

**INTERGOVERNMENTAL AGREEMENT
FOR TRANSFER OF ARTWORK ON PORTLAND TRANSIT MALL**

THIS AGREEMENT is made this _____ day of _____, 2010, by and between the TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON, a mass transit district of the state of Oregon ("TriMet"), and THE CITY OF PORTLAND, a municipal corporation of the state of Oregon acting by and through its Elected Officials ("City") (TriMet and the City are collectively referred to as "Parties").

RECITALS

- A. Pursuant to ORS Chapter 190, the parties have the authority to enter into this Agreement.
- B. TriMet and the City were partners in constructing the Portland Mall Segment of the South Corridor Light Rail Project ("Project"), which brings light rail service to the Portland Transit Mall ("Mall") in downtown Portland.
- C. As part of the Project, TriMet commissioned and installed various sculptures on the Mall. The sculptures ("Mall Sculptures") are set forth on Exhibit A, which is attached hereto and incorporated by this reference herein.
- D. The Parties desire that the City take title to the Mall Sculptures, as well as all responsibility therefore.
- E. The Regional Arts and Culture Council ("RACC"), an Oregon non-profit corporation, administers the City of Portland's Public Art Program pursuant to Portland City Code Chapter 5.74 and the November 18, 2005 Agreement for Services between RACC and the City of Portland, and is the City of Portland's agent for purposes of this Agreement.

NOW THEREFORE, it is agreed by and between the parties hereto as follows:

AGREEMENT

- 1. The recitals form part of this Agreement.
- 2. Title to all Mall Sculptures, and any pedestals or bases for such sculptures, shall pass to the City, subject to the provisions of this contract
- 3. Upon passing of title to the City, and subject to the obligations of Paragraphs 4 and 5, below, the City shall bear full responsibility for the Mall Sculptures, including maintenance responsibility, at its own expense.
- 4. Upon passing of title to the City, TriMet agrees to supply RACC with digital images of the completed Mall Sculptures in their final site. These images should be submitted as a tiff file and measure at least 3000 pixels on the longest side for archival purposes. In addition, TriMet agrees to supply RACC with a completed Conservation Record Form for each Mall Sculpture.

This document will become part of the object's legal record and will provide detailed information about the fabrication and media of the artwork for all future conservation and maintenance.

5. Should RACC discover within the period of the warranty contained in TriMet's contract with the artist that any Mall Sculptures contain defects in materials or workmanship, RACC may notify TriMet in writing of the problem and request that TriMet pursue its contractual warranty to have the artist repair or replace the artwork or any portion of the work that is found to be defective at no additional cost to TriMet or RACC. Upon such a written notification from RACC, TriMet may perform such investigation of the alleged defect as it considers reasonable. If TriMet concurs with RACC's assessment, TriMet shall enforce its contractual warranty obligation as to that work and shall use its best efforts to ensure that the work is repaired or replaced at no cost to TriMet or RACC. Other than those obligations imposed in this paragraph, TriMet has no obligation to repair or replace any Mall Sculptures.

6. In accordance with the Memorandum of Understanding ("MOU") dated June 29, 2009 between RACC, TriMet and Portland Mall Management Inc. ("PMMI") (attached hereto as Exhibit B) TriMet shall cause PMMI to pay \$80,000 to RACC no later than June 30, 2013. Payment shall be made in four equal yearly installments beginning in Fiscal Year 2009-2010, and shall occur no later than June 30 of the then-current fiscal year. In accordance with the terms of the MOU, in the event TriMet and PMMI fail to enter into subsequent Agreements for Services covering any or all of the Fiscal Years 2010-11 through 2013-14 which provide resources for PMMI to meet its obligations under the MOU, then TriMet shall assume responsibility for PMMI's obligations to pay the \$80,000 to RACC. Other than the obligations imposed in this Paragraph, TriMet has no future financial responsibility to the City related to the Mall Sculptures.

7. The City shall not relocate any of the Mall Sculptures without first consulting with TriMet's Public Arts Program Manager in order to ensure that relocation occurs in accordance with the terms of TriMet's contract with the respective Mall Sculpture artist. To the extent practicable, any relocated Mall Sculptures shall be on the right of way occupied by TriMet's light rail line or on public property contiguous with and at a point within sight of that right of way.

