation.
6. Provide a final updated Timeline and Budget – Exhibit A showing actual costs.
7. At the option of the artist, attend a grand opening event or dedication ceremony.

3.3 Documentation and Records:

1. A written technical description and photos of the Work and any maintenance instructions or recommendations.
2. The completed Timeline and Budget final report form.
3. A full written narrative description of the Work.
4. An updated resume of the Artist.

Section IV: Submittal Evaluation

4.1 Criteria

The criteria described below will be used to evaluate Respondents’ qualifications. The Art Committee may request additional information or clarification. In general, submittals will be evaluated for completeness, detail, and thoughtfulness.

ARTIST'S BIOGRAPHY, STATEMENT, and CAPACITY – 20 points

Factors favorable to the artist are:

- Breadth of education and life experience that would contribute to the overall stability of the artist
- Clear artist statement
- Clear statement of commitment to the project and artist's availability
- History of completed commissioned works, timely execution of work

NARRATIVE DESCRIPTION – 50 points

Factors favorable to the artist are:

- Clear acknowledgement of the required responsibilities
- Creative approach to the project
- Understanding of college mission, theme of project, and architectural influence (See RFQ Section 1.3)

EXPERIENCE/DESIGN MANAGEMENT– 30 points

Factors favorable to the artist are:

- Participation in public art projects
- Relevant graphic, architectural, and multi-media design
- Works of similar theme and subject matter (education)
- Appropriateness of past work to Minnesota State needs

4.2 Eligibility

Members of the Art Committee are ineligible. This solicitation is open to experienced artists or artist-led collaborations. Central Lakes College students, faculty, and alumni are encouraged to respond to the RFQ.

Section V: General Requirements

5.1 Owner's Rights

The Owner reserves the right to amend any segment of the RFQ prior to its announcement of a successful Respondent and award of contract. If a change occurs resulting in a modification to the RFQ, an addendum will be prepared and posted to the Owner's website at <http://www.minnstate.edu/vendors/index.html>. Respondents will be responsible for meeting the requirements of all addenda and must acknowledge receipt of all addenda on the RFQ Transmittal form.

This RFQ does not obligate the Owner to award a contract or complete the project, and the Owner reserves the right to cancel the solicitation if it is considered to be in its best interest.

Notwithstanding anything to the contrary, the Owner reserves its right to:

- Reject any and all submittals received in response to this RFQ.
- Select any proposal for contract negotiation.
- Waive or modify any informalities, irregularities, or inconsistencies in proposals.
- Negotiate any aspect of the proposal with any Respondent and negotiate with more than one (1) Respondent at the same time.
- If negotiations fail to result in an agreement, terminate negotiations and select the next most responsive Respondent, prepare and release a new RFQ, or take such other action as the Owner deems appropriate.

5.2 Affidavit of Non-Collusion

Each Responder must complete the attached Affidavit of Non-Collusion (**Attachment 1**) and include it with the RFQ response. Failure to submit a correctly executed Affidavit of Non-Collusion shall be grounds for rejection of a vendor's response to this RFQ.

5.3 Insurance Requirements

The selected artist will be required to obtain insurance as required by the contract. Please refer to the sample contract included in the appendix for insurance requirements. The artists must submit a Certificate of Insurance to **Minnesota State** prior to execution of the contract.

5.4 State Audit

The books, records, documents and accounting practices and procedures of the vendor relevant to the contract(s) shall be available for audit purposes to **Minnesota State** and the Legislative Auditor's Office for six (6) years after the termination/expiration of the contract.

5.5 Conflicts of Interest

A Responder must provide a list of all entities with which it has relationships that create, or appear to create, a conflict of interest with the work that is contemplated in this RFQ. The list should indicate the name of the entity, the relationship, and a discussion of the conflict.

5.6 Disposition of Responses

All materials submitted in response to this RFQ will become property of **Minnesota State** and will become public record in accordance with Minn. State. §13.591 after the evaluation process is completed and an award decision is made. All materials submitted by responders are subject to the provisions of Minnesota Statutes section 13.591, subd. 3(b), which reads as follows:

Data submitted by a business to a government entity in response to a request for proposal, as defined in section [16C.02](#), subdivision 12, are private or nonpublic until the responses are opened. Once the responses are opened, the name of the responder is read and becomes public. All other data in a responder's response to a request for proposal are private or nonpublic data until completion of the evaluation process. For purposes of this section, "completion of the evaluation process" means that the government entity has completed negotiating the contract with the selected vendor. After a government entity has completed the evaluation process, all remaining data submitted by all responders are public with the exception of trade secret data as defined and classified in section [13.37](#). A statement by a responder that submitted data are copyrighted or otherwise protected does not prevent public access to the data contained in the response. If all responses to a request for proposal are rejected prior to completion of the evaluation process, all data, other than that made public at the response opening, remain private or nonpublic until a re-solicitation of the requests for proposal results in completion of the evaluation process or a determination is made to abandon the procurement. If the rejection occurs after the completion of the evaluation process, the data remain public. If a resolicitation of proposals does not occur within one year of the proposal opening date, the remaining data become public.

5.7 Contingency Fees Prohibited

Pursuant to Minnesota Statutes Section 10A.06, no person may act as or employ a lobbyist for compensation that is dependent upon the result or outcome of any legislation or administrative action.

ATTACHMENT 1

Affidavit of Noncollusion
State of Minnesota
Request for Proposals/Qualifications

Firm Name: _____

Instructions: Please return your completed form as part of the Response submittal.

