

ARTIST CONTRACT
THE CITY OF NORTH VANCOUVER
Public Art Program

TABLE OF CONTENTS

1. DEFINITIONS	1
1.1 Definitions	1
1.2 Performance	2
1.3 Contracting with Third Parties.....	2
2. SCOPE OF WORK.....	2
2.1 General.....	2
2.2 Proposal Review.....	3
2.3 Execution, Fabrication, Transportation, Installation and/or Inspection of the Work.....	3
2.4 Completion.....	4
2.5 Post Installation.....	4
2.6 Acceptance.....	5
2.7 Insurance.....	5
2.8 Contracting by the Artist	6
2.9 Title	6
3. COMPENSATION.....	6
3.1 Fee	6
3.2 Artist's Expenses.....	7
3.3 Artist Invoices	7
4. TIME OF PERFORMANCE.....	7
4.1 Construction Delay.....	7
4.2 Force Majeure	8
4.3 Failure to Complete the Work.....	8
5. WARRANTIES	8
5.1 Title and Copyright	8
6. RIGHTS.....	9
6.1 Grant of Non-exclusive Rights	9
6.2 Reservation of Rights	10
6.3 Moral Rights	10
7. MAINTENANCE.....	11
7.1 Maintenance.....	11
7.2 Repairs and Restoration.....	11
8. TERMINATION	11
8.1 Non-Performance	11
8.2 Property Rights	11
8.3 Right to Terminate	12
8.4 Compliance	12
8.5 Frustration.....	12

9. DISPUTES AND REMEDIES	12
9.1 Dispute Resolution	12
10. CREDIT AND PUBLICITY	12
10.1 Credit to the Artist.....	12
10.2 Credit to the City	13
10.3 Publicity	13
10.4 Identification	13
11. GENERAL PROVISIONS.....	13
11.1 Indemnification	13
11.2 Notices	13
11.3 Benefit	14
11.4 Entire Agreement	14
11.5 Execution of Agreement	14
11.6 Independent Legal Advice.....	14

SCHEDULE A - PHASE 1 - ARTIST’S SCOPE OF WORK AND COMPENSATION

SCHEDULE B - PHASE II - DELIVERABLES TIMETABLE & PAYMENT SCHEDULE

SCHEDULE C - ARTIST SPECIFICATIONS OF WORK

SCHEDULE D - FINAL PROJECT DOCUMENTATION

SCHEDULE E - TRANSFER OF TITLE

ARTIST CONTRACT

Public Art Program

THIS AGREEMENT dated the XX day of MONTH, 200X.

BETWEEN:

**THE NORTH VANCOUVER OFFICE OF CULTURAL
AFFAIRS**

("NVOCA")

AND:

ARTIST' NAME

(the "Artist")

WITNESSES THAT WHEREAS:

- A. The services to be provided by the Artist under this contract must be coordinated and integrated into the Project.
- B. Management and general supervision for the Project will be the responsibility of, CITY OF NORTH VANCOUVER PUBLIC ART COORDINATOR at the direction of the NORTH VANCOUVER OFFICE OF CULTURAL AFFAIRS.

NOW THEREFORE, in consideration of the mutual promises and covenants of the parties set out in this Agreement, the parties agree as follows:

1. DEFINITIONS

1.1 Definitions

In this Agreement, the following definitions apply:

- (a) **"Final Proposal"** means the original work of art the Artist proposes to create for the CNV to be integrated into the Project, such proposal including all revisions;
- (b) **"Project"** means the work, construction, improvement, enhancement or other alteration of a City facility, building or site proposed by the CNV which may include public art;
- (c) **"Site"** means the location of the Project or, where applicable, the location within the Project where the Work is to be installed;
- (d) **"Work"** means the physical work of art to be created by the Artist in conformity with the Final Proposal;

- (e) “City” means the City of North Vancouver.

1.2 Performance

The Artist will perform the services required under this Agreement in a satisfactory and competent manner.

1.3 Contracting with Third Parties

Should the Artist employ and/or contract with any third persons in the performance of this Agreement, the Artist agrees that the Artist will be fully responsible for ensuring compliance with this Agreement and the Artist acknowledges and agrees that the Artist is not an agent of the CNV for the purpose of contracting by the Artist with third persons.

