

State of Illinois
CAPITAL DEVELOPMENT BOARD
ARTWORK
General Conditions of Contract

CDB PROJECT NO.:
CDB CONTRACT NO.:
PROJECT TITLE:
ARTIST ID NO.:

ARTICLE 1. DEFINITIONS

- A. **CAPITAL DEVELOPMENT BOARD.** Capital Development Board is the State Agency created by the General Assembly in Illinois Revised Statutes, ch. 127, para . 771 et seq., as amended, hereinafter referred to as "CDB."
- B. **PROJECT.** Project is the total construction designed by CDB, its Architect/Engineer (A/E), or agent in which the Artwork under this Agreement will be incorporated or displayed.
- C. **ARTIST.** Artist is the individual, partnership, firm, corporation or other business entity entering into the Agreement with CDB to perform the work under the Documents. The Artist is identified in the Artwork Contract.
- D. **ARTWORK.** The Artwork comprises the completed Artwork prepared for installation as specified by A/E drawings and such other services required of the Artist by the Documents. The Artwork includes all labor, materials, equipment and services necessary for the performance of the Agreement.
- E. **USING AGENCY.** State agency or governmental entity benefiting from the project.

ARTICLE 2. CDB-RIGHTS AND RESPONSIBILITIES

- A. **AUTHORIZED REPRESENTATIVES OF CDB.** CDB has the right to designate authorized representatives to act on its behalf. CDB and its representatives shall at all times have access to the Artwork.
- B. **COORDINATION.** CDB will designate an Art-in-Architecture Coordinator to coordinate all activities between the CDB, Project Manager, Architect/Engineer, and Artist.
- C. **RIGHT TO TERMINATE THE AGREEMENT.** The Capital Development Board may terminate this Agreement:
 - 1. Upon 10 days written notice to the Artist if the termination is without fault on the Artist's part. In this case, the Artist will be entitled to a final payment or settlement, paid according to the schedule set forth in the *Article 7-Payment*, plus a proportionate part of the next scheduled installment determined by the percentage of completion of the Artwork reached at time of termination. The Artist shall deliver the Artwork to CDB in whatever form it exists at that time. The Artwork shall then become CDB's property for use without restrictions, except that it shall not be represented as the Artist's work.
 - 2. If the Artist fails or refuses to execute the work with such diligence as to allow timely completion in accordance with the Contract Time, the CDB will give the Artist written notice of intention to terminate and the reason therefor. Unless the violation shall cease, or satisfactory arrangements be made within 10

business days, CDB may terminate the Agreement.