8. Prior to deaccessioning any of the Mall Sculptures or any use inconsistent with this Agreement, the City shall consult with TriMet's Public Art Program Manager to ensure that deaccessioning occurs in accordance with the terms of TriMet's contract with the respective Mall Sculpture artist.

9. TriMet has installed a sculpture base at the Public Services Building (920 SW 6th Avenue). Ownership of the Public Services Building sculpture base will also be transferred from TriMet to the City with this agreement. The City has entered into a loan agreement with Public Service Building LLC for the loan of the sculpture to the City. TriMet will have no responsibility for the sculpture, and after transfer will have no responsibility for the Public Services sculpture base.

10. As part of the Project, TriMet agreed to commission and install a serial art/light Identifier feature at NW Davis Street ("Davis Street Identifier Project"). The Parties agree that the City will contract, oversee and be fully responsible for all work required to design, fabricate, install and maintain the Davis Street Identifier Project. Upon completion, the Davis Street Identifier Project will become the property of the City. TriMet shall pay RACC \$391,485 upon execution of this agreement and RACC shall perform all work set forth in Exhibit C, which is attached hereto and incorporated by this reference herein. Other than the obligations set forth in this paragraph, TriMet has no further obligations related to the Davis Street Identifier Project.

(Remainder of this Page Intentionally Left Blank)

11. Within the maximum liability limits of the Oregon Constitution and the Oregon Tort Claims Act, the City shall hold harmless, indemnify and defend TriMet and its officers, agents, and employees against any and all liability, settlements, losses, costs, and expenses (including attorney fees) in connection with any action, suit, or claim arising from the fault or negligence of the City related to this Agreement. Within the maximum liability limits of the Oregon Constitution and the Oregon Tort Claims Act, TriMet shall hold harmless, indemnify and defend the City and its officers, agents, and employees against any and all liability, settlements, losses, costs, and expenses (including attorney fees) in connection with any action, suit, or claim arising from the fault or negligence of TriMet related to this Agreement.

CITY OF PORTLAND

**TRI-COUNTY METROPOLITAN
TRANSPORTATION DISTRICT OF
OREGON**

By: _____
_____, Commissioner

By: _____
Neil McFarlane, Executive Director

City Auditor

By: _____

Approved as to Form:

Approved as to Form:

By: _____
City Attorney

By: _____
Lance Erz, Assistant General Counsel

**ACCEPTED BY
REGIONAL ARTS AND CULTURE COUNCIL**

By: _____

Exhibit A**TRANSFER OF ARTWORK ON PORTLAND TRANSIT MALL****Mall Sculptures**

Rick Bartow, *The Responsibility of Raising a Child*, 2004, bronze

Christine Bourdette, *Cairns*, 2008, silver ledgerstone

Cris Bruch, *Whistlestop for an Organ Teacher*, 2009, stainless steel

John Buck, *Lodge Grass*, 2000, bronze

Mark Calderon, *Floribunda*, 1998, bronze

Bruce Conkle, *Burls Will Be Burls*, 2009, bronze and cast concrete

Fernanda D'Agostino, *Urban Hydrology*, 2009, carved granite

Daniel Duford, *The Green Man of Portland*, 2009, mixed media

Chris Gander, *Puzzle Tower I*, 2007, stainless steel

Malia Jensen, *Pile*, 2009, bronze

Mel Katz, *Daddy Long Legs*, 2006, painted aluminum

Michihiro Kosuge, *Continuation*, 2009, carved granite

Mark Smith, *Reading the Street*, 2008, laminated glass

Patti Warashina, *City Reflections*, 2009, bronze and granite

Exhibit B

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding dated this 29th day of June 2009, is entered into between the Regional Arts and Culture Council, Inc. ("RACC"), Portland Mall Management, Inc. ("PMMI") and the Tri-County Metropolitan Transportation District of Oregon ("TriMet") for the purpose of funding a dedicated account within the Public Art Trust Fund (PATF) for the care and maintenance of works of public art commissioned and installed by TriMet as a part of the Portland Mall Revitalization Project ("Project") as well as artworks created for the original Portland Mall in 1976.