2. SCOPE OF WORK

2.1 General

- (a) The NVOCA hereby commissions and engages the independent contracting services of the Artist, which will be rendered on a non-exclusive but first priority basis as follows:
 - (1) to create, design, execute and fabricate an original artist Work tentatively entitled “XXXXXXX” in accordance with the artistic and technical elements described in Schedule A & B, captioned Artist’s Scope of Work, attached hereto. The Scope of Work divides the Artist’s services into two Phases: Phase I, related to design; and, Phase II, related to execution;
 - (2) to transport, deliver and install the Work in accordance with the physical location and technical specification set out in Schedule B, Phase II, Deliverables: Timetable & Payment Schedule for Fabrication & Installation of Artwork;
 - (3) to furnish all supplies, material and equipment as necessary for the creation, design, execution, fabrication, transportation, delivery and installation of the Work;
 - (4) to prepare and submit all drawings, reports and documents required hereunder; and;
 - (5) to render all other services as are customarily rendered by creators of works of public art in relation to such works and their locations.
- (b) The Artist will begin work after execution of this Agreement by the NVOCA,

- (c) The NVOCA will be responsible for providing to the Artist, without cost, copies of designs, drawings, reports and other relevant data needed by the Artist in order to design and execute the work.

2.2 Proposal Review

- (a) The NVOCA and the Artist entered into an agreement to pursue further the proposal and/or maquette presented to the Selection Panel attached hereto as the Final Proposal for creating the Work.
- (b) Following approval of the Final Proposal by the NVOCA – Public Art Selection Panel, the Artist will submit to the NVOCA a detailed Deliverables Timetable and Payment Schedule for execution of the Work.
- (c) The Artist acknowledges and agrees that the NVOCA may, for record-keeping and archival purposes only, photograph, film or videotape any objects and photocopy any printed materials that are part of the Final Proposal.
- (d) Within thirty (30) days after its receipt of the Artist's Final Proposal pursuant to Section 2.2(b), the NVOCA will advise the Artist in writing that either:
 - (1) the NVOCA approves the Final Proposal; or
 - (2) the NVOCA does not approve the Final Proposal.

If the NVOCA does not approve the Final Proposal, the NVOCA will advise the Artist in writing of any required revisions to the Final Proposal and give the Artist a reasonable period of time to correct the deficiencies. The Artist will advise the NVOCA in writing when the Artist has corrected such deficiencies. The NVOCA will then, within ten (10) business days, advise the Artist in writing that either:

- (3) the NVOCA approves the Final Proposal; or
- (4) the NVOCA does not approve the Final Proposal.

If the NVOCA does not approve the Final Proposal, the NVOCA will have the right to terminate this Agreement by giving written notice to the Artist and will have no further liability in respect hereof. For a period of thirty (30) days immediately thereafter, the Artist may request the return of any or all objects and printed materials that he/she submitted as part of the Final Proposal. The Artist acknowledges and agrees that any such objects or materials not recovered as per this Section will, at the NVOCA's option, become its property.

2.3 Execution, Fabrication, Transportation, Installation and/or Inspection of the Work

- (a) The Artist will execute, fabricate, transport, deliver and install all Work in accordance with the Final Proposal incorporating any revisions reasonably required by the NVOCA for health, safety or liability reasons or to ensure

compliance with applicable municipal, provincial and federal laws, or as agreed upon between the parties.

- (b) The NVOCA will have the right to review the progress of the Work at reasonable times during the fabrication thereof, and will be entitled to suspend or terminate this Agreement if the Work in progress, in the opinion of the NVOCA, does not conform with the Final Proposal.
- (c) The Artist will present to the NVOCA in writing for prior review and approval any significant changes the Artist proposes to make in the execution, fabrication, transportation, delivery or installation of the Work not permitted by or not in conformity with the Proposal. A significant change is any change in the artistic expression, scope, design, colour, size, material, texture or location of the Work which affects installation, scheduling, Site preparation, maintenance and preservation of the Work or the concept of the Work as represented.
- (d) The Artist will, if and when working on City property, supervise such clean up as may be reasonably requested by the City. At the close of the Artist's work, the Artist will remove (his/her) equipment, excess materials, etc. promptly and as requested by the NVOCA.
- (e) The Artist will perform his/her services in a manner and time so as not to cause interference with any operations, construction, or maintenance of the NVOCA.
- (f) The Artist will complete the fabrication and installation of the Work in substantial conformity with Schedule A & B Artist's Scope of Work as attached to this contract.

2.4 Completion

Notwithstanding anything to the contrary in this Agreement, the Artist will finish and install the work in the designated location on or before DATE.