3. Upon the Artist's death or permanent disability.
- D. In the event of termination as set forth under *Article 2(C)2 or 3-Right to Terminate the Agreement*, CDB may exercise the option to take possession of the design, drawings, photographs, partially completed Artwork and materials and pay to the Artist or his estate the proportionate share of payment called for in *Article 8-Payment*, and complete the fabrication and installation of the Artwork at its expense. Exercise of this option by CDB does not prevent CDB from pursuing a remedy otherwise available to it by law and equity.
- E. **DISPUTES AND ALTERNATIVE DISPUTE RESOLUTION.** Except as provided in this paragraph, CDB will resolve disputes and its decision will prevail unless otherwise removed to a court of competent jurisdiction. Before any party files litigation it shall submit the dispute to ADR, and all parties and their subcontractors or agents who are involved in the dispute shall participate in the ADR. CDB expressly retains all its rights including, but not limited to, those contained in this document. CDB's exercise of its rights shall not be subject to ADR, but disputes concerning amounts due and owing are subject to ADR. Legal rights and remedies of any party that may be provided by law shall not be waived or tolled by participation in ADR, unless otherwise agreed in writing.
1. **Not a Cause for Delay.** CDB decisions or pending ADR shall not be cause for delay of the work. The Artist shall continue to perform the work, but such continuation shall not operate as a waiver of any of the Contractor's rights.
 2. **Definitions.**
 - a. **Dispute:** Any contested claim or matter growing out of the project or CDB's project contracts regarding payment or time for performance, but not including personal injury cases (including worker injuries), vehicle accidents, contractor-subcontractor matters in the nature of lien actions, employment matters, or contract suspension or termination.
 - b. **Parties:** Parties to a dispute shall be defined broadly to include anyone who may have a stake in the dispute or whose participation is perceived as essential to resolution, whether or not there is a direct contractual relationship. Parties shall also include any other entity holding a contract with CDB whose performance of its contract relates in any way to the dispute or claim.
 - c. **ADR:** ADR is a process conducted with the assistance of a neutral person or persons the parties agree is unbiased and qualified to understand the dispute and make the determinations that may be required. Forms of ADR that may be utilized include, but are not limited to, mediation, mini-trials, a dispute resolution board, or resolution through expert opinion, but do not include arbitration or binding decisions.
 3. **Cooperation.** In the event that disputes arise, CDB and the Artist agree to exercise good faith efforts to resolve the matter fairly, amicably and in a timely manner. Litigation shall be considered as a last resort to be employed only when ADR methods fail. At the request of any party to a dispute, regardless of dollar amount, CDB and the Artist agree to cooperate in resolution by first conferring with the other parties and by submitting the matter to ADR. CDB and the Artist agree that ADR shall be a condition precedent to filing a Court action or administrative proceeding seeking economic recovery greater than \$25,000. When ADR is utilized, the Artist and CDB agree to have in attendance a person with actual authority to resolve the dispute. When approval of CDB's Board is required, CDB personnel shall be exempt from the requirement but shall notify all concerned at the earliest possible time when it is apparent the Board approval will be required for ultimate resolution. If the parties to the dispute cannot

agree on a form for ADR or a neutral to facilitate the ADR, then CDB shall make the determination and its determination shall be final.

4. **Sharing Expenses.** All parties to ADR shall share the expense of the neutral equally or on a pro rata basis if agreed. Individuals must bear their own costs such as travel expenses, attorney fees, or fees charged by consultant hired by the individual.
5. **Subcontractors and Suppliers.** The Artist shall require its subcontractors and suppliers to agree to and be bound by this provision.
6. **Confidentiality.** All ADR procedures shall be strictly confidential. Neither statements made during the course of ADR nor documents generated for the purpose of ADR shall be discoverable in any subsequent litigation. In no event shall a mediator or other neutral party engaged to assist in ADR be disposed or called to testify in any subsequent litigation.

F. OWNERSHIP, COPYRIGHT, AND MORAL RIGHTS OF THE WORK.

1. All sketches, drawings, maquettes, mockups, models, photographs, reliefs, and any other materials relating to the Artwork shall become the property of the State of Illinois upon final payment. For purposes of this article of this Agreement, the CDB, Illinois State Museum or the Using Agency may exercise the rights and perform the obligation incident to this Agreement vested in the State of Illinois.
2. At the time of final payment the Artist shall transfer all copyrights on the work to the State of Illinois.
3. The Artist reserves the right to reproduce photographically and to allow publication required for his/her career. In the event that the Artist wishes to use the copyright the Artist may petition the CDB.
4. The CDB, the Illinois State Museum, or the Using Agency may allow the reproduction of the Artwork for publicity or educational purposes.
5. Artist expressly and forever waives any rights under the Visual Artists Rights Act of 1990 (VARA), 17 U.S.C. § 106A associated with any use of the Artwork. This waiver includes recognition that the Artist waives any right under VARA that could
 - a. prevent the removal of the Artwork, or
 - b. form the basis of a claim that the relocation or removal of the Artwork distorts, mutilates, modifies, or destroys the Artwork in whole or in part, whether intentional or unintentional. Nor is the relocation or removal prejudicial to the honor or reputation of the Artist.

