



**Minnesota**  
STATE COLLEGES  
& UNIVERSITIES

**MINNESOTA STATE COLLEGES AND UNIVERSITIES**

*Bemidji State University*

**REQUEST FOR QUALIFICATION (RFQ) FOR  
ART DESIGN AND COMMISSION**

**23, February 2009**

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## SECTION 1: INTRODUCTION

The Minnesota State Colleges and Universities (MnSCU) is the fifth-largest higher education system in the U.S. and is comprised of 32 two-year and four-year state colleges and universities with 53 campuses located in 46 Minnesota communities. MnSCU colleges and universities serve about 150,000 students each semester and produce about 30,000 graduates a year.

Bemidji State University is completing an addition and remodel of Sattgast Hall, which houses the sciences and will house the nursing department.

The MnSCU Board of Trustees, on behalf of Bemidji State University, hereafter referred to as the “Owner”, is soliciting proposals from interested, qualified artists, and intends to retain a professional artist to provide Art Design and Commissioning. A Public Art Task Force is overseeing the art selection process.

Selection of vendors shall be based on Public Art Task Force evaluation of responses. Bemidji State University intends to enter into a contract with the selected Respondent, and this contract will contain all the terms and conditions required by this request for qualifications (RFQ), as well as further terms and conditions negotiated between Bemidji State University, the Office of the Chancellor's General Counsel and/or the Office of the Attorney General, and the selected Respondent.

### 1.1 Summary

#### **Proposals must be delivered to:**

**Location:** Bemidji State University  
**Name:** Dr. Patrick Guilfoile  
**Title:** Public Art Task Force Chairperson  
**Address:** 1500 Birchmont Drive, # 23 Bemidji, MN, 56601  
**Phone:** (218) 755-2862

**No later than 2:00 p.m., March 12, 2009. Late Responses will not be considered.**

### 1.2 Purpose of this Request for Qualification

The purpose of this Request for Qualification (RFQ) is to evaluate and select an artist to design and commission an original piece of artwork to be located outside **Sattgast Hall, Bemidji State University, Bemidji**, Minnesota. The Artist shall work with the Owner's appointed Project Manager, the Owner's Office of the Chancellor Facilities Unit, the Architect/Engineer (A/E) design team, related consultants and the construction contractor(s) throughout the process as applicable.

### 1.3 General Description of Project

#### RFP Guidelines

- This project will be an outdoor installation.
- The installation will be on top of an existing concrete surface.
- The artwork will integrate into the overall campus architecture/artwork.
- The artwork will tell a story related to the disciplines housed in the Sattgast Hall (Environmental Studies, Geology, Biology and Aquatic Biology, Chemistry, Physics, and Nursing).
- The artwork will incorporate a variety of motifs that represent the disciplines listed above. One goal would be to have visitors see something new every time they visited the site.
- The artwork will create a space for discovery and renewal of the human spirit.
- The artwork would be located in the area adjacent to Sattgast in the northwest corner of the building, adjacent to a wall with a list of names of prominent scientists. This artwork should in some way highlight or draw attention to the wall with the names on it.
- This artwork should include an inviting outdoor seating / green area
- The proposal should include consideration of some connection to the adjacent butterfly garden.

It is expected the public art design process will begin immediately after contract award and that installation will be as soon as the artwork is completed.

### 1.4 Project Budget and Fees

The estimated total Project cost is **\$60,000**. This cost includes: all professional consultants, artist stipends, artist fees and reimbursable expenses, site investigations and surveys, insurance, labor of the Artist and Artist's assistants, studio and operating costs, all materials, installation, applicable sales tax, rental equipment, and inflation factors. **It also includes travel costs to visit and research site, and supervise installation.**

Final contract amount will be negotiated with the selected artist.

### 1.5 Completion Date

On or before September 30, 2009.

## **1.6 Procurement Timetable:**

The following is the University's intended schedule for the RFQ and procurement process to obtain artist services. The University reserves the right to modify this schedule as necessary.

| <b><u>Event</u></b>                                               | <b><u>Date</u></b>                      |
|-------------------------------------------------------------------|-----------------------------------------|
| • RFQ Release Date                                                | <b>23 February 2009</b>                 |
| • RFP Written Question Submission Deadline                        | <b>2 March 2009</b>                     |
| • RFQ Response Submission Deadline                                | <b>2:00 p.m., March 12, 2009</b>        |
| • Evaluation of submitted proposals by Owner Evaluation Committee | <b>20 March 2009</b>                    |
| • Notification of Short-listed Finalists for Interviews           | <b>23 March 2009</b>                    |
| • Interviews of Short-listed Finalist                             | <b>By 3 April 2009</b>                  |
| • Authorization for Selected Finalists to develop Concept Design  | <b>10 April 2009</b>                    |
| • Presentation of Concept Design by Selected Finalists            | <b>30 April 2009</b>                    |
| • Anticipated Contract Award Date                                 | <b>May 2009</b>                         |
| • Completion date/ Installation                                   | <b>September, 30<sup>th</sup>, 2009</b> |

## **SECTION 2: PROPOSAL PREPARATION**

### **2.1 General Information**

Proposals must be clear, concise, and clearly follow the format detailed in this RFQ. Proposals that are difficult to follow or that do not conform to the RFQ format or binding specifications may be rejected. Respondents must include required information called for in this RFQ. The Owner reserves the right to reject a proposal if required information is not provided or is not organized as directed. 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 request for qualification 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.