I swear (or affirm) under the penalty of perjury:

1. That I am the Responder (if the Responder is an individual), a partner in the company (if the Responder is a partnership), or an officer or employee of the responding corporation having authority to sign on its behalf (if the Responder is a corporation).
2. That the attached proposal submitted in response to the _____ Request for Proposals has been arrived at by the Responder independently and has been submitted without collusion with and without any agreement, understanding or planned common course of action with, any other Responder of materials, supplies, equipment, or services described in the Request for Proposals, designed to limit fair and open competition.
3. That the contents of the proposal have not been communicated by the Responder or its employees or agents to any person not an employee or agent of the Responder and will not be communicated to any such persons prior to the official opening of the proposals.
4. That I am fully informed regarding the accuracy of the statements made in this affidavit.

Authorized Signature

Responder

Firms Name: _____

Print name of
Authorized Representative _____ Title: _____

Authorized Signature _____ Date _____
(mm/dd/yyyy)

Notary Public

Subscribed and sworn to before me this:

_____ day of _____, _____

Notary Public signature

Commission Expires (mm/dd/yyyy)

ATTACHMENT 2

**Transmittal Form
Central Lakes College Request
for Qualifications (RFQ) for
Public Art Design and Commissioning**

Responses are due by 5:00pm (CST), Tuesday, November 12, 2024

Name:
Date:
Street Address:
Phone Number:
Email:

Response includes:

- Transmittal Form** - this page printed and signed with the following attached
- One (1) Copy of RFQ Submittal documents below:**
 - Artist's Biography, Statement and Capacity
Narrative Description
Experience
References (minimum of one)
- Attachment #1 – Affidavit of Non-collusion**
 - Signed and notarized
- One (1) electronic copy**
 - Include all information listed above
- Acknowledgment of _____ addenda**

By signing below, _____ agrees:

1. The RFQ Submittal contents are accurate to the best knowledge of the undersigned.
2. _____ is committed to entering into the work promptly in order to meet the requirements of the work.
3. The undersigned is familiar with the terms of Minnesota State's contracts, and is willing to sign contract(s) should they be offered.

Signature of the Artist
Date

Attachment 3

**STATE of MINNESOTA
MINNESOTA STATE COLLEGES & UNIVERSITIES**



**Public Art Design and Commission
TIMELINE AND BUDGET**

Project: Central Lakes College, Student Services renovation project

Artist:

Date:

Part 1 - TIMELINE - The following dates are estimated key points in the completion of the commission:

Phase	Date
I. Preliminary Design Proposal	February 2025
II. Design Development	
Design Presentation to Art Committee	
Approval by Art Committee	
III. Studio and Production Dates	
- Begin	
- Halfway	
- Completion	
Dimensioned Drawings	
Shipping to Site	
VI. Installation	
- Pre-installation conference attendance	Estimated July 2025
- Site visit	
- Site visit	
V. Delivery of Public Notice plaque	
Dedicate ceremony or grand opening	

Part 2 – BUDGET

#	Category	Description	Quantity	Unit cost	Amount
0.0	Donated Supplies and Services	Assign fair market value			
0.1	Item				\$0.00
0.2	Item				\$0.00
	TOTAL DONATIONS				

Part 2 – BUDGET continued

#	Category	Description	Quantity	Unit cost	Amount
1.0	Preliminary Design proposal		1	800	\$800.00
2.0	Materials and Supplies	Include all sales and excise taxes.			
2.1	Item				\$0.00
2.2	Item				\$0.00
2.3	Item				\$0.00
3.0	Production or Fabrication	Indicate assistant or subcontractor if used			
3.1	Item				\$0.00
4.0	Travel and Lodging				
4.1	Design Presentation				\$0.00
4.2	Pre-installation conference				\$0.00
4.3	Site Visit				\$0.00
4.4	Site Visit				\$0.00
5.0	Documentation	Required			
5.1	Work in progress				\$0.00
5.2	Final				\$0.00
6.0	Studio Time or Rental	Include utilities			\$0.00
7.0	Tools and Equipment				
7.1	Purchase				\$0.00
7.2	Rental				\$0.00
8.0	Dimensioned Drawings				\$0.00
9.0	Insurance				
9.1	General Liability				\$0.00
9.2	Work while in studio				\$0.00
9.3	During shipment/installation				\$0.00

Part 2 – BUDGET continued

#	Category	Description	Quantity	Unit cost	Amount
10.0	Shipping and Postage				\$0.00
11.0	Public notice plaque	Required			\$0.00
12.0	Misc. office expenses				\$0.00
13.0	Other				
13.1	Item				\$0.00
13.2	Item				\$0.00
14.0	Artist’s Fee				\$0.00
	TOTAL				\$0.00

AN AMENDED COPY OF THIS BUDGET ESTIMATE SHOWING ACTUAL COSTS WILL BE SUBMITTED AS A FINAL REPORT AFTER THE ARTWORK IS COMPLETED AND INSTALLED.

**STATE OF MINNESOTA
MINNESOTA STATE**

**PUBLIC ART DESIGN AND COMMISSIONING CONTRACT
Minnesota State Form**

This AGREEMENT is made by and between the State of Minnesota acting through its Board of Trustees for Minnesota State Colleges and Universities on behalf of *[Insert name of college/university]* (hereinafter “Minnesota State”), and *[Insert Artist Name and address]* (“Artist”), an independent contractor.