2.5 Post Installation

- (a) Within thirty (30) days after the installation of the Work, the Artist will furnish the CNV with the following:
 - (1) Schedule C – Revised Artist Specifications of Work,
 - (2) Schedule D - Final Project Documentation.
- (b) The Artist will be reasonably available at such time or times as may be agreed between the NVOCA and the Artist to attend any inauguration or presentation ceremonies relating to the transfer of the title of the Work to the City.

- (c) Upon installation of the Work, the Artist will deliver to the NVOCA written recommendations for appropriate maintenance and preservation of the Work as outlined in Schedule C - Artist Specification of Work.

2.6 Acceptance

- (a) The Artist will immediately advise the NVOCA when the Work has been totally completed and installed in compliance with Schedule A and Schedule B.
- (b) The NVOCA will, within ten (10) business days following receipt of the notice in (a) above advise the Artist in writing that either:
 - (1) the Work is accepted; or
 - (2) the Work is not accepted,

If the NVOCA does not accept the Work, the NVOCA will provide the Artist with detailed written reasons therefore and will give the Artist a reasonable period of time to correct any deficiencies. The Artist will advise the NVOCA when the deficiencies have been corrected following which the NVOCA will then within ten (10) business days, advise the Artist in writing that either:

- (3) the Work is accepted; or
- (4) the Work is not accepted.

If the NVOCA does not accept the Work, the parties will attempt to reach a reasonable agreement to allow the NVOCA to accept the Work or, failing such agreement will refer the matter to dispute resolution as per section 9.

- (c) Upon acceptance of the Work by the NVOCA and for a period of thirty (30) days immediately thereafter, the Artist may request the return of any or all objects and printed materials that he/she submitted as part of the Proposal. The Artist acknowledges and agrees that any such object or materials not recovered as per this Section will become the property of the CNV.

2.7 Insurance

The Artist agrees to secure at its own expense, and to keep in force at all times during the term of this Agreement, a general public liability insurance policy, with the City endorsed as an additional named insured, in form and with a company acceptable to and approved by the City, covering the Artist's operations hereunder with a minimum combined single limit amount of XXXXXX Dollars (\$X,000,000.00) for death or bodily injury and for injury or damage to Property for each occurrence.

The Artist will provide the City with certificates evidencing the existence of insurance required above upon execution of this Agreement. The certificates will contain valid provisions or

endorsements stating "The insurance coverage under this policy will not be cancelled without first giving thirty (30) days prior written notice thereof to the NVOCA".

The Artist will ensure the Artist meets all *Workers Compensation Act* assessment and related requirements for all of the Artist's employees, contractors and any other persons as applicable.

If the Artist's relationship with the NVOCA is an employer/employee agreement and is paid either hourly, salaried or commissioned basis, the Artist is not required to be registered with the WCB (see WCB Policy #20:30:20).

2.8 Contracting by the Artist

The Artist may contract with third parties for performance of portions of the execution, fabrication, transportation, delivery and installation services to be provided hereunder at the Artist's expense, provided that said contracting will not affect the design, appearance or visual quality of the Work, will be carried out under the personal supervision of the Artist and is insured as per section 2.7 and will comply with applicable, municipal, provincial and federal laws. The Artist will not incorporate into the Work any artists work or subject-matter created or designed by other artists or collaborate with or engage any other person to create or design the Work or any portion thereof without prior written approval from the NVOCA. The parties agree that such contracting by the Artist will not, by itself, modify in any way the amount of compensation payable hereunder or the representations, warranties, covenants and agreements made by the Artist herein.

The Artist further acknowledges and agrees that the Artist is solely responsible for any work performed by third parties for the Artist and that the Artist remains solely responsible for compliance with this Agreement.

2.9 Title

Title to the Work will pass to the CITY OF NORTH VANCOUVER automatically upon acceptance of the Work by the NVOCA, pursuant to Section 2.6(b). Notwithstanding the foregoing, upon such acceptance and prior to payment of the final installment of the Fee as per Schedule B, the Artist will promptly deliver to the City the transfer of title document attached hereto as Schedule E executed by the Artist (the "Transfer").

3. COMPENSATION

3.1 Fee

The Artist will be paid for work and services satisfactorily rendered pursuant to this Agreement accordance with the terms herein and subsequent adjustments, changes or additions as specifically provided for in this Agreement. Payment of the sum agreed herein will be full compensation for work performed and services rendered, for all supervision, labour, supplies, materials, equipment or use thereof, taxes, permits and for all other necessary incidentals. Such

payment will represent all consideration for the completion of the Work by the Artist pursuant to this agreement.