- A. This document, including attachments, constitutes a formal Request for Qualification (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. The Owner reserves the right to reject a proposal that is determined to be incomplete or which does not follow the required structure and format. However, when such statements, omissions or deviations are innocent or inadvertent in the opinion of the Owner, the Owner further reserves the right to waive them as informalities.
- B. Proposals are to be sealed in mailing envelopes or packages with the Responder's name and address clearly written on the outside. The proposal must be signed in ink by an authorized member of the company. Proof of authority of the person signing shall be furnished upon request. All costs incurred by a Responder in replying to this RFQ shall be borne by the Responder.
- C. Notwithstanding anything to the contrary, the Owner reserves its right to:
  - 1. Reject any and all proposals received in response to this RFQ.
  - 2. Select any proposal for contract negotiation.
  - 3. Waive or modify any informalities, irregularities, or inconsistencies in proposals received and/or accept a late written modification requested by the Owner if the proposal itself was submitted on time and if the modified proposal is more favorable to the Owner.
  - 4. Approve sub-consultant(s) used by a Respondent.
  - 5. Negotiate any aspect of the proposal with any Respondent and negotiate with more than one (1) Respondent at the same time.
  - 6. 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.
  - 7. Select more than one Respondent.

8. The Owner's evaluation process may include interviews with some Respondents who have been short-listed after previous review of proposal documents.
- D. Any verbal explanations of instructions or discussion of any aspect of this RFQ provided the Respondent before the award of a contract shall not be binding. Respondents with questions regarding this Request for Qualification must submit them in writing by regular or electronic mail (do not fax) to:
- Name: Dr. Patrick Guilfoile  
Title: Public Art Task Force Chairperson  
Address: 1500 Birchmont Drive NE, # 23, Bemidji, MN 56601  
Email: pguilfoile@bemidjistate.edu  
Phone: (218) 755-2862
- E. Responders may propose additional tasks, activities, or alternative suggestions if they will substantially improve the results of the project. These items shall be separated from the required items on the cost proposal.

## 2.2 Contacts

Requests for information or clarification by Respondents must be received no later than **March 2, 2009**. Written questions or communications with the Owner regarding this RFQ must be submitted in sealed envelopes or via email. Questions must include the name of the questioner, as well as a phone number, mailing address, and e-mail address for confirmation. Note that both questions and answers will be distributed to all Respondents on the Owner's official Respondent list and anonymous questions will not be answered.

All communication must clearly state the appropriate RFQ reference (i.e. subject plus page and section numbers) and must generally state the contents of the communication (for example, "RFQ Questions") on the outside of the envelope or at the top of the email. Any envelope or email not carrying this designation will be assumed to be general mail, and may not receive priority attention.

If appropriate, a change responding to such a request may be issued by the Owner in the form of an addendum to the RFQ. No other communications shall be of any effect in changing or amending this RFQ.

All written communications from potential Respondents must be addressed or sent via e-mail to:

Name: Dr. Patrick Guilfoile  
Title: Public Art Task Force Chairperson  
Address: BSU, 1500 Birchmont Dr NE, # 23, Bemidji, MN 56601  
Email: pguilfoile@bemidjistate.edu  
Phone: (218) 755-2862

From the date of release of this RFQ until a Respondent is selected and a contract executed, Respondents must not communicate with the Owner's staff concerning the RFQ except through the Owner Contact pursuant to the procedure described in the RFQ. If any Respondent attempts any unauthorized communication, the Owner may reject that Respondent's proposal.

### **2.3 Proposal Delivery**

All proposals must be sent to and received by:

Institution: Bemidji State University  
Name: Dr. Patrick Guilfoile  
Title: Public Art Task Force Chairperson  
Address: BSU, 1500 Birchmont Dr. NE # 23, Bemidji, MN 56601

In order to be considered for selection, sealed proposals must be received at the address identified above and time stamped by the Owner no later than **2:00 p.m., March 12, 2009**. Submission by fax, email or other electronic transmission is unacceptable and proposals submitted by these means will not be considered. The Owner assumes no responsibility for delays in the US mail or courier systems, or because of weather.

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 the proposal. Late proposals will be logged as to date/time received and thereafter returned to the late Respondent.

If delivery of the proposal is not made by courier or in person, the use of certified or registered mail is suggested. Note: Use of certified or registered mail does not relieve the Respondent of the responsibility to ensure the proposal is date/time stamped as specified above.

### **2.4 Quantities**

Each Respondent shall provide on 8 ½ x 11 inch paper one signed original copy of its entire submission including all attachments. In addition, all Respondents shall submit **three (3)** identical copies of its proposal with duplicate signatures and all attachments.

### **2.5 Duration of Offer**

Proposals submitted in response to this solicitation are irrevocable for 60 days following the due date of the proposals. This period may be extended by written agreement between Responder and the Owner.

### **2.6 Transmittal Letter**

A Transmittal Letter for each Respondent's proposal must be submitted. The letter shall transmit the proposal, identify all materials and enclosures being forwarded collectively

as a response to this RFQ, and must be signed by an individual authorized to commit the Respondent to the scope of work proposed.