WHEREAS, Minnesota State is authorized to enter into this Agreement pursuant to Minnesota Statutes Sections 16B.35, 136F.06, 136F.581 and 471.59, and the February 21, 2012 Inter-Agency Agreement between Minnesota State and the Minnesota State Arts Board (hereinafter “Arts Board”);

WHEREAS, the funds that have been allocated and otherwise made available by Minnesota State for this artwork, and the total value of this Agreement is *[Insert dollar amount in words and numbers (e.g., One Thousand Five Hundred and 00/100th Dollars (\$1,500.00))]*, which shall cover all expenses incurred by the Artist, including but not limited to fees, materials, applicable state sales tax, labor of the Artist and the Artist's assistants, studio and operating costs applicable to this project, insurance, travel costs for the Artist to visit and research the site, transportation of the work to the location, and any costs incurred by the Artist for installation of the work at the location;

WHEREAS, the Artist has indicated a desire to create for Minnesota State an original artwork in a professional manner, and;

WHEREAS, both parties wish the integrity and clarity of the Artist's ideas and statements in the work to be maintained.

NOW THEREFORE, the parties mutually agree as follows:

I. PHASE ONE — DESIGN PROPOSAL

1. OVERVIEW. The design proposal is Phase One in the commissioning process. It is the intent of the parties that Minnesota State and the Artist shall establish a close and cooperative consultation throughout the duration of this Agreement. Therefore, the Artist is requested to meet and communicate with representatives of *[Insert name of college/university]*, and the architect during the design phase for the Work. Upon the Artist's completion of and Minnesota State acceptance of Phase One, Minnesota State at its sole discretion may direct the Artist to proceed to Phase Two, the actual commission; or to complete an extended design phase to refine the preliminary proposal. At any point in the process, Minnesota State may require design refinements for works such as plaza or courtyards that must be integrated with the architectural project or for works that feature specific iconography that must be researched for accuracy. If an extended design phase is required for the production of more detailed proposals, a separate amendment to this Agreement addressing the Artist's duties and responsibilities as well as a budget for supplies and services will be negotiated and executed by the parties.

2. TIME SCHEDULE. The preliminary design presentation shall be made to Minnesota State by *[Insert month, date and year]*.

3. DESIGN PROPOSAL. The Artist shall prepare a design proposal, which will include the following:

A. Model/maquette to scale showing some indication of color and, if necessary or upon Minnesota State request, other drawings or documentation to present a meaningful representation of the proposed Work. Engineering drawings of the Work or the footings may be required at a later date for structural design review.

B. Completed Artwork Statement form, attached as **Exhibit A**, describing details of the Work including materials, dimensions, weight, and finish. This form shall be submitted to Minnesota State no later than **two weeks prior to the design proposal presentation**.

C. Recommendations regarding site preparation, including appropriate lighting.

D. Outline of proposed installation and preliminary maintenance recommendations.

E. Completed Preliminary Timeline/Budget Estimate form, attached as Exhibit B. This form shall be submitted to Minnesota State no later than **two weeks prior to the design proposal presentation**.

F. Other: *[Delete this item if there are no other requirements for design proposal; otherwise, insert description of other requirements]*

4. DESIGN APPROVAL. Minnesota State shall have authority for final approval of the design.

5. TERMINATION OF DESIGN PHASE.

A. If Minnesota State accepts the design, Minnesota State shall pay the concept design fee of *[Insert dollar amount in words and numbers (e.g., One Thousand Five Hundred and 00/100th Dollars (\$1,500.00))]* to the Artist within thirty (30) calendar days after the submission of an invoice from the Artist, and the process shall proceed in accordance with paragraph 1 above. If Minnesota State does not accept the design proposal, Minnesota State may (a) request that the Artist present an alternative design proposal, (b) request that the Artist alter or revise its design proposal, or (c) terminate the Artist's participation in the project.

B. If the Artist presents a second or alternative design proposal in accordance with option (a) above or alters or revises its design proposal in accordance with option (b) above and Minnesota State accepts the original proposal, the alternative proposal or the revised proposal, Minnesota State shall pay the concept design fee of ***[Insert dollar amount in words and numbers (e.g., One Thousand Five Hundred and 00/100th Dollars (\$1,500.00))]*** to the Artist within thirty (30) calendar days after submission of an invoice from the Artist, and the process shall proceed in accordance with paragraph 1 above. If Minnesota State does not accept the design proposal at the second presentation, then the Artist's participation in the project terminates and Minnesota State shall pay the concept design fee of ***[Insert dollar amount in words and numbers (e.g., One Thousand Five Hundred and 00/100th Dollars (\$1,500.00))]*** to the Artist.

C. If the Artist's participation in the project terminates during Phase One, the Artist shall retain all rights to the design proposal produced by the Artist.

6. PERMISSION TO PROCEED. The Artist shall not proceed with Phase Two, the commission, until Minnesota State provides written authorization to the Artist to proceed.

II. PHASE TWO — COMMISSION

7. DESCRIPTION OF ARTWORK. If Minnesota State accepts the Artist's design proposal in accordance with the provisions of Phase One above and provides written authorization to the Artist to proceed with Phase Two, the commission, then the Artist shall create and install the work of art ("the Work") in accordance with the Minnesota State-approved design.

8. LOCATION. The location for the Work shall be ***[Insert street address, building name, location within/outside of building with as much detail as possible]***.

