

### SECTION 3: CONTRACTS AND ARTWORK MAINTENANCE

Once selected, the contracting agency (city, county, state, etc) will prepare a standard contract with the artist. Below are typical issues that are addressed in the contract and should be thoroughly understood by the artist before signing.

*Unique design:* The agency will want confirmation that the artwork is uniquely designed for them, unless it is specifically understood that it is part of a limited edition.

*Workbase or foundation:* Did you address the workbase or foundation in your proposal or was it addressed in the prospectus? Whose responsibility is it? A third party could also be involved.

*Changes in Design:* The artist reserves the right to make minor adjustments as deemed aesthetically and structurally necessary. Any substantial change in the scope, design or material of the artwork must be approved in writing and in advance by the agency. If in doubt, contact the program administrator for clarification.

*Site Preparation:* Usually done by the commissioning agency or another department, but not always.

*Delivery and Installation of the artwork:* It is the artist's responsibility to ensure that the artwork is delivered and installed (unless a separate installation agreement is indicated in the contract), according to the date specified in the contract. Consider what you will need to make good on this: a lift, crane, other special equipment? Did you budget for delivery and installation?

*Identification Plaque:* The plaque is usually included in the artist's budget, but some agencies provide them to keep continuity throughout the collection. If it is your responsibility, is there a requirement for what type of material should be used such as cast bronze or brass? Research those costs and plan accordingly.

*Taxes:* In New Mexico, all local, municipal, county and state governments receive a portion of their operating revenue from sales tax on goods and services. Public art projects are no exception. While some aspects of goods and services may be exempt from gross receipts tax, specific guidelines issued by the New Mexico Taxation and Revenue Department must be followed to determine which aspects are or are not exempt. The tax relationship in New Mexico is a relationship between the seller, you as the artist, and the state, the collector of the tax. The buyer, the commissioning agency, is not a direct part of the tax relationship. It is therefore up to you, the seller, to understand the state's guidelines for determining the gross receipts tax due on goods or services you provide to the commissioning agency.

Often, public art projects are advertised at a set dollar amount and you are then responsible for "backing out" the taxable amount. Towns, cities and counties have different tax rates in New Mexico. In order to correctly back out the appropriate amount of tax, you will need to know the tax rate where your place of business is located, not where the public art project is located. To "back out" tax from total receipts at the end of the report period, simply DIVIDE total receipts including the tax for the report period by 100 PLUS the applicable gross receipts tax rate (Albuquerque's tax rate is 7.00%). The result is your gross receipts without tax. EXAMPLE: \$2,000 (Gross Receipts, Including Tax), divided by 107.00% (Tax Rate plus 100), equals \$1,869.16 (Gross Receipts without Tax), and the tax amount is \$130.84.

For more information about gross receipts and current tax rates, visit the [New Mexico Taxation and Revenue](#) website.



*Travelin' Man, Wanxin Zhang*  
Cesar Chavez Community Center  
Louisiana & Kathryn SE

*Insurance Requirements:* When your proposal is selected and you are ready to sign a contract with the agency, you will likely be required to provide proof of insurance coverage. Insurance requirements vary significantly from agency to agency. Some municipalities are so large that they are self insured, while other local forms of government purchase insurance policies much like individuals do. The difference between being self insured and not self insured is usually what affects the type of coverage that you will be required to provide while you are working on your public art project. For detailed explanations of risk and insurance terms, we recommend this [website](#). To learn more about a “Certificate of Insurance” we recommend an internet search for the phrase, “sample certificate of insurance”. Many professional insurance organizations provide “interactive” and annotated samples to review. Some terms to become familiar with:

1. *Contractual Liability Insurance* is when one party assumes the financial consequences of certain liabilities of another through a contract. As a public artist, you will assume the contractual liability for the work the agency is paying you to create, until the project is complete.

2. At a minimum, you will probably need to provide basic *General Commercial Liability* coverage. This type of insurance protects you and the agency from basic general, unintentional, liabilities associated with doing business such as processing one form of material into another form of material, assembly of parts, labor services, and basic business decision-making practices.

3. In addition, artists are often required to provide insurance coverage for the artwork while it is being transported from one location to another, *Transportation or Cartage Insurance*, sometimes called *Inland Marine*.

4. *Installation Insurance* covers the quality of the work provided during the installation process. Installation insurance