The amount and date of payments to the Artist will be computed as follows:

- (a) Schedule A, (\$\$\$\$\$\$ + GST) and
- (b) Schedule B, (\$\$\$\$\$\$ + GST).

3.2 Artist's Expenses

The parties agree that the compensation provided for in Section 3.1 will be full and final payment for the services tendered and materials furnished hereunder and for the title transferred and the rights and privileges granted herein, that the NVOCA and its assignees will not be obliged to make any further payment of any kind to the Artist or any other person, corporation or organization in relation thereto and that the Artist is solely responsible for all costs and expenses related thereto, including the payment of all mailing or shipping charges for notices or the submission of any reports, schedules or materials pursuant to this Agreement, the costs of liability insurance as per section 2.7, the costs of contracting with third parties, the costs of compliance with applicable municipal, provincial and federal laws, the costs of transporting the Work 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 hereunder.

3.3 Artist Invoices

The Artist will submit Invoices in accordance with Schedule B. Invoices not complying with this condition may be subject to delays in processing. In the event that the NVOCA disputes any item in an invoice, the NVOCA will pay all other amounts not disputed, pending resolution of the dispute.

The Artist agrees that he/she will not invoice the NVOCA for any services not previously agreed to in writing.

The Artist agrees that no charges or claim for damages will be made by the Artist for any delays or hindrances beyond the control of the NVOCA during the progress of any portion of the services specified in this Agreement.

No payment to the Artist for any Project work will constitute a waiver or release by the NVOCA of any claims, right or remedy it may have against the Artist under this Agreement or by law, nor will such payment constitute a waiver, remission or discharge by the NVOCA of any failure or fault of the Artist to satisfactorily perform the Project work as required under this Agreement.

4. TIME OF PERFORMANCE

4.1 Construction Delay

If the Project is suspended by the NVOCA for more than three (3) months, or, at the NVOCA's sole discretion, abandoned in whole or in part, the Artist will be compensated for services

performed prior to receipt of written notice from the NVOCA of such suspension or abandonment. If the Project is resumed after being suspended for more than nine (9) months, the Artist's compensation may be subject to re-negotiation. Where the Project has been suspended or abandoned in whole or in part by the NVOCA, the NVOCA may compensate the Artist for legitimate and reasonable additional expenses incurred by the Artist as a direct result of the suspension or abandonment of the Project.

4.2 Force Majeure

A delay or failure in fulfilling the obligations under this Agreement by either the Artist or the NVOCA, other than the payment of money, will not constitute a default, nor will either party be held liable for loss or damage, if and to the extent that such delay, failure, loss or damage is caused, whether directly or indirectly, by an occurrence beyond the reasonable control of such party and which by the exercise of reasonable diligence such party is unable to prevent, including but not limited to: illness, injury or accident to the Artist; delay of transportation services, accident to means of transportation, riots, strikes, epidemics, acts of God; and compliance with any act regulation, order or request of any governmental authority or agency.

4.3 Failure to Complete the Work

If, for any reason, the Artist does not complete the Work pursuant to this Agreement, the Artist or his heirs, executors, administrators or assignees, as the case may be, will, within thirty (30) days of the Artist ceasing production of the Work, submit to the City a Transfer for that portion of the Work completed prior to the Artist ceasing production of the Work (the "Work in Progress"). Upon obtaining a Transfer for the Work in Progress, the NVOCA will pay the Artist for all services satisfactorily performed by the Artist and may, at its sole option, complete the Work or cause the Work to be completed. If the Work is completed pursuant to this section, the parties will be joint and equal owners of the copyright in the Work and the Artist acknowledges and agrees that such actions will not violate or infringe any moral rights that he/she may have in relation to the Work in Progress or the Work. Notwithstanding the foregoing, the Artist will not be relieved of liability to the NVOCA for damages sustained by the NVOCA by virtue of his/her failure to complete the Work, and the NVOCA may reasonably withhold payments to the Artist until such time as the exact amount of such damages due to the City from the Artist is determined. The NVOCA may off-set any such damages determined against any amounts owing to the Artist under this Agreement.

5. WARRANTIES

5.1 Title and Copyright

The Artist represents and warrants that:

- (a) the design or Work being commissioned is the original product of the Artist's own creative efforts and to the best of the Artist's knowledge does not infringe upon or violate any right, including the copyright in any other artistic work or subject matter of any other person;

- (b) unless otherwise stipulated, the work is original, and that the Artist will not sell or reproduce the work in BC or allow others to do so without the prior written consent of the NVOCA.
- (c) the Artist will guarantee his/her work to be free and clear of any liens or encumbrances from any source whatsoever and to be free from faults of material and workmanship for a period of one year after installation, and free and clear of any liens from any source whatever. This guarantee will apply only to that work which is entirely that of the Artist (or persons responsible to him/her), as installed, and will not apply to materials or workmanship of projects in which the work of the Artist is integrated or combined or to materials purchased, acquired, or installed by any person or entity other than the Artist.