## 2.7 Proposal Content

The following is considered minimum contents of the proposal:

- A. A restatement of the objectives, goals, and tasks to show or demonstrate the Responder's view of the nature of the project.
- B. Identification and description of the deliverables to be provided by the Responder.
- C. An outline of the Responder's background and experience with particular emphasis on local, state, and federal government work. Identification of personnel to conduct the project, with details on training and work experience.
- D. **A brochure, photographs or similar information showing at least 2 similar installations. If Responder has a website with additional information, provide website address.**
- E. Three references from similar projects. Include name of contact, title, telephone number, location and description of project including project size and cost.
- F. Required attachments.
- G. Required Respondent Statements or Attestations
  - 1. A list of the individuals involved with the preparation of the RFQ response.
  - 2. A statement that no attempt has been made or will be made by the Respondent to induce any other person or firm to not submit a proposal.
  - 3. A statement on the RFQ proposal sheet listing all addenda, if any, received by the Respondent.
  - 4. A statement that the Respondent did not have any personnel currently employed by the University or MnSCU or under contract to the University or MnSCU **participate, directly or indirectly, in any activities related to the preparation of the Respondent's proposal;** this does not include clarifications and answers to questions provided by the Owner in regards to this RFQ.
  - 5. A statement that the Respondent has had no contractual relationships or other contacts with any University or MnSCU's **personnel involved in the development of the RFQ,** or, if such contacts have occurred, a statement identifying in detail the nature and extent of such contacts and the personnel involved.

6. A statement that Respondent has sole and complete responsibility for the completion of all services provided under the contract, except for those items specifically defined as Owner responsibilities.
7. A statement that no contingency fees have been paid for purposes of securing this contract.
8. A statement that the Respondent's offer will be firm and binding, without any reference to the price submitted, for 60 days from the due date for receipt of proposals.

## **SECTION 3: SCOPE OF SERVICES**

### **3.1 Selected Finalists' Concept Proposals**

1. After interviews of the Short-Listed Finalist's, Owner will request two or three artists provide a preliminary Concept/Design Proposal.
2. Preliminary Concept/Design Proposal – The preliminary concept/design stipend for the model(s) or drawings(s) will be \$1,200. The stipend shall include 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;. The design proposal will be presented to Owner.
3. Preliminary Concept/Design Proposal shall consist of the following:
  - Drawing or model to convey a meaningful representation of the design concept.
  - Estimated timeline for design and installation.
  - Anticipated budget for total project: Final Concept/Design Proposal fee, any consultant fees, material, suppliers and production cost, installation cost, travel and lodging costs, general conditions such as insurance, shipping, documents costs, plaque, office, expenses, etc.
4. Final selection of the Artist will be made after presentations of the Preliminary Concept/Design Proposals to the Task Force in Bemidji, MN.

### **3.2 Artist Duties and Responsibilities after Contract Award**

1. FINAL Concept/Design Proposal – The Artist is first required to finalize the concept design proposal. The design proposal must be presented to Owner at a formal meeting in Bemidji, MN.
2. Commission of the Work – Once the concept/design proposal has been accepted, the Owner will inform the Artist and the process proceeds into the production of the commissioned work.
3. Coordinate major elements of design and/or construction with the campus' schedules and activities to minimize disruptions.
4. Provide for the design, fabrication, and installation of the public notice plaque in an area appropriate for identification.
5. See Attachment 3 for additional information.

### **3.3 Documentation and Records:**

1. A written technical description of the Work, any blueprints regarding installation, any special installation instruction such as suspension or foundation requirements, and any maintenance instructions or recommendations.
2. The completed Timeline/Budget Final Report form.
3. Ten professional quality digital photos of the Work during production and after installation for archival records.
4. Two 8x10 black and white glossy photographs of the Work.
5. A full written narrative description of the Work.
6. An updated resume of the Artist.

## SECTION 4: PROPOSAL EVALUATION

### 4.1 General

All proposals received by the deadline noted above will be evaluated by representatives of Bemidji State University. In some instances, an interview may be part of the evaluation process. The Owner reserves the right to name a date at which all or selected finalists will be invited to present demonstrations and/or participate in an interview. The Owner does not agree to reach a decision by any certain date; however, it is hoped that the evaluation and selection will be completed within 45 business days after the RFQ deadline. Factors on which proposals will be judged include, but are not limited to:

1. Completeness, detail, and thoughtfulness of response as reflected by proposal coverage of all elements of work listed in Section II.
2. Experience on similar projects. Prior experience in designing and installing Public Art Projects of this type; availability and commitment to the project.
3. Qualifications and current abilities. Proposer is capable of producing an outstanding example of Public Art; producing Public Art that meets the artistic intent of the Sattgast Hall Renovation Project; creating designs that will be responsive to and effectively used in the facility; working cooperatively and productively with administration, staff, other consultants and contractors; and cooperating with other participants, as well as taking initiative, in effectively managing the project to meet time schedules and budget objectives.
4. Approach and special services, benefits, or advantages to the Owner. Relationship of work to the overall theme of the project.
5. Cost in relation to level of service to be provided.

**The following criteria will be used in evaluating the proposals to short-list finalists:**  
(Numbers correspond to descriptions under 4.1).

|                                      |            |
|--------------------------------------|------------|
| Proposal Response                    | 25%        |
| Experience on similar projects       | 35%        |
| Qualifications and current abilities | <u>40%</u> |
|                                      | 100%       |

**The following criteria will be used in final selection of the Artist (after Preliminary Concept/Design Proposal presentation):**  
(Numbers correspond to descriptions under 4.1).

|                                      |            |
|--------------------------------------|------------|
| Qualifications and current abilities | 20%        |
| Approach and special services        | 50%        |
| Cost                                 | <u>30%</u> |
|                                      | 100%       |

## **SECTION 5: GENERAL REQUIREMENTS**

### **5.1 Owner's Right to Amend RFQ**

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 in Owner's requirements resulting in a decision to modify the RFQ scope of work or statement of requirements, such change will be communicated in writing as an addendum to the RFQ provided to all prospective Responders on the official Respondent list. In such an event of a change, all Respondents will be afforded the opportunity to revise their proposals to accommodate the RFQ amendment.