G. MAINTENANCE, ALTERATION AND NON-DESTRUCTION OF THE ARTWORK.

1. The CDB will not intentionally destroy, damage, or alter the Artwork in any manner. If, after completion of the Artwork an alteration is made by the CDB or by others, intentionally or otherwise, the Artwork will no longer be represented as the Artist's work without his written consent.
2. The CDB will consult with qualified Artwork conservation specialists before conservation, restoration, or repair to the Artwork.

ARTICLE 3. ARTIST – RIGHTS AND RESPONSIBILITIES

A. **DESIGN AND COMPLETION OF THE ARTWORK.** The Artist shall:

1. Perform all services and furnish all supplies, material, and/or equipment as necessary for the design and fabrication of the Artwork in accordance with the specified documents. Services shall be performed in a professional manner and in strict compliance with all terms and conditions in the Agreement.
2. Determine the design and artistic expression of the work, subject to CDB's approval and direction.
3. Determine, in consultation with the CDB and its' agents, the scope of the work required by the Agreement, including:
 - a. Structural and technical work required for safe and permanent installation.
 - b. Commitment that finished work will be in substantial conformity in size and shape with approved design.
4. Prepare sketches, drawings, and models in connection with the Artwork and make them available to CDB for display at all times.
5. Arrange the transportation and installation of the Artwork in consultation with CDB and the Using Agency. If the Artist does not install the Artwork himself/herself, Artist shall supervise and approve the installation.
6. Artist shall provide a maintenance manual with a description of all materials and products utilized in the Artwork and the required care and upkeep involved.
7. Provide necessary facilities for safe and permanent installations.
8. Be available with reasonable advance notice for meetings, ceremonies, and the like, as necessary.

B. **REVIEW OF ARTWORK IN PROGRESS.** CDB or its representative shall have the right to make reasonable inspection and review of the Artwork and the progress of the Artwork upon request. The Artist shall cooperate and make the Artwork available for viewing to CDB when such request is received.

C. **PERMITS AND FEES**

1. The Artist shall obtain and pay all permits and approvals pertaining to the Artwork required by authorities having jurisdiction over the project at the Artist's expense.
2. All travel and other expenses for the Artist, his/her agents or employees as required for the proper performance of the Artwork are included in the Agreement sum and are not reimbursable expenses under the Agreement.
3. The Artist shall be responsible for any and all gallery fees associated with the sale of the Artwork.
4. Purchases of materials for incorporation into the project are exempt from the Illinois Retailer's Occupation and Use Tax (sales taxes.)
5. The Artist shall pay any and all applicable copyright, license, patent or other use fees or costs required in the performance of the Artwork.

D. **PHOTOGRAPHS.** The Artist shall provide, subject to CDB's approval, photographic documentation of the finished Artwork prior to the final payment.

E. **AGREEMENT TIME.**

1. The Artist, recognizing that the Agreement time is of the essence, shall perform the Artwork in such manner and with such sufficient equipment and forces to complete the Artwork by the date specified in the Agreement.
2. Extensions of Agreement time will be made for delays arising from unforeseeable causes beyond the control and without the fault or negligence of the Artist or of his subcontractors or suppliers, including but not restricted to:
 - a. Acts of God
 - b. Insurrections/riots
 - c. Acts of CDB, the A/E or the Using Agency
 - d. Acts of other contractors in the performance of a contract with CDB
 - e. Fires, floods, epidemics, strikes, freight embargos, or other perils causing damage to the Artwork or Project.
3. Request for a time extension will not be considered unless made in writing to CDB within 15 calendar days after the cause of delay. In the case of a continuing cause of delay, only one request is necessary. CDB may grant Agreement time extensions either during the performance of the work or at the end of Agreement time. The grant of a time extension to the Artist shall not impair or prejudice CDB's rights hereunder.
4. The Artist will not be entitled to any claim for damages or compensation from CDB on account of any delays except that the Agreement time will be adjusted for excusable delays, said extension of time granted herein being the Artists sole and exclusive remedy.