The Artist agrees that an essential element of the Agreement is the skill and creativeness of the Artist. The Artist therefore will not assign the creative or artistic portions of the Work to another party for the production of the Work without the written consent of the NVOCA. Failure to conform to this provision will result in the termination of the Agreement.

In the event the services of the Artist are integrated into, combined, or otherwise coordinated with services by third parties not within the control of the Artist, he/she will not be responsible for such third party services. If any of the Artist's work depends for proper execution or results upon the work of the City or a third party, the Artist will, prior to proceeding with the work, promptly report to the NVOCA any apparent discrepancies or other defects in such other work that renders it unsuitable for proper execution and results. The Artist will not be responsible for any liability or failure to fulfill his/her obligations because of such discrepancies or defects. Failure of the Artist to report a discrepancy or defect will constitute an acceptance of the City's or third party's work as fit and proper to receive the Artist's work, except as to defects that may subsequently become apparent in such work by others. Any costs caused by defective or ill-timed work will be borne by the party responsible therefore. Nothing in this section will limit the responsibility of the Artist to take all reasonable steps to coordinate his/her work with the work of City or of a third party on the project.

6. RIGHTS

6.1 Grant of Non-exclusive Rights

The Artist authorizes the NVOCA and the City of North Vancouver, for non-commercial and municipal non-profit purposes only:

- (a) to photograph, film or videotape the Work, or the Work in Progress as the case may be, and to reproduce, publish and distribute copies of such photographs or cinematographic works in perpetuity, throughout the world and by any and all means and in any and all media formats, whether now known or hereafter devised; and
- (b) to authorize any other person, firm or corporation in respect of any of the rights granted to the NVOCA herein to refrain from exercising all or any of the rights entirely, from time to time or in particular media, formats or territories;

and no compensation will be payable to the Artist by the NVOCA or any other person for the exercise of these rights.

6.2 Reservation of Rights

The Artist reserves to himself and his assignees the copyrights and all other rights, including all rights in respect of commercial use or exploitation, in and to the Work except the limited rights expressly granted herein.

6.3 Moral Rights

The Artist acknowledges and agrees that the Work, by nature of its composition and location will be subject to the ravages of nature, pollution, vandalism and time and that the City may in future use the Site for civic purposes requiring the Work's removal or relocation. While the City will reasonably seek to maintain the Work according to the Artist's original intent, the City retains the right to alter, remove or relocate the Work if the Site is required for purposes deemed necessary or expedient by City Council. At any time such alteration, removal or relocation is in the opinion of City Council deemed necessary, the Artist may decide the Work is no longer the Work as originally intended and the Artist may request that all signs and acknowledgments linking the Work to the Artist be removed. The Artist agrees that such alteration, removal or relocation of the Work will not violate his moral rights in relation to the Work. The NVOCA will, by notice to the Artist, endeavour to consult with him on the Work's alteration, removal, relocation or maintenance.

If, for any reason, the City determines it is unable to remove or relocate the Work without destroying the Work, the City will, by notice to the Artist, offer the Artist a reasonable opportunity to recover the Work at no cost to the Artist except for the obligation of the Artist to indemnify and reimburse the City for the amount by which the cost to the City of such recovery exceeds the cost to the City of the proposed destruction. The Artist acknowledges and agrees that if he/she chooses not to recover the Work and the Work is destroyed, such destruction will not violate or infringe his moral rights in relation to the Work.

Accordingly, the Artist hereby acknowledges and agrees that the City may, subject to the foregoing:

- (a) alter the site;
- (b) replace, substitute or remove any vegetation forming part of the Work;
- (c) repair and maintain the Work;
- (d) relocate the Work;
- (e) remove the Work;
- (f) use the Site for any municipal purposes; or
- (g) destroy the Work,

without violating or infringing his moral rights in relation to the Work.

7. MAINTENANCE

7.1 Maintenance

The NVOCA recognizes that maintenance of the Work on a regular basis is essential to the integrity of the work. The NVOCA will reasonably assure that the work is properly maintained and protected taking into account the recommendations of the Artist as stated in the maintenance criteria provided by the Artist.