Any addenda to this RFQ will be sent by the Owner to Respondents by mail or email. Respondents will be responsible for meeting the requirements of all addenda and will be required to acknowledge receipt of all addenda on the RFQ proposal form.

To receive addenda and other information pertaining to this RFQ, all Respondents must ensure they are on the Owner's official lists of Respondents and must designate a single mailing and/or email address for all such mailings.

### **5.2 Affidavit of Non-Collusion**

Each Responder must complete the attached Affidavit of Non-Collusion (**Attachment 1**) and include it with the proposal. 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 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. Disclosure of any contractual relationship with any MnSCU College/University or MnSCU personnel in the twelve (12) months immediately prior to the release of the RFQ, or any similar real or potential conflicts of interest, may, at the sole discretion of the Owner, be grounds for rejection of the Respondent's proposal or termination of any contract awarded.

### **5.4 Disposition of Responses**

All materials submitted in response to this RFQ will become property of MnSCU 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 resolicitation of the requests for proposal results in completion of the evaluation process or a determination is made to abandon the purchase. 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.

## **5.5 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.

## **5.6 Form of Contract between Owner and Respondent**

You should be aware the contract between the selected Respondent and the Owner will be in the form of Minnesota State Colleges and Universities Art Design and Commissioning Contract, including this RFQ and any addenda, the selected Respondent's response to the RFQ, and any modifications to the requirements of the RFQ resulting from negotiations between the selected Respondent and the Owner.

A sample Minnesota State Colleges and Universities Art Design and Commissioning Contract is attached (**Attachment 3**) for your reference. Much of the language reflected in the contract is required by statute. If you take exception to any of the terms, conditions or language in the contract, you must indicate those exceptions in your response to the RFQ; certain exceptions may result in your proposal being disqualified from further review and evaluation. Only those exceptions indicated in your response to the RFQ will be available for discussion or negotiation.

Any award made as a result of this RFQ Process will be governed by the terms and conditions contained in this document.

If you take exception or wish to propose a deviation to any term or condition in this document, do so clearly and conspicuously in your proposal by referencing the specific section number of the term or condition and by describing the exception or deviation and proposing alternative language.

If you do not clearly and conspicuously take an exception or propose a deviation to a specific term or condition, you shall be bound by such term or condition in the event an award of the contract is made to you.

The Owner reserves the right in each instance to:

- 1) accept with deviations or exceptions
- 2) negotiate deviations or exceptions or
- 3) reject a proposal with deviations deemed unacceptable by the Owner at its option and in the exercise of its sole discretion.

#### **5.7 Preference to Targeted Group and Economically Disadvantaged Businesses and Individuals**

In accordance with Minnesota Rules 1230.1810, subpart B and Minnesota Rules 1230.1830, certified Targeted Group Businesses and individuals submitting proposals as prime contractors shall receive the equivalent of a six percent preference in the evaluation of their proposal, and certified Economically Disadvantaged Businesses and individuals submitting proposals as prime contractors shall receive the equivalent of a six percent preference in the evaluation of their proposal. For information regarding certification, contact the Materials Management Helpline at 651.296.2600, or you may reach the Helpline by e-mail at [mmd.help.line@state.mn.us](mailto:mmd.help.line@state.mn.us). For TTY/TDD communications, contact the Helpline through the Minnesota Relay Services at 1.800.627.3529

#### **5.8 Human Rights Requirements - Not Applicable to Contracts under \$100,000**

#### **5.9 Certification Regarding Lobbying**

Federal money may be used to pay for all or part of the work under the contract, therefore the Responder must complete the attached **Certification Regarding Lobbying (Attachment 7)** and submit it as part of its proposal.

#### **5.10 Insurance Requirements**

Listed below are the insurance requirements of the State of Minnesota acting through its Board of Trustees of the Minnesota State Colleges and Universities, hereinafter "BOARD."

ARTIST shall not commence Work under the Contract until it has obtained all insurance required herein and such insurance has been approved by BOARD.

ARTIST shall procure and maintain, for the life of the Contract, or for as long as required herein, insurance policies, including any amendments or additional insurance required as follows:

- A. 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 operating under this Contract whether such operations be by the Artist or by a subcontractor or by anyone directly or indirectly employed under this Contract. Insurance minimum amounts will be as follows:

1. \$2,000,000.00 - per occurrence
2. \$2,000,000.00 - annual aggregate
3. Products and Completed Operations Liability – Aggregate \$2,000,000
4. Damage to Rented Premises \$50,000 (Each Occurrence)
5. Medical Expenses \$5,000 (Any one person)

In addition, the following coverages shall be included:

Bodily Injury and Property Damage

Blanket Contractual Liability

Name the Board of Trustees of 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, the Architect and its agents, as Additional Insured

- B. Automobile Liability: The Artist will be required to maintain automobile insurance protecting the Artist from claims for damages for bodily injury, including sickness and 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 Contract whether such operations were by the Artist of by subcontractor of by anyone directly or indirectly employed under the Contract.. Insurance minimum amounts will be as follows:

1. \$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

Name the Board of Trustees of 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, the Architect and its agents, as Additional Insured

The BOARD will reserve the right to immediately terminate the Contract if the Contractor is not in compliance with the insurance requirements and retains all rights to pursue any legal remedies against the Contractor. All insurance policies must be open to inspection by the BOARD, and copies of policies must be submitted to the BOARD's authorized representative upon written request.