F. **INSURANCE AND RESPONSIBILITY FOR DAMAGES DURING INSTALLATION.**

1. The Artist shall bear the risk for all loss or damage to the Artwork, until CDB's final acceptance and such time that CDB makes final payment. The Artist shall also be responsible for all loss or damage to the project, the site and improvements thereon and the work of other contractors caused by his operation during the performance of the Agreement.
2. When deemed necessary by CDB, the Artist shall provide, at his/her expense, commercial liability insurance during the time of installation. This required insurance shall provide protection for the Artist from loss or damage to the project, the site and improvements thereon and the work of other contractors caused by the installation of his/her commissioned work. Proof of said insurance shall be provided to CDB prior to the installation, and must be secured from a provider approved by the CDB Pre-qualification Unit.

G. **SUBCONTRACTING OR ASSIGNMENT.** Any subcontracting, assignment or transfer of all or part of the interests of the Artist in the Artwork covered by this Agreement shall be prohibited without the prior written consent of CDB in each instance.

1. If CDB gives such consent, the terms and conditions of this Agreement shall apply to and bind the party

or parties to whom such Artwork is subcontracted, assigned or transferred as fully as the Artist is hereby obligated.

2. Artist shall furnish in writing to CDB the name, address, and anticipated payments to any such approved subcontractor or assignee.
- H. **WAIVER OF RIGHTS.** The Artist shall notify CDB in writing within one year of change in the Artist's address. Failure to give such notice shall constitute a waiver of the Artist's rights to notice under the Agreement.

ARTICLE 4. SCOPE

A. DESIGN CONCEPT

1. The Artist submitted a project design concept pursuant to a competition organized for the procurement of an Artist to design and fabricate an Artwork suitable for the current project.
2. Within **<number>** days after the execution of this Agreement, CDB shall notify the Artist if the project design concept requires any revisions for reasons including but not limited to ensuring physical integrity of the Artwork or its installation at the site. Such revisions will become part of the design.
3. The Artist shall prepare structural drawings detailing every physical feature of the construction of the Artwork and its integration with the site. These drawings shall indicate any risks involved in the construction, integration, and maintenance of the Artwork, as well as any third-party subcontractors needed to work on the project.
4. When required, the Artist shall present such drawings to a qualified engineer, licensed by the state and paid by the Artist, for certification that the Artwork will be of adequate structural integrity and the Artists shall provide the CDB with such certification.

B. FABRICATION

1. The Artist shall fabricate and install the Artwork in substantial conformity with the project design concept. The Artist may not deviate from the approved design without written approval of the CDB.
2. If upon review of the Artwork, CDB determines that the Artwork does not conform to the project design concept, CDB reserves the right to notify the Artist in writing of the deficiencies and that CDB intends to withhold the next budget installment.
3. The Artist will promptly cure the CDB's objections and will notify the CDB in writing of completion of the cure. The CDB shall promptly review the Artwork, and upon approval shall release the next budget installment. If the Artist disputes the CDB's determination that the Artwork does not conform, the Artist shall promptly submit reasons in writing to the CDB within **<number>** days of the CDB's prior notification to the contrary. The CDB shall make reasonable efforts to resolve the dispute with the Artist in good faith. However, Artwork will not be finally accepted until CDB has determined that the Artist has fully complied with the terms of the Agreement.
4. The Artist shall notify the CDB in writing when fabrication of the Artwork has been completed, and that the Artwork is ready for delivery and installation.
5. CDB shall inspect the Artwork within **<number>** days after receiving notification pursuant to paragraph (4) of this section, prior to installation, to determine that the Artwork conforms with the project design concept and to give final approval of the Artwork. CDB shall not unreasonably withhold final approval of

the fabricated Artwork. In the event that CDB does withhold final approval, the CDB shall submit the reasons for such disapproval in writing within <number> days of examining the fabricated Artwork. The Artist shall then have <number> days from the date of CDB's notice of the disapproval to make the necessary adjustments to the fabricated Artwork in accordance with such writing. The Artist shall not be penalized for any delay in the delivery and installation of the Artwork to the site unless the Artist has willfully and substantially deviated from the project design concept without the prior approval of CDB. The Artist shall then be held responsible for any expenses incurred in correcting such deviation.