7.2 Repairs and Restoration

The NVOCA will have the right to determine, after consultation with a professional conservator, when and if repairs and restorations to the Work will be made. During the Artist's lifetime, the Artist will have the right to approve all major repairs and restorations, provided, however, that the Artist will not unreasonably withhold approval for any repair or restoration of the work. If the Artist unreasonably fails to approve any repair or restoration, the NVOCA will have the right to make or personally supervise significant repairs and restorations, to the extent practical, the Artist, during the Artist's lifetime, will be given the opportunity to make or personally supervise significant repairs and restorations and will be paid a reasonable fee for any such services, provide that the NVOCA and the Artist will agree in writing, prior to the commencement of any significant repairs or restorations, upon the Artist's fee for such services.

All repairs and restorations will be made in accordance with recognized principles of conservation.

8. TERMINATION

8.1 Non-Performance

In the event that the NVOCA determines that the Artist has substantially failed to fulfill his/her obligations as provided in Schedule A or Schedule B, the NVOCA will provide the Artist with written notice within thirty (30) days detailing the specific obligations which the NVOCA claims the Artist failed to fulfill and notifying the Artist that he/she is deemed to be in breach of this Agreement. If the breach is not cured or if the NVOCA and the Artist cannot agree on a schedule for curing the breach, the Agreement will be deemed terminated on a date specified by the NVOCA which will be no sooner than ten (10) days from the date of issuance of the notice.

8.2 Property Rights

On receipt of the Notice provided in subparagraph 8.1 above the Artist will have the right to terminate the contract and thereby forfeit all monies owing him/her in exchange for the NVOCA's grant of a complete release of the Artist.

The NVOCA will have the right, upon termination of the agreement, to all the Work in Progress which the Artist has produced and for which payment has been made, and that the NVOCA will have the rights, as set out in earlier provisions of the Agreement to have the Work completed by another person or persons.

8.3 Right to Terminate

In addition to termination under paragraph 8.1 above the NVOCA will have the unilateral right to terminate this Agreement for any reason. In the event of such termination, the NVOCA will compensate the Artist for all services satisfactorily performed up to that stage and for materials and products ordered or procured prior to receipt of written notice of termination and the NVOCA will have the right to all Work in Progress which the Artist has produced and for which payment has been made, and to have the Work completed by another person or persons.

8.4 Compliance

Upon receipt of termination notice under subsections 8.1 or 8.3 above, the Artist will promptly discontinue all services affected (unless the notice directs otherwise).

8.5 Frustration

If, because of death, unavailability or any other occurrence, it becomes impossible for the Artist to render services under this Agreement, the Agreement will be deemed terminated.

The NVOCA will have the right, upon termination of the agreement, to all the Work in Progress which the Artist has produced and for which payment has been made, and that the NVOCA will have the rights, as set out in earlier provisions of the Agreement to have the Work completed by another person or persons.

9. DISPUTES AND REMEDIES

9.1 Dispute Resolution

If there is any dispute regarding the interpretation, performance or an alleged breach of the Agreement, either party may give written notice of dispute to the other party and the Artist and the NVOCA, or their representatives, will attempt in good faith and using reasonable efforts to resolve the matter equitably to the satisfaction of both parties. If the parties cannot resolve the dispute within thirty (30) business days after the notice of dispute is given the parties may elect to mediate the dispute; provided that if no election is made or the mediation fails, the dispute will be referred for arbitration by a single arbitrator pursuant to the *Commercial Arbitration Act*, R.S.B.C. 1966, C.55, as amended, and the decision of the arbitrator will be final.

10. CREDIT AND PUBLICITY

10.1 Credit to the Artist

All photographs and cinematographic work and any copies thereof embodying the Work that are made or authorized by the NVOCA will contain a credit to the Artist reading substantially, "an

original work by "ARTIST NAME". The placement, form, type and size of such credit will be at the NVOCA's sole discretion. Causal or inadvertent failure by the NVOCA or any third party to comply with this provision will not constitute a breach of this Agreement.

10.2 Credit to the City

All reproductions of the Work by the Artist and all exhibition and publication of such reproductions will contain a credit reading substantially, "an original work owned and commissioned by the City". The placement, form, type and size of such credit will be at the NVOCA's sole discretion. Causal or inadvertent failure by the Artist or any third party to comply with this provision will not constitute breach of this Agreement.