9. STRUCTURAL DESIGN REVIEW.

A. Within twenty one (21) calendar days after Minnesota State approves the design proposal, the Artist shall prepare and submit to Minnesota State detailed working drawings of the Work and site, together with such other graphic material as Minnesota State may reasonably request in order to permit Minnesota State to carry out structural design review or to certify the compliance of the Work with applicable statutes and ordinances, including state and federal access codes. These submissions shall be made after the Artist consults and collaborates with the c/u Project Manager or Architect. Minnesota State shall furnish to the Artist all information reasonably requested by the Artist in order to complete these submissions promptly.

B. Minnesota State may require the Artist to make such revisions to the Work's design as are necessary for the Work to comply with any applicable federal, state or local statutes, ordinances or regulations. Minnesota State may also require revisions for other practical, non-aesthetic reasons as determined by Minnesota State.

C. Within fourteen (14) calendar days after Minnesota State's receipt of the Artist's submissions pursuant to paragraph (A) above, Minnesota State shall notify the Artist of its approval or disapproval of such submissions and of all revisions made in the original design as a result thereof. Revisions made and approved pursuant to paragraphs (A) or (B) above become a part of the approved design.

10. CHANGES IN DESIGN. The Artist agrees not to begin to create the Work until the Artist receives written notice from Minnesota State that it has accepted the design after the structural design review. The Artist shall then create the Work in accordance with the approved design. Recognizing that the change in scale from model/maquette to full scale may require adjustments, the Artist has the right to make minor changes in the Work that are structurally and aesthetically necessary. Any significant change in scope, design, color, size, texture, material, or detail from the approved design of the Work, or any change that affects installation, scheduling, site preparation, or maintenance for the Work, shall require the review and prior written approval of Minnesota State.

11. SITE AND BASE OR FOOTING PREPARATION. The Artist shall be responsible for all expenses, labor, and equipment to prepare the site for the timely installation of the Work, including, but not limited to, landscaping, footings, plumbing, electricity, or lighting as are necessary for the presentation or activation of the Work. If extensive site preparation is required, if the Work is only part of an overall plan for development of a site, or if the Work is to be integrated into the building, specific responsibilities for site preparation will be negotiated with Minnesota State.

12. PRICE AND PAYMENT SCHEDULE.

A. As payment for the services of the Artist and for the completed Work, Minnesota State shall pay the Artist a total of ***[Insert dollar amount in words and numbers (e.g., One Thousand Five Hundred and 00/100th Dollars (\$1,500.00))]***, which shall constitute full compensation for the Work, including, but not limited to fees; materials; applicable sales tax; labor of the Artist and the Artist's assistants; studio and operating costs applicable to this project; insurance; travel costs for the Artist to visit and research the site; transportation of the Work to the location; and any costs incurred by the Artist for installation of the Work at the location.

B. The money shall be paid, in general accordance with *Preliminary Timeline/Budget Estimate* form, as modified and agreed to by the parties in writing and made a part of this Agreement, upon the Artist's completion of the following stages:

\$ _____ upon the Artist's documentation of costs actually incurred for materials purchased and received in satisfactory condition

\$ _____ upon completion of half the required construction or creation of the Work, as defined in this section ***[NOTE: amount for 2nd payment cannot bring total payments, including design fee, to more than 60% of total budget]***

\$ _____ upon installation of the Work in its permanent location ***[NOTE: amount for 3rd payment cannot bring total payments, including design fee, to more than 90% of total budget]***

\$ _____ upon completion, submission of all documentation required in Section 16 below, and final acceptance of the installed Work by Minnesota State.

To receive payments, the Artist shall submit a billing or invoice to Minnesota State within thirty (30) days after each of the stages outlined above has been reached satisfactorily as determined by Minnesota State authorized representative. Payment will be made within thirty (30) calendar days of Minnesota State receipt of a valid billing for services satisfactorily performed as determined by Minnesota State authorized representative.

C. **At any time, Minnesota State may require the Artist to provide documentation to substantiate the Artist's claimed progress with the Work. Minnesota State shall have the right to inspect the Work at reasonable times while it is being produced and installed.** If Minnesota State disagrees with the Artist's estimation of the stage of completion of the Work, Minnesota State must notify the Artist within fourteen (14) business days of receipt of the Artist's invoice.

13. INSTALLATION AND TIME SCHEDULE.

A. The Artist shall deliver and install the Work at the site by *[Insert month, day and year]*. The Artist agrees to notify Minnesota State in writing when fabrication of the Work is completed and the Work is ready for delivery and installation.

B. If the site is not prepared to receive the Work because of Minnesota State conduct, Minnesota State agrees to either provide storage space for the Work or reimburse the Artist for storage costs the Artist actually incurs for the period between (a) the later of the time provided in the schedule for commencement of installation or seven (7) calendar days after Minnesota State receives the Artist's notice that the Work is ready for delivery and installation, and (b) the date upon which the site is sufficiently prepared to receive the Work.

C. In the event that, through the fault of the Artist as determined by Minnesota State, the Work is not installed by the agreed date, an amount equivalent to 10% of the balance of the total Agreement price remaining unpaid shall be deducted every ten (10) business days until the installation is completed.

D. Minnesota State will consider granting an extension of the installation date only upon special circumstances. If the Artist believes special circumstances exist, the Artist may request an extension of the delivery date from Minnesota State in writing, including an explanation of any alleged special circumstances, no later than twenty (20) business days prior to the installation date. If granted, Minnesota State shall notify the Artist of the extension, including the specification of a new installation date, in writing. Such change shall not affect any other provisions or sections of this Agreement.