#### **5.11 Hold Harmless and Indemnification:**

The Contractor shall indemnify and hold harmless the Owner and the Board of Trustees of the Minnesota State Colleges and Universities and its officers and members, the State

of Minnesota, officers and employees of the State of Minnesota, the Architect, Architect's consultants, and agents, and employees of any of them from and against all claims, damages, loss or expense (1) is attributable to bodily injury, sickness, disease, or death or to injury to or destruction of tangible property (other than the Work itself), including loss of use resulting there from and (2) is caused in whole or in part by any negligent act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity or liability which would otherwise exist as to any party or person described in this paragraph.

## **5.12 Financial Requirements**

In preparing a response, Responders should be aware of the following required MnSCU contract terms and conditions:

- A. Compensation will be for ALL services performed, unless a specific payment schedule is mutually agreed upon. Bemidji State University DOES NOT make regular payments based on the passage of time and only pays for services performed or work delivered AFTER it is accomplished in a satisfactory way.
- B. Payment is only made after the submission of an authorized and properly itemized invoice, submitted on MnSCU form.
- C. Reimbursement for travel and subsistence expenses actually incurred in performance of a contract is limited by the provisions of "Commissioner's Plan" promulgated by the Commissioner of Employee Relations. Generally, meals have a dollar limitation and reasonable and necessary travel and lodging is paid for at cost. Travel outside of Minnesota must receive written approval BEFORE it takes place. Compensation for reimbursables is from the Public Art Budget and must be included in Artist's budget.

**ATTACHMENT 1**

**MINNESOTA STATE COLLEGES AND UNIVERSITIES**

**AFFIDAVIT OF NON-COLLUSION**

I hereby 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*** covering the order for: Art Design & Commission has been arrived at by the independently and has been submitted without collusion with, and without any agreement, understanding or planned common course of action with, any other vendor of materials, supplies, equipment or services described in the Request for ***Qualification*** designed to limit independent quoting or competition;
3. That the contents of the Request for ***Qualification*** have not been communicated by the Responder or its employees or agents to any person not an employee or agent of the Responder or its surety on any bond furnished with the Request ***for Qualification*** and will not be communicated to any such person prior to the official opening of the Request for ***Qualification***; and
4. That I have fully informed myself regarding the accuracy of the statements made in this affidavit.

Signed: \_\_\_\_\_

Company Name: \_\_\_\_\_

Subscribed and sworn to me this day of \_\_\_\_\_, 20\_\_\_\_\_.

Notary Public

My commission expires \_\_\_\_\_, 20\_\_\_\_\_.

PUR009.doc  
5/15/00

## **ATTACHMENT 2**

The following Data Disclosure Information is required by Minnesota Statute §270.66. The Contractor is to provide either a social security number or federal employer tax identification number and Minnesota tax identification number. This form must be kept separate from the contract to protect the Contractor's private information from being distributed when copies of the contract are circulated.

A copy of this form is required to be sent to the Department of Human Services, see form for more detailed information.

|                                                                                                                                                    |             |           |        |          |        |
|----------------------------------------------------------------------------------------------------------------------------------------------------|-------------|-----------|--------|----------|--------|
| F.Y.                                                                                                                                               | Cost Center | Obj. Code | Amount | Vendor # | P.O. # |
| Department Contact Name:<br>Contact Name Telephone Number:<br>Cost Center Authorization Name Printed:<br>Cost Center Authorization Name Signature: |             |           |        |          |        |

***[INSTRUCTIONS FOR COMPLETING THIS FORM ARE IN ITALICS AND BRACKETS. FILL IN EVERY BLANK AND DELETE ALL INSTRUCTIONS INCLUDING THE BRACKETS.]***

**STATE OF MINNESOTA  
MINNESOTA STATE COLLEGES AND UNIVERSITIES  
DATA DISCLOSURE INFORMATION**

**NOTICE TO VENDORS AND CONTRACTORS:**

You are required by Minnesota Statute §270.66 to provide either a social security number or federal employer tax identification number and Minnesota 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 you to file state tax returns and pay delinquent state tax liabilities. This contract 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 approving the contract and the payment of state obligations.

Name and Address: *[INSERT FULL LEGAL NAME AND FULL LEGAL ADDRESS OF VENDOR/CONSULTANT]*

SSN or Federal Employer Tax ID No.: *[INSERT SSN OR FEDERAL EMPLOYER TAX ID NO.]*

Minnesota Tax ID No.: *[INSERT MINNESOTA TAX ID NO.]*

For any person hired as an independent contractor, Minnesota Statute §256.998 requires the following information be submitted to the Department of Human Services except for those persons whose contract is for less than two months with gross earnings of less than \$250 per month. This information may be used in the enforcement of state and federal child support laws and will be provided to the Minnesota New Hire Reporting Center, P.O. Box 64212, St. Paul, MN 55164-0212. This contract will not be approved unless this information is provided.

SSN: *[INSERT SSN IF NOT PROVIDED ABOVE]*

Date of Birth (mm/dd/yyyy): *[INSERT MONTH, DATE, AND YEAR IF CONTRACT IS FOR AN INDIVIDUAL PERSON]*

**THIS PAGE CONTAINS PRIVATE INFORMATION AND, EXCEPT AS DEFINED ABOVE, SHALL NOT BE REPRODUCED OR DISTRIBUTED WITHOUT EXPRESS WRITTEN PERMISSION OF THE VENDOR OR CONTRACTOR. ONLY INDIVIDUALS THAT REQUIRE THE ABOVE INFORMATION AND INDIVIDUALS SIGNING THIS CONTRACT SHALL HAVE ACCESS TO THIS DATA.**