10.3 Publicity

The NVOCA may use or authorize others to use the Artist's name and approved photograph, approved likeness and approved biographical material in connection with the promotion and advertisement of the Work, the Site, the City or the NVOCA , but may not represent the Artist as using, consuming or endorsing any product, service, corporation or organization. The Artist and the NVOCA will make reasonable efforts to consult with each other prior to the release or distribution of any written materials or press releases regarding the Work.

10.4 Identification

The NVOCA will, after consulting with the Artist, at its expense, prepare and install at the Site, a plaque identifying the Artist, the title of the Work and the year of completion.

11. GENERAL PROVISIONS

11.1 Indemnification

The Artist agrees to indemnify and save harmless the NVOCA and its assignees of and from any claims, liabilities, losses, damages, assessments or expenses (including reasonable legal fees) arising directly or indirectly out of any breach of the Artist's representations, warranties, covenants or agreements herein.

11.2 Notices

All notices, statements and other communications between the parties will be deemed to have been delivered if made in writing and either mailed by registered mail and received within seven (7) days or actually delivered or faxed to the other party at the applicable address or fax number provided below. The Artist will notify the NVOCA of any changes of address or fax number. The failure to do so, if such failure prevents the NVOCA from locating the Artist, will be deemed a waiver by the Artist of the right subsequently to enforce those provisions of this Agreement that require consultation or approval of the Artist. Notwithstanding these provision, the NVOCA will make every effort to locate the Artist when matters arise relating to the Artist's rights/

11.3 Benefit

This Agreement will enure to the benefit of and be binding upon the parties and their respective heirs, executors, administrators, successors and assignees, as applicable.

11.4 Entire Agreement

This Agreement constitutes the entire agreement between the parties and supersedes all prior communications, representations, understandings and agreements whether verbal or written between the parties with respect to the subject matter hereof.

11.5 Execution of Agreement

This Agreement merges and supersedes all prior negotiations, representations, and agreements between the parties relating to the subject matter hereof and constitutes the entire agreement between the parties.

This Agreement may be amended only by written instrument signed by the parties hereto.

11.6 Independent Legal Advice

Each of the parties acknowledges that it has obtained its own independent legal advice with respect to the terms of this Agreement prior to execution of this Agreement and further acknowledges that it fully understands this Agreement.

By signing in the spaces provided below, the Artist and the NVOCA accept and agree to all of the terms and conditions of this Agreement as of the date first written above.

**Signed, Sealed and Delivered by:
the North Vancouver Office of
Cultural Affairs:**

Director, NV Office of Cultural Affairs

Witness Name

Date Signed

Address

Occupation

Signed, Sealed and Delivered
In the Presence of:

Artist

Witness Name

Address

Address

Date Signed

Occupation

SCHEDULE A

SCOPE OF WORK

A. Design Development

Upon approval of the Concept Proposal by the NVOCA, the Artist will be directed to proceed with and complete Design Development of the approved proposal.

The Artist will provide documentation in the format of drawings, models, maquettes, and/or other documents as are necessary to accurately and completely represent the Artist's design as presented in the approved proposal.

The Artist will provide 1) material samples that accurately represent the Artist's final product; 2) dimensioned drawings in plan, elevation, section, and detail as required to accurately document the designs or elements for fabrication by the Artist or by others; 3) accurate definition of fabrication and installation techniques and procedures; 4) an accurate estimate of construction costs; 5.) drawings stamped by a structural engineer registered in the province of British Columbia.

B. Final Design

The Artist will provide final dimensioned technical drawings, specifications and all other information required to accurately construct and install the Artist's designs either by the Artist or by others; a final project cost estimate; and a completed "Artist Specifications of Work" (Schedule C).

C. Construction Administration

The Artist will provide construction administration. This will include clarification of contract documents from requests by bidders; review and approval of contractor shop drawings, submittals or mock-ups; site visits as required to resolve construction questions; and Final Review and Approval of construction.

D. Project Documentation

Upon completion of all work related to installation and site, the Artist will provide Final Project Documentation to the NVOCA. Such Project Documentation will be determined upon submittal of Final Design and attached as an amendment to this Agreement (Schedule D).

COMPENSATION

The Artist will be paid an amount not to exceed \$000 inclusive of GST for all services required to design the Artist's work and construction administration required to completely and successfully fabricate and install the Artist's work.

A. Design Development

1. The Artist will be paid \$000 in accordance with Schedule B payment 1 for services required to satisfactorily complete Design Development and all construction documents required to fabricate the work of the approved proposal.

B. Construction Administration

The Artist will be paid \$000 in accordance with Schedule B during the construction phase of the Project. Payments will be invoiced upon completion of construction milestones based on percentage of construction completed.