6. CDB shall promptly notify the Artist of any delays impacting installation of the Artwork. The Artist shall be required to inspect the site prior to the transportation and installation of the Artwork and shall notify the CDB of any adverse site conditions that will impact the installation of the Artwork which are in need of correction.

C. INSTALLATION

1. Upon CDB's final approval of the fabricated Artwork, as being in conformity with the project design concept, the Artist shall deliver and install the completed Artwork to the site. Transportation fees shall be paid by the Artist.
2. The Artist will coordinate closely with CDB to ascertain that the site is prepared to receive the Artwork. Artist must notify Agency of any adverse conditions at the site that would affect or impede the installation of the Artwork. The Artist is responsible for timely installation of the Artwork. The Artist will confer and coordinate with CDB to ensure timely coordination with CDB's construction team. Artist may not install the Artwork until authorized to do so by CDB.
3. The Artist shall be present to supervise the installation of the Artwork. Upon installation of the Artwork, the Artist shall provide CDB with written instructions for the appropriate maintenance and preservation of the Artwork along with product data sheets for any material or finish used. The Artwork must be durable, taking into consideration that the site is an unsecured public space that may be exposed to elements such as weather, temperature variation, and considerable movement of people and equipment. Artist must ensure that all maintenance requirements will be reasonable in terms of time and expense. The Using Agency is responsible for the proper care and maintenance of the Artwork.

ARTICLE 5. MODIFICATIONS

- A. **GENERAL.** CDB may, at any time, order changes in the Agreement time or in Artwork germane to the Agreement. The Artist may initiate requests for changes. Upon issuance of a Modification, the Artist shall promptly proceed with the Artwork as changed. No Artwork shall be changed without written approval of CDB.
- B. **CHANGES IN AGREEMENT TIME.** Adjustment in the Agreement time will be made by modification pursuant to the provisions of *Article 3(F) Agreement Time*.
- C. **CHANGED CONDITIONS.** Should the Artist encounter physical conditions at the site which differ materially from those indicated in the documents or from those ordinarily encountered and recognized as inherent in Artwork of the character provided for in the Agreement, the Artist shall give written notice to CDB before any such condition is disturbed. Under this provision, no claim by the Artist will be allowed unless the Artist has given the required notice. CDB will promptly investigate. If it determines that conditions differ materially from those which should have been reasonably anticipated, CDB will change the documents as necessary. If such conditions cause a change in Artist's cost, CDB may modify the Agreement sum.