RECITALS

Whereas, as part of the Project, TriMet funded the commissioning and installation of works of public art in the amount of \$750,000, as part of the Project, and;

Whereas, TriMet and the City of Portland ("City") anticipate entering in to an agreement for the transfer of ownership of these public works of art to the City, and;

Whereas, the City contracts with RACC, an independent public benefit corporation, for the accessioning, care and maintenance of works of public art, and;

Whereas, the funding for the care and maintenance of public works of art may be provided by the establishment of a dedicated account within the RACC PATF in the amount of ten percent (10%) of the acquisition cost, and;

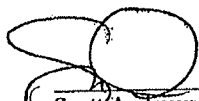
Whereas, TriMet and PMMI have agreed that PMMI shall fund the establishment of a dedicated account in the PATF over a four year period, first year resources for which are provided to PMMI through its FY 2009-10 Agreement for Services with TriMet.

AGREEMENT

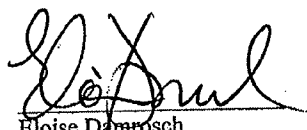
NOW THEREFORE, the parties hereto agree as follows:

- 1) RACC shall establish a dedicated account for the care and maintenance of works of public art commissioned and installed by TriMet on the Portland Mall.
- 2) PMMI shall pay to RACC, for deposit into the PATF account, the sum of twenty thousand dollars (\$20,000.00) per year beginning in FY 2009-10 and continuing for three (3) subsequent fiscal years for a total contribution of eighty thousand dollars (\$80,000.00).
- 3) In the event TriMet and PMMI fail to enter into subsequent Agreements for Services covering any or all of the Fiscal Years 2010-11 through 2013-14 which provide resources for PMMI to meet its obligations under this Memorandum of Understanding then TriMet shall assume responsibility for PMMI's obligations hereunder.
- 4) Upon payment of the full amount stated in 2) above neither PMMI or TriMet shall have any further obligation for funding the care and maintenance of the works of public art commissioned and installed by TriMet on the Portland Mall.

FOR PMMI:


 Scott Andrews
 President

FOR RACC:


 Eloise Damrosch
 Executive Director

FOR TRIMET:

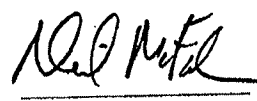

 Neil McFarlane
 Executive Director of
 Capital Projects

Exhibit C
Scope of Services
Davis Street "Identifier" Project

Budget: \$391,485.00

The City of Portland has agreed to complete and own the Davis Street "Identifier" Project. The Identifier project is a serial art/light feature that connects the Pearl District with Old Town/Chinatown both day and night.

The Regional Arts and Culture Council (RACC), acting on behalf of the City, will provide the following services to accomplish the City's obligations with respect to the Identifier:

A. CONTRACT WITH ARTIST

Contract with artist Dan Corson ("Artist") to design, engineer, fabricate, and oversee installation of the Davis Street "Identifier" Project.

B. DESIGN COORDINATION

1. Concept Design
 - a. Coordinate with Artist a revised concept design that meets agreed upon project goals
 - b. Coordinate review of concept with RACC public art committee (TriMet's Public Art Manager will be a member of the RACC public art committee for the Identifier project)
 - c. Present approved concept to Old Town/Chinatown stakeholders and neighbors for comment
2. Final Design
 - a. Upon approval of concept design, coordinate final design with Artist
 - b. Coordinate review of final design with RACC public art committee (TriMet's Public Art Manager will be a member of the RACC public art committee for the Identifier project)
 - c. Present approved final design to Old Town/Chinatown stakeholders and neighbors for information only

C. FABRICATION AND INSTALLATION

1. Coordinate within the City of Portland for engineering approval and all necessary permits
2. Coordinate with artist fabrication of final design
3. Contract with experienced installers, electricians and/or other technical disciplines to install final artwork

D. DOCUMENTATION AND MAINTENANCE

1. Create permanent record documentation
2. Maintain artwork in accordance with RACC's permanent collection standard practice

All work shall be completed by November 30, 2010, unless otherwise mutually agreed in writing by both parties.