### ATTACHMENT 3

P.O. Number \_\_\_\_\_

## **STATE OF MINNESOTA MINNESOTA STATE COLLEGES AND UNIVERSITIES**

### **PERCENT FOR ART DESIGN AND COMMISSIONING CONTRACT**

*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 “MnSCU”), and [insert Artist Name and address] (hereinafter “Artist”), an independent contractor and not an employee of MnSCU or the State of Minnesota.*

WHEREAS, MnSCU is authorized to enter into this Agreement pursuant to Minnesota Statutes Sections 16B.35, 136F.06, 136F.581 and 471.59, and the January 11, 2005 Inter-Agency Agreement between MnSCU and the Minnesota State Arts Board (hereinafter “Arts Board”);

WHEREAS, the funds that have been allocated and otherwise made available by MnSCU for this artwork, and the total value of this Agreement is [INSERT DOLLAR AMOUNT IN WORDS AND NUMERS (e.g., One Thousand Five Hundred and 00/100<sup>th</sup> 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 MnSCU 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:

### ***SAMPLE***

#### **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 MnSCU 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 MnSCU's acceptance of Bemidji State University Sattgast Hall ART RFQ

Phase One, MnSCU 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, MnSCU 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 MnSCU 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 MnSCU's 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 MnSCU 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 MnSCU 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. MnSCU shall have authority for final approval of the design.

5. TERMINATION OF DESIGN PHASE.

A. If MnSCU accepts the design, MnSCU shall pay the concept design fee of *[INSERT DOLLAR AMOUNT IN WORDS AND NUMERS (e.g., One Thousand Five Hundred and 00/100<sup>th</sup> Dollars (\$1,500.00)]* to the Artist within thirty (30) days after the submission of an invoice from the Artist, and the process shall proceed in accordance with paragraph 1 above. If MnSCU does not accept the design proposal, MnSCU 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 Bemidji State University Sattgast Hall ART RFQ

MnSCU accepts the original proposal, the alternative proposal or the revised proposal, MnSCU shall pay the concept design fee of *[INSERT DOLLAR AMOUNT IN WORDS AND NUMERS (e.g., One Thousand Five Hundred and 00/100<sup>th</sup> Dollars (\$1,500.00)]* to the Artist within thirty (30) days after submission of an invoice from the Artist, and the process shall proceed in accordance with paragraph 1 above. If MnSCU does not accept the design proposal at the second presentation, then the Artist's participation in the project terminates and MnSCU shall pay the concept design fee of *[INSERT DOLLAR AMOUNT IN WORDS AND NUMERS (e.g., One Thousand Five Hundred and 00/100<sup>th</sup> 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 MnSCU provides written authorization to the Artist to proceed.

## II. PHASE TWO — COMMISSION

7. DESCRIPTION OF ARTWORK. If MnSCU 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 MnSCU-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) days after MnSCU approves the design proposal, the Artist shall prepare and submit to MnSCU detailed working drawings of the Work and site, together with such other graphic material as MnSCU may reasonably request in order to permit MnSCU 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 project manager or architect. MnSCU shall furnish to the Artist all information reasonably requested by the Artist in order to complete these submissions promptly.

B. MnSCU 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. MnSCU may also require revisions for other practical, non-aesthetic reasons as determined by MnSCU.

C. Within fourteen (14) days after MnSCU's receipt of the Artist's submissions pursuant to paragraph (A) above, MnSCU 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 MnSCU 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 MnSCU.

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 MnSCU.

12. PRICE AND PAYMENT SCHEDULE.

A. As payment for the services of the Artist and for the completed Work, MnSCU shall pay the Artist a total of *[INSERT DOLLAR AMOUNT IN WORDS AND NUMERS (e.g., Five Thousand Five Hundred and 00/100<sup>th</sup> Dollars (\$5,500.00))]*, 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; complete installation cost of the Work; and any other 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 2<sup>nd</sup> 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 3<sup>rd</sup> 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 MnSCU.

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

C. **At any time, MnSCU may require the Artist to provide documentation to substantiate the Artist's claimed progress with the Work. MnSCU shall have the right to**

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**inspect the Work at reasonable times while it is being produced and installed.** If MnSCU disagrees with the Artist's estimation of the stage of completion of the Work, MnSCU 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 MnSCU 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 MnSCU's conduct, MnSCU 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) days after MnSCU 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 MnSCU, 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. MnSCU 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 MnSCU in writing, including an explanation of any alleged special circumstances, no later than twenty (20) business days prior to the installation date. If granted, MnSCU 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 MnSCU will occur when MnSCU signifies that the Work has been satisfactorily completed and installed according to terms of this Agreement in a letter of final acceptance from MnSCU to the Artist. MnSCU shall provide the Artist with written final acceptance of the Work within forty five (45) 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.** MnSCU 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 MnSCU 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;  
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February, 2009

- C. Ten professional quality digital photos 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 MnSCU 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 MnSCU 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. MnSCU agrees to reasonably maintain the public notice or plaque in good repair and display it on or near the Work.

18. MAINTENANCE. MnSCU recognizes that maintenance of the Work on a regular basis may be essential to the integrity of the Work. MnSCU 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. MnSCU 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. MnSCU 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 MnSCU 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 MnSCU of any changes in the Artist's address within ninety (90) 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 MnSCU, or its designee, acting as custodian.

## 22. TERMINATION OF COMMISSION PHASE.

A. If the underlying MnSCU building project is delayed or canceled, MnSCU reserves the right, upon no less than twenty (20) days 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 MnSCU or the Artist may cancel this Agreement by providing written notice of cancellation to the other party no later than ninety (90) 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 MnSCU all monies paid by MnSCU 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 MnSCU 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 MnSCU 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 MnSCU. The Artist shall deliver to MnSCU the Work in whatever form it exists at the time of termination, and the Work shall then become the property of MnSCU 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 MnSCU all monies paid by MnSCU 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, MnSCU may require either of the options that would have been available to the Artist in this section.