ARTICLE 6. INSPECTION AND ACCEPTANCE

1. **INSPECTION.** The Artwork will be subject to inspection by CDB and the Coordinator at all reasonable times and at all places. All such inspections will be conducted in such manner as not to unreasonably delay the Artwork or increase the cost of performance.
2. **ACCEPTANCE.** When the Artist believes that the Artwork or any part thereof is substantially complete, he/she shall give five business days' notice to CDB, which will inspect the Artwork. When CDB determines that the Artwork is substantially complete, a Progress Payment will be made to the Artist as set forth in *Article 7-Payment*. Such payments will establish the date of substantial completion.
3. **WARRANTIES OF TITLE.** The Artist warrants that:
 1. The Artwork under the Agreement is a unique and solely the original product of the Artist's creative efforts.
 2. Except as otherwise disclosed in writing to CDB, the Artwork is unique and does not infringe upon any copyright or the rights of any person.
 3. The Artwork is an edition of one, unless otherwise noted in the CDB Artwork Contract.
 4. The Artwork (or duplicate thereof) has not been accepted for sale elsewhere.
 5. The Artist has not sold, assigned, transferred, licensed, granted, encumbered, or utilized the Artwork or any element thereof or any copyright related thereto which may affect or impair the rights granted pursuant to the Agreement.
 6. The Artwork is free and clear of any liens from any source whatsoever.
 7. The Artist has the full power to enter into and perform this Agreement and to make the grant of rights contained in this Agreement.
 8. These representations and warranties shall survive the termination or other extinction of this Agreement.
 9. Artist has not employed or retained any company or person other than a bonafide employee or established art agent for the Artist to solicit or secure the Agreement with CDB, and that the Artist has not paid or agreed to pay any fee, commission, percentage, brokerage fee, gifts or any other considerations contingent upon or resulting from the award or execution of the Agreement.
4. **WARRANTIES OF QUALITY AND CONDITION**
 1. The Artist represents and warrants that all work will be performed in accordance with professional "workmanlike" standards and free from defective or inferior materials and workmanship (including any defects consisting of "inherent vice" or qualities that cause or accelerate deterioration of the Artwork) for one year after the date of final acceptance.
 2. The Artist represents and warrants that the Artwork and materials used are not currently known to be harmful to public health and safety.

3. If within one year the Using Agency observes any breach of warranty described in this section that is curable by the Artist, the Artist shall, at the request of the Using Agency, cure the breach promptly, satisfactorily, and consistent with professional conservation standards, at no expense to the Using Agency or CDB. The Using Agency shall give notice to the Artist of such breach with reasonable promptness.
4. If within one year the Using Agency observes a breach of warranty described in this section that is not curable by the Artist, the Artist is responsible for reimbursing the Using Agency for damages, expenses, and loss incurred by the Using Agency as a result of the breach. However, if the Artist disclosed the risk of breach in the project design proposal and the Using Agency and CDB accepted that it may occur, it shall not be deemed a breach for purposes of this section of this Agreement.
5. Acceptable Standards of Display. The Artist warrants and represents that:
 - a. General routine cleaning and repair of the Artwork and any associated parts will maintain the Artwork within an acceptable standard of public display.
 - b. Foreseeable exposure to the elements and general wear and tear will cause the Artwork to experience only minor repairable damage and will not cause the Artwork to fall below an acceptable standard of public display.
 - c. With general routine cleaning and repair, within the context of foreseeable exposure to the elements and general wear and tear, the Artwork will not experience irreparable conditions that do not fall within an acceptable standard of public display, including mold, rust, fracturing, staining, chipping, tearing, abrading, and peeling.
6. Manufacturer's Warranties. To the extent that the Artwork incorporates products covered by a manufacturer's warranty, Artist shall provide copies of such warranties to CDB.

The foregoing warranties are conditional and shall be voided by the material failure of the Using Agency to maintain the Artwork in accordance with the Artist's specifications and the applicable conservation standards.

ARTICLE 7. PAYMENT--PROGRESS PAYMENTS. CDB will pay the Agreement sum in installments according to the progress of the Artwork. Progress payments will be made only when the Coordinator has signed the voucher indicating acceptance of the Artwork and approval for payment. Progress shall be in accordance with the following schedule.

- A. <number> percent upon the execution of this Agreement
- B. <number> percent upon CDB's notification to the Artist of its approval of the project design concept as set forth in *Article 4--Scope, Section A--Design Concept*
- C. <number> percent within <number> days after CDB has inspected the Artwork and determined that the Artwork conforms with the project design concept and has given final approval of the Artwork prior to installation.
- D. <number> percent after the Artist provides CDB with written instructions for the maintenance and preservation of the Artwork.
- E. <number> percent upon final acceptance of the Artwork by the Using Agency