14. FINAL ACCEPTANCE. Final acceptance will be reached and official sole ownership of the Work by Minnesota State will occur when Minnesota State signifies that the Work has been satisfactorily completed and installed according to terms of this Agreement in a letter of final acceptance from Minnesota State to the Artist. Minnesota State shall provide the Artist with written final acceptance of the Work within forty five (45) calendar days after the Artist has created and installed the Work according to the terms of this Agreement and complied with Sections 16 and 17 below.

15. INSPECTION AND REVIEW. Minnesota State reserves the right to review the Work while the Artist is in the process of execution and to require and receive progress reports from the Artist.

16. DOCUMENTATIONS AND RECORDS. Upon installation of the Work, and before final payment shall be made, the Artist shall furnish Minnesota State with the following:

A. A completed Documentation Worksheet form including a written technical description of the Work, any blueprints regarding installation, any special installation instructions such as suspension or foundation requirements, maintenance instructions or recommendations, and other related information;

B. The completed Timeline/Budget Final Report form;

- C. Ten to twenty professional quality 35mm slides of the Work during production and after installation for archival records;
- D. Two 8X10 black and white glossy photographs of the Work;
- E. A full written narrative description of the Work; and
- F. An updated resume of the Artist.

17. PUBLIC NOTICE. The Artist agrees to design, fabricate, install and pay for a public notice or plaque that is satisfactory to Minnesota State and that includes, at a minimum, the title of the Work, identification of the Artist, year of completion, and the following statement: "Commissioned for the State of Minnesota on behalf of *[Insert name of college/university]* under the Minnesota Percent for Art Act." The public notice or plaque shall be of such medium and design as to be appropriate to the Work itself and the permanent location of the Work. In the case of a series of works, the Artist and Minnesota State will reach agreement in writing concerning the number of public notices or plaques needed for appropriate identification. The public notice or plaque shall be installed by the Artist on or before the date that the Work is completed and installed. Minnesota State agrees to reasonably maintain the public notice or plaque in good repair and display it on or near the Work.

18. MAINTENANCE. Minnesota State recognizes that maintenance of the Work on a regular basis may be essential to the integrity of the Work. Minnesota State agrees to take reasonable steps, taking into account the recommendations of the Artist provided in accordance with the documents submitted pursuant to Section 16 of this Agreement, to maintain and protect the Work, including reasonable efforts to protect and maintain the Work against deterioration, vandalism, and the elements.

19. REPAIRS. Minnesota State shall take reasonable steps to consult with the Artist concerning repairs and restoration of the Work. All repairs and restorations shall be made in accordance with recognized principles of conservation.

20. RELOCATION. The Work shall be placed in the location designated in Section 8. Minnesota State agrees that it will take reasonable steps to notify the Artist if, for non-emergency reasons, the Work has to be removed and permanently relocated to a site not specified in Section 8. The Artist may advise Minnesota State regarding relocation of the Work. This section also applies to movable works residing in the locations specified in Section 8.

21. WAIVER AND TERMINATION OF RIGHTS. The Artist agrees to notify Minnesota State of any changes in the Artist's address within ninety (90) calendar days of a change. Failure to do so shall be deemed a waiver of those Artist's rights expressed in this Agreement. The Artist agrees that upon the Artist's death, all of the Artist's rights in the Work shall belong to the State of Minnesota with Minnesota State, or its designee, acting as custodian.

22. TERMINATION OF COMMISSION PHASE.

- A. If the underlying Minnesota State building project is delayed or canceled, Minnesota State reserves the right, upon no less than twenty (20) calendar day notice to the Artist, to postpone the execution schedule of this Agreement.

B. If the underlying building project is postponed for one year or more from the scheduled completion date of this Agreement, either Minnesota State or the Artist may cancel this Agreement by providing written notice of cancellation to the other party no later than ninety (90) calendar days after such delay or cancellation is known to the party exercising its right to cancel. If the Artist cancels this Agreement pursuant to this paragraph, the Artist shall refund to Minnesota State all money paid by Minnesota State to the Artist for the performance of work under this Agreement and the Artist shall retain the Work, together with any models, plans or drawings and all materials and supplies purchased for the Work, for the Artist's own use without restrictions.

C. In the event this Agreement is cancelled or terminated by Minnesota State without fault on the part of the Artist, the Artist shall be entitled to either of the following, at the option of the Artist:

1. The Artist shall be paid an amount equal to the percentage of the Work done at the time Minnesota State terminated or cancelled the Agreement. If payments previously made to the Artist exceed the total amount due, then the Artist shall refund the excess to Minnesota State. The Artist shall deliver to Minnesota State the Work in whatever form it exists at the time of termination, and the Work shall then become the property of Minnesota State for use or display without restriction, except that it shall not be represented to be the completed Work of the Artist;

2. The Artist may refund to Minnesota State all monies paid by Minnesota State before it terminated or cancelled the Agreement and the Artist shall retain the Work, together with any models, plans, or drawings and all materials and supplies purchased for the Work, for the Artist's own use without restrictions.

D. In the event this Agreement is terminated due to fault on the part of the Artist or to the death or disability of the Artist, or due to the Artist's breach any terms of this Agreement, Minnesota State may require either of the options that would have been available to the Artist in this section.

E. Notwithstanding paragraphs (A) through (D) above, Minnesota State may unilaterally terminate this Agreement before the Work's completion or installation upon payment of just compensation if Minnesota State determines that further performance under the Agreement would not serve Minnesota State purposes.