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

#### 27. INDEMNITY AND LIABILITY.

A. The Artist agrees to indemnify and save and hold MnSCU, its agents and employees harmless from any and all claims or causes of action arising from the performance of this Agreement by the Artist or Artist's agents or employees. This clause shall not be construed to bar any legal remedies the Artist may have for MnSCU's failure to fulfill its obligations pursuant to this Agreement. The risk of damage to or loss of the Work prior to final acceptance by MnSCU shall be that of the Artist solely.

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

C. Protection for Public/Insurance: The Artist shall provide MnSCU's 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 10 day notice of cancellation, nonrenewal, or material change to all named and additional insureds. MnSCU 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 MnSCU, and copies of policies must be submitted to MnSCU's 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 Bemidji State University Sattgast Hall ART RFQ

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

In addition, the following coverages should be included:

Bodily Injury and Property Damage  
Products and Completed Operations Liability  
Blanket Contractual Liability  
Name MnSCU as an Additional Insured

2. **Automobile Liability:** The Artist will be required to maintain automobile insurance protecting the Artist 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 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  
Name MnSCU as an Additional Insured

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, MnSCU 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 MnSCU 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) days of the Artist's receipt of payment from MnSCU.

## 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 MnSCU 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. MnSCU 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 MnSCU, and at no expense to the Artist, for educational displays associated with the Work. MnSCU 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. MnSCU shall present to the Artist satisfactory proof of insurance and transportation both ways. If the Artist makes transportation arrangements, MnSCU shall have no liability for loss or damage to these materials.

B. The Artist hereby grants and MnSCU 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. MnSCU 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 January 11, 2005 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 MnSCU) to prevent MnSCU from attributing the authorship of the Work to the Artist. Within ninety (90) days after MnSCU's receipt of such

notice, MnSCU 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 MnSCU or its faculty or staff; provided, however, that no provision of this Agreement shall obligate MnSCU to alter or remove any such attributive reference printed or published prior to MnSCU's receipt of such notice, or shall obligate MnSCU to interfere with or curtail any constitutionally protected speech or expression.

B. MnSCU reserves the right to, and the Artist hereby waives any right to prevent MnSCU from, modifying, relocating, destroying or deaccessioning the Work if, after taking reasonable steps to notify the Artist and obtaining consent from the Arts Board, MnSCU 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) MnSCU 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 MnSCU decides to destroy the Work in accordance with this Section 32, MnSCU 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 MnSCU, or its designee, acting as custodian upon MnSCU's Final Acceptance of the Artwork. Title transfer shall be self-executing upon MnSCU's Final Acceptance. The Artist grants the State of Minnesota with MnSCU, 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 MnSCU at no charge. MnSCU shall make reasonable efforts to ensure that reproductions or

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publications that prominently feature the Work contain a credit to the Artist. In the event that MnSCU's use of the Work creates trademark, service mark or trade dress rights in connection with the Work, MnSCU 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 MnSCU 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 MnSCU.

33. DISPUTE RESOLUTION. In case any dispute or controversy arises between the Artist and MnSCU, 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 MnSCU 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. If the Artist or the Artist's business resides in the State of Minnesota, Minnesota Statutes Section 270.66 requires the Artist to provide its social security number or Minnesota Tax Identification number if the Artist does business with the State of Minnesota. 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.

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:**

|                                            |
|--------------------------------------------|
| 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.

|                                            |
|--------------------------------------------|
| By (authorized signature and printed name) |
| Title                                      |
| Date                                       |

**3. MINNESOTA STATE COLLEGES AND UNIVERSITIES**

***[INSERT NAME OF COLLEGE/UNIVERSITY/OFFICE OF THE CHANCELLOR]:***

|                                            |
|--------------------------------------------|
| By (authorized signature and printed name) |
| Title                                      |
| Date                                       |

**4. AS TO FORM AND EXECUTION:**

|                                            |
|--------------------------------------------|
| By (authorized signature and printed name) |
| Title                                      |
| Date                                       |

**ATTACHMENT 4**

**MINNESOTA STATE COLLEGES AND UNIVEWRSITIES**

**PERCENT FOR ART ARTWORK STATEMENT**

**PLEASE SUBMIT A COMPLETED COPY OF THIS DOCUMENT  
TO MNSCU'S AUTHORIZED REPRESENTATIVE  
NO LESS THAN TWO (2) WEEKS BEFORE THE CONCEPT/DESIGN  
PRESENTATION**

Project: \_\_\_\_\_ Date: \_\_\_\_\_

Artist: \_\_\_\_\_

Concept or inspiration for artwork, including title (attach an additional sheet, if necessary):

**Physical Description of Artwork —**

Materials:

Dimensions:

Weight:

Color:

Finish:

Site Preparation, including footings:

Lighting:

Installation Method:

Preliminary maintenance recommendations:

---

Artist's Printed Name

Artist's Signature

Date

## ATTACHMENT 5

### MINNESOTA STATE COLLEGES AND UNIVERSITIES

#### PERCENT FOR ART TIMELINE AND BUDGET

The Artist must do a timeline and budget before beginning work on the commission. The overall purpose of the budget is to help identify all cash expenses the Artist will incur while doing this commission. The budget should cover the time at which the Artist begins work on the concept design proposal to the installation of the artwork at the site. **Both design and production of the final artwork must be budgeted within the allocated amount: \$[insert dollar amount].**

The categories of potential costs are reflected in the attached budget listing, and include:

##### **Phase One — Concept/Design Proposal**

The Artist is first required to present a concept design proposal for any anticipated commission. The concept/design fee for the model(s) or drawing(s) is generally on a sliding scale from 5-10% of the total artwork budget. The design proposal must be presented to MnSCU's authorized representative by *[insert date specified in the Agreement]*.