C. Project Documentation

The Artist will be paid \$000 in accordance to Schedule B upon completion of all Project Documentation including but not limited to photographic record of the final Work installed and all maintenance records as required to successfully maintain the physical integrity of the Work. Project Documentation required will be determined upon submittal of Final Design and attached as an amendment to this Agreement.

SCHEDULE B - PHASE II - DELIVERABLES TIMETABLE & PAYMENT SCHEDULE**FOR
FABRICATION & INSTALLATION OF ARTWORK****(not to exceed a fixed price of \$ 000 plus GST)**

Date

PAYMENT 1**\$ + gst**

- Start up fees & site consultations
- Completion of Schedule A

Date

PAYMENT 2**\$ + gst**

- Set up cast & footing
- Provision of proof of insurance
- Provision of Stamped Engineering Drawings

Date

PAYMENT 3**\$ + gst**

- Finish cast
- Install
- Complete rock base

Date

PAYMENT 4**\$ + gst**

- Receipt of schedule D deliverables
- Signing of Schedule E
- Acceptance of work by CNV and Public Art Coordinator

SCHEDULE C - ARTIST SPECIFICATIONS OF WORK

Artist

Project Title

1. Design Drawings

Attach drawings of the project or note pages of Construction Drawings that describe project.

2. Location or Placement of the Work

The location of the work is in accordance with the attached drawings.

3. Dimensions of the Work

Provide overall dimensions of the Work per:

Length	_____
Height	_____
Width	_____
Weight (approximate)	_____

4. Materials, Finishes, and/or Colours

Provide a complete list of the materials, their finishes and/or colors, which will be used in the fabrication of the Work.

The list of materials and finishes and colors must include all raw materials including all metals, stone, primers, paints, adhesives, grouts, epoxies, fabrics, plant materials, special lighting, etc. Alternately, attach specifications sheets provided by manufacturer or supplier.

5. Studio Fabrication/Field Fabrication

The following is a description of the Work which will be studio fabricated, shop fabricated or field fabricated:

(a) Studio Fabrication by Artist

Description

- (b) Shop Fabrication

By: _____

Description:

- (c) Field Fabrication

Not included in general contractor construction contracts.

By: _____

Description:

- (d) Field Fabrication

Included in general contractor construction contracts.

Include No. and Title: _____

6. Installation

The following features are noted for incorporation of the labor by the General Contractor into the supporting structure to which the Work is fixed. (Attach the necessary drawings or reference appropriate drawings in contract bid documents).

7. Maintenance and Cleaning Provisions

The following are design provisions and instructions for the maintenance and cleaning of the Work upon final acceptance by the NVOCA. Provide detailed instructions which include the following:

- (a) Special features included in the design for maintenance of the Work.
- (b) Special Preservation features included in the Work.
- (c) Maintenance and repair instructions.
- (d) Special cleaning instructions.

8. Protection

Provide a complete list of requirements for the protection of the Work when such labor is being preformed in the field (on construction site). These provisions must be incorporated into the Construction Specifications of Work Documents where applicable:

9. Schedule for Completion of Work

Provide a schedule for completion of labor as per Line Item 5A, 5B, 5C, and 5D above.

Please use additional sheets as required to provide the information requested.

SCHEDULE D - FINAL PROJECT DOCUMENTATION

Photo Documentation

(two sets of three 35 mm colour slides of the Work)

and

(three digital j-peg images of the completed work)

and

(As-Builts as needed)

SCHEDULE E - TRANSFER OF TITLE

Whereas, the City of North Vancouver (CNV) and _____ (the Artist) have entered into an agreement dated _____, (the Agreement) for the Artist to create, design, execute fabricate, transport, deliver and install an original work tentatively entitled (the Work).

AND the CNV has accepted the Work pursuant to Section 2.6(b) of the Agreement and requires an executed copy of this transfer of Title as further assurance of the City of North Vancouver's ownership of the Work.

THEREFORE IN CONSIDERATION of the sum of and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Artist hereby unconditionally and irrevocably transfers ownership and title in and to the Work, to the City of North Vancouver.

The Artist further hereby acknowledges and agrees that, in the event that the Artist has failed to complete the Work as per the terms and conditions of the Agreement, this Transfer of Title will apply to that portion of the Work completed prior to the Artist ceasing production of the Work.

IN WITNESS WHEREOF the Artist has executed this Agreement as of the _____ day of _____, 2007.

Witness' Name

Witness' Signature

Artist's Signature