This Agreement shall remain in effect until ***[Insert month, day and year]*** or until all obligations set forth in this Agreement have been satisfactorily fulfilled, whichever occurs last.

23. OTHER PROVISIONS. ***[Insert N/A if no other provisions; otherwise describe other provisions in detail].***

III. GENERAL CONDITIONS

24. MINNESOTA STATE AUTHORIZED AGENT. Minnesota State authorized agent for the purpose of administration of this Agreement is ***[Insert name, address, phone number, fax number and e-mail address]***, or ***[Insert his/her as appropriate]*** successor, who shall have final authority for acceptance of the Artist's services and the Work, and if such services and Work are accepted as satisfactory, shall so certify on each invoice submitted pursuant to this Agreement.

25. ARTIST AS INDEPENDENT CONTRACTOR. The Artist agrees to perform all work under this Agreement as an independent contractor and not as an agent or employee of the State. Any and all employees of the Artist engaged in the performance of any work or services required by the Artist under this Agreement are

employees of the Artist only. The Artist shall furnish all supervision, labor, supplies, materials, insurance, and other incidentals needed to complete this Agreement. Arrangements and costs of transportation of the Work to the site are the responsibility of the Artist.

26. ASSIGNMENT OF WORK. The work and services required of the Artist under this Agreement are personal and shall not be assigned, sublet, or transferred without prior written consent of Minnesota State.

27. INDEMNITY AND LIABILITY.

A. In the performance of this Agreement by Artist, or Artist's agents or employees, the Artist must indemnify, save, and hold harmless Minnesota State, its agents, and employees, from any claims or causes of action, including attorney's fees incurred by Minnesota State, to the extent caused by the Artist's:

1. Intentional, willful, or negligent acts or omissions; or
2. Actions that give rise to strict liability; or
3. Breach of contract or warranty.

The indemnification obligations of this section do not apply in the event the claim or cause of action is the result of Minnesota State sole negligence. This clause shall not be construed to bar any legal remedies the Artist may have for Minnesota State failure to fulfill its obligations pursuant to this Agreement. The risk of damage to or loss of the Work prior to final acceptance by Minnesota State shall be that of the Artist solely.

B. Damage to Minnesota State Property: The Artist must take all reasonable precautions to protect Minnesota State property from damage. In addition to any other available remedies, Minnesota State may deduct from its payments to the Artist the amount necessary to repair any damage.

C. Protection for Public/Insurance: The Artist shall provide Minnesota State authorized representative with a certificate of insurance for each type of insurance required below within 30 days of execution of this Agreement and prior to commencement of any work under this Agreement. Each policy must contain a 30 calendar day notice of cancellation, nonrenewal, or material change to all named and additional insureds. If Artist receives a cancellation notice from an insurance carrier affording coverage herein, Artist agrees to notify Minnesota State in accordance with the policy provisions with a copy of the cancellation notice, unless Artist's policy(ies) contain a provision that coverage afforded under the policy(ies) will not be canceled without advanced written notice to Minnesota State in accordance with the policy provisions. Minnesota State reserves the right to immediately terminate this Agreement if the Artist is not in compliance with the insurance requirements and retains all rights to pursue any legal remedies against the Artist. All insurance policies must be open to inspection by Minnesota State, and copies of policies must be submitted to Minnesota State authorized agent upon written request. The Artist will be required to maintain and furnish satisfactory evidence of the following insurance policies:

1. **General Liability**: The Artist will be required to maintain general liability insurance protecting it from claims for damages for bodily injury, including sickness or disease, death, and for care and loss of services as well as from claims for property damage including loss of use which may arise from operations under this Agreement whether the operations are by the Artist or by a subcontractor or by anyone directly or indirectly employed under the Agreement. Insurance minimum amounts will be as follows:

\$2,000,000.00 per occurrence

\$2,000,000.00 annual aggregate applying per project or location

\$2,000,000.00 annual aggregate applying to Products/Completed Operations

In addition, the following coverages should be included:

Premises and Operations Bodily Injury and Property Damage

Personal Injury and Advertising Injury

Products and Completed Operations Liability, to be maintained for at least three (3) years after completion of the services under this Contract

Contractual Liability as provided in Insurance Services Office (ISO) form CG 00 01 04 13 or its equivalent

Pollution Exclusion with standard exception as per Insurance Services Office (ISO) Commercial General Liability Coverage Form – CG 00 01 04 13 or its equivalent

Independent Contractors (let or sublet work)

Waiver of Subrogation in favor of Minnesota State

Coverage will not contain any restrictive endorsement(s) excluding or limiting Broad Form Property Damage (BFPD) or Explosion, Collapse, Underground (XCU)

Name the following as Additional Insureds, to the extent permitted by law:

The Board of Trustees of the Minnesota State Colleges and Universities and its officers and members, to include the Project's College or University, the State of Minnesota, officers and employees of the State of Minnesota, to the extent permitted by law,.