**NOTE:** The concept/design fee is set and has been written into the Budget listing. The fee is inclusive of costs for materials and wages so please **do not** repeat these costs in the Budget portion for Phase Two. However, travel and lodging expenses should be itemized in Phase Two.

##### **Phase Two — Commission of the Work**

Once the preliminary concept/design proposal has been accepted, MnSCU will inform the Artist and the process proceeds to Phase Two – production of the commissioned work. Because Phase Two involves the longest period of work and the majority of the expenses, a complete and detailed itemization of costs is necessary. This will allow a thorough review of the concept/design proposal and the attendant costs to produce the final piece. In particular, the Artist should balance the scale and scope of the artwork with the money available.

**NOTE:** The Artist's fees may be calculated using any of several methods, including an hourly wage during construction of the work, or supervision of its fabrication; as a percentage of the total project; as a flat fee; or as a fee for management of the project.

Under the commission agreement, the Artist must carry insurance to protect the public, particularly during the work's installation. MnSCU requires that the Artist procure general liability insurance for the duration of the agreement and until final payment for the artwork is received.

If the Artist needs assistance in completing the following schedule and budget, please contact MnSCU's authorized representative.

MINNESOTA STATE COLLEGES UNIVERSITIES

PERCENT FOR ART TIMELINE AND BUDGET

PLEASE SUBMIT A COMPLETED COPY OF THIS DOCUMENT  
TO MNSCU'S AUTHORIZED REPRESENTATIVE  
AT LEAST TWO (2) WEEKS BEFORE THE CONCEPT/DESIGN PRESENTATION

Commission Timeline and Budget for:

Project: \_\_\_\_\_

Artist: \_\_\_\_\_

Date: \_\_\_\_\_

**I. TIMELINE** - The following dates are estimated key points in the completion of the commission:

Design Presentation by \_\_\_\_\_  
Signing of Commission Agreement \_\_\_\_\_  
(approximately six weeks after design presentation)

Studio and Production Dates Begin \_  
Halfway \_\_\_\_\_  
Completion \_\_\_\_

Shipping to Site \_\_\_\_\_  
Installation at Site \_\_\_\_\_

**II. BUDGET**

**Phase One: Concept/Design Proposal** \$ \_\_\_\_\_

*As specified in Agreement*

- Includes models, drawings, etc.
- Travel reimbursement for Phase One should be itemized under "Travel and Lodging" on the following page.

**Phase Two: Commission of Work**

*Please include any applicable sales and excise taxes, and identify all suppliers, firms, or individuals whose supplies or services are to be used.*

Consultant Fees  
(structural engineer, architectural drawings, etc.)

\_\_\_\_\_ \$ \_\_\_\_\_  
\_\_\_\_\_ \$ \_\_\_\_\_  
\_\_\_\_\_ \$ \_\_\_\_\_

Materials and Supplies

|             |          |             |          |
|-------------|----------|-------------|----------|
| Item: _____ | \$ _____ | Item: _____ | \$ _____ |
| Item: _____ | \$ _____ | Item: _____ | \$ _____ |

Timeline and Budget - Page two

Project:

\_\_\_\_\_

Artist:

\_\_\_\_\_

Date:

\_\_\_\_\_

Production or Fabrication

*(indicate assistant(s) or subcontractor(s) if used)*

\_\_\_\_\_ \$ \_\_\_\_\_

\_\_\_\_\_ \$ \_\_\_\_\_

Studio Time or Rental *(include utilities)*

\$ \_\_\_\_\_

Tools and Equipment: Purchase

\$ \_\_\_\_\_

Tools and Equipment: Rental

\$ \_\_\_\_\_

Insurance on Work while in Studio,  
During Shipment and Installation

\$ \_\_\_\_\_

General Liability Insurance

\$ \_\_\_\_\_

Site Preparation & Installation

*(indicate contractor, if used)*

\_\_\_\_\_ \$ \_\_\_\_\_

Shipping to Site

\$ \_\_\_\_\_

Travel and Lodging

\$ \_\_\_\_\_

Documentation Costs

*(10-20 slides of work in progress - required)*

\$ \_\_\_\_\_

Plaque or Framed Artist's Statement *(required)*

\$ \_\_\_\_\_

Miscellaneous Office Expenses

\$ \_\_\_\_\_

Other

Item: \_\_\_\_\_ \$ \_\_\_\_\_

Item: \_\_\_\_\_ \$ \_\_\_\_\_

Artist's Fee

\$ \_\_\_\_\_

**Subtotal, Phase Two**

**\$ \_\_\_\_\_**

Donated Supplies and Services

*(assign fair market value)*

Item: \_\_\_\_\_ \$ \_\_\_\_\_

Item: \_\_\_\_\_ \$ \_\_\_\_\_

**Total Donations**

\$ \_\_\_\_\_

**TOTAL PROJECT COSTS**

*(Phase One + Phase Two; DO NOT include Donations)*

\$ \_\_\_\_\_

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

## **ATTACHMENT 6**

### **CERTIFICATION REGARDING LOBBYING**

For Minnesota State Colleges & Universities  
Contracts and Grants over \$100,000

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, A Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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Organization Name

---

Name and Title of Official Signing for Organization

By: \_\_\_\_\_  
Signature of Official

---

Date  
PUR015  
1/30/01