2. **Automobile Liability:** The Artist will be required to maintain automobile insurance protecting the Artist from claims for damages for bodily injury, as well as from claims for property damage including loss of use which may arise from operations under this Agreement whether such operations were by the Artist or by subcontractor or by anyone directly or indirectly employed under the Agreement. Insurance minimum amounts will be as follows:

\$2,000,000.00 - per occurrence Combined Single limit for Bodily Injury and Property Damage

In addition, the following coverages should be included:

Owned, Hired, and Non-owned

3. Additional Insurance Conditions:

- The Artist's policy(ies) shall be primary insurance to any other valid and collectible insurance available to Minnesota State with respect to any claim arising out of the Artist's performance under this contract;
- If the Artist receives a cancellation notice from an insurance carrier affording coverage herein, the Artist agrees to notify Minnesota State, in accordance with the policy provisions, with a copy of the cancellation notice, unless the Artist's policy(ies) contain a provision that coverage afforded under the policy(ies) will not be cancelled without advanced written notice to Minnesota State in accordance with the policy provisions;
- The Artist is responsible for payment of Contract related insurance premiums and deductibles;
- If The Artist is self-insured, a Certificate of Self-Insurance must be attached;
- The Artist's policy(ies) shall include legal defense fees in addition to its liability policy limits, with the exception of Professional Liability insurance above;

- The Artist shall obtain insurance policy(ies) from insurance company(ies) having an “AM BEST” rating of A- (minus); Financial Size Category (FSC) VII or better, and authorized to do business in the State of Minnesota; and
- An Umbrella or Excess Liability insurance policy may be used to supplement the Artist’s policy limits to satisfy the full policy limits required by the Contract.

Minnesota State reserves the right to immediately terminate the contract if the Artist is not in compliance with the insurance requirements and retains all rights to pursue any legal remedies against the Artist. All insurance policies must be available for inspection by the Minnesota State and copies of policies must be submitted to the Minnesota State authorized representative upon written request.

28. COMPLIANCE WITH THE LAW AND NONDISCRIMINATION. In the performance of the Work, the Artist shall comply with all applicable federal, state and local laws, rules and regulations. This Agreement shall be construed in accordance with and is subject to the laws of the State of Minnesota, and venue of any legal actions related to or arising from this Agreement shall be in Ramsey County, Minnesota.

- A. WORKERS COMPENSATION: In accordance with the provisions of Minnesota Statutes Section 176.182, Minnesota State affirms that the Artist certifies being in compliance with the workers’ compensation insurance coverage requirement of Section 176.181, subd. 2.
- B. PREVAILING HOURS OF LABOR AND PREVAILING WAGE: Any project with an estimated total cost of more than \$25,000 shall comply with Minnesota Statutes Sections 177.41-.43 regarding prevailing hours of labor and wage rate.
- C. AUDITS: The books, records, documents, and accounting procedures and practices of the Artist relevant to this Agreement shall be subject to examination by Minnesota State and the legislative auditor for a period not to exceed six years after the end of this Agreement.
- D. PROMPT PAYMENT TO SUBCONTRACTORS: The Artist is required to pay subcontractors pursuant to Minnesota Statutes Section 16A.1245 within ten (10) calendar days of the Artist’s receipt of payment from Minnesota State.

29. WARRANTIES.

- A. The Artist warrants that the Work is the original product of the Artist’s own creative efforts. The Artist also warrants that the Work is unique and that the Work, or a duplicate thereof, has not been accepted for sale elsewhere, unless, as stipulated to the Minnesota State as one of a limited edition of Works. The Artist expressly warrants that no pre-existing Agreements with an Artist’s gallery agent shall be the cause for any breaches of this Agreement or render this Agreement impracticable by the Artist.
- B. The Artist warrants that the execution and fabrication of the Work shall be performed in a workmanlike manner and that the Work, as fabricated and installed, shall be free of defects in material and workmanship, including any defects consisting of “inherent vice” or qualities which cause or accelerate deterioration of the Work. **The Artist shall guarantee and maintain the Work from faults of material and workmanship for a period of three (3) years after the acceptance date.**
- C. The Artist warrants that the reasonable maintenance of the Work shall not require procedures substantially in excess of those described in the maintenance recommendations submitted in the design proposal previously approved for the Work.

30. RIGHT TO EXHIBIT.

A. Minnesota State reserves the right to request temporary possession of any drawings, models, photographic negatives, displays, and similar materials produced during the preparation and execution of the Work, provided that the request shall not unreasonably interfere with the production of the Work. The Artist agrees to make such materials as noted above that are still in the possession of the Artist available to Minnesota State, and at no expense to the Artist, for educational displays associated with the Work. Minnesota State shall have this right of display for up to sixty (60) consecutive days once every five (5) years and upon written notice to the Artist. Minnesota State shall present to the Artist satisfactory proof of insurance and transportation both ways. If the Artist makes transportation arrangements, Minnesota State shall have no liability for loss or damage to these materials.

B. The Artist hereby grants and Minnesota State hereby reserves the right to make the Work available for temporary loan to other government entities or public institutions for the purpose of exhibition to the public.

31. ALTERATION, MODIFICATION, RELOCATION, AND DEACCESSIONING OF THE WORK OR OF THE SITE.

A. Minnesota State will not intentionally damage, alter, modify or change the Work without taking reasonable steps to obtain the prior written approval of the Artist, which the Artist shall not unreasonably withhold, and without the consent of the Arts Board in accordance with the February 21, 2012 Inter-Agency Agreement. If, after the Work it has been completed and installed, any changes, distortion, mutilation, alteration, destruction or other modification of the Work occurs, including any change in the interrelationship or relative locations of parts of the Work, which would be prejudicial to the Artist's honor or reputation, the Artist shall have the right (exercisable upon written notice to Minnesota State) to prevent Minnesota State from attributing the authorship of the Work to the Artist. Within ninety (90) calendar days after Minnesota State receipt of such notice, Minnesota State shall remove from the site of the Work all attributive references to the Artist and shall cease publicly stating that the Artist authored or created the Work other than those public statements which fall within the academic freedom of Minnesota State or its faculty or staff; provided, however, that no provision of this Agreement shall obligate Minnesota State to alter or remove any such attributive reference printed or published prior to Minnesota State's receipt of such notice, or shall obligate Minnesota State to interfere with or curtail any constitutionally protected speech or expression.

B. Minnesota State reserves the right to, and the Artist hereby waives any right to prevent Minnesota State from, modifying, relocating, destroying or deaccessioning the Work if, after taking reasonable steps to notify the Artist and obtaining consent from the Arts Board, Minnesota State determines that one or more of the following conditions apply:

(1) the condition or security of the Work cannot be reasonably guaranteed;

(2) the Work requires excessive maintenance or has faults of design or workmanship beyond practical repair or remedy;

(3) the Work has been damaged and repair is impractical or unfeasible;

(4) the Work endangers public safety;

(5) 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 Work;

(6) significant adverse reaction has continued unabated for more than three years;

(7) the Work is shown to be of an inferior quality or unauthentic;

(8) Minnesota State wishes to replace the Work with another work by the Artist; or

(9) the Artist requests modification, relocation or deaccession of the Work.

C. If Minnesota State decides to destroy the Work in accordance with this Section 32, Minnesota State shall take reasonable steps to offer the Artist an opportunity to recover the Work at the Artist's expense in accordance with applicable law.

D. The Work shall be subject to the Visual Artists Rights Act of 1990, 17 U.S.C. §§101, et seq., and shall not constitute a work made for hire as provided in that Act.

32. TITLE AND OWNERSHIP.

A. Except in the case of early termination of this Agreement as provided elsewhere in this Agreement, title to the Work shall transfer from Artist to the State of Minnesota with Minnesota State, or its designee, acting as custodian upon Minnesota State Final Acceptance of the Artwork. Title transfer shall be self-executing upon Minnesota State Final Acceptance. The Artist grants the State of Minnesota with Minnesota State, or its designee, acting as custodian title to and ownership of the Work, including the right to reproduce the Work, and images thereof, for research, scholarly and educational purposes, including publicity and documentation within the usual functions of Minnesota State at no charge. Minnesota State shall make reasonable efforts to ensure that reproductions or publications that prominently feature the Work contain a credit to the Artist. In the event that Minnesota State use of the Work creates trademark, service mark or trade dress rights in connection with the Work, Minnesota State shall have an exclusive and irrevocable right in such trademark, service mark or trade dress. The Artist agrees to give credit in the following form: "Original owned by the State of Minnesota, commissioned under Minnesota Percent for Art in Public Places and displayed at *[Insert name of college/university]*, *[Insert name of building]*" in any public showing of any reproductions of the Work.

B. Drawings, specifications, and models of the Work, or which relate to the Work including all preliminary studies, shall be the property of the Artist following completion of the Work under this Agreement or following termination of the Agreement by Minnesota State without fault on the part of the Artist. Under these circumstances they shall not be used by the Artist on other projects or extensions of this project except pursuant to a subsequent agreement in writing between the Artist and Minnesota State.

33. DISPUTE RESOLUTION. In case any dispute or controversy arises between the Artist and Minnesota State, the parties may exercise those legal remedies in State District Court as may be available to them. The venue for any proceedings is herein agreed to be Ramsey County, State of Minnesota, unless otherwise specifically agreed. The Artist shall carry on the Work during any proceedings unless otherwise agreed to by the Artist and Minnesota State in writing.

34. AMENDMENTS. Any amendments to this Agreement shall be in writing, and shall be executed by the same parties who executed the original Agreement, or their successors in office.

35. NOTICE TO ARTIST. As a condition of this contract, the Artist is required by Minn. Stat. §270C.65 to provide a social security number, a federal tax identification number or Minnesota tax identification number. If the Artist or the Artist's business **does not reside in Minnesota**, the Artist is required to provide its social security number **or** Federal Tax Identification number. This information may be used in the

enforcement of federal and state tax laws. Supplying these numbers could result in action to require the Artist to file state tax returns and pay delinquent state tax liabilities. This Agreement will not be approved unless these numbers are provided. These numbers will be available to federal and state tax authorities and state personnel involved in the payment of state obligations.

If you are an independent contractor, Minn. Stat. §256.998 requires the state to report your name, address and social security number to the New Hire Reporting Center of the Minnesota Department of Human Services unless your contract is for less than two months in duration with gross earnings of less than \$250.00 per month. This information may be used by state or local child support enforcement authorities in the enforcement of state and federal child support laws.

36. ENTIRE AGREEMENT. This Agreement represents the entire agreement of the parties.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed intending to be bound thereby.

APPROVED:

1. ARTIST: *[INSERT NAME OF ARTIST]*

By (authorized signature and printed name)
Title
Date

2. VERIFIED AS TO ENCUMBRANCE:

Employee certifies that funds have been encumbered as required by Minnesota Statute §16A.15.

[INSERT NAME OF COLLEGE/UNIVERSITY/SYSTEM OFFICE]:

By (authorized signature and printed name)
Title
Date

3. MINNESOTA STATE

[INSERT NAME OF COLLEGE/UNIVERSITY/SYSTEM OFFICE]:

By (authorized signature and printed name)
Title
Date

4. AS TO FORM AND EXECUTION:

[INSERT NAME OF COLLEGE/UNIVERSITY/SYSTEM OFFICE]:

By (authorized signature and printed name)
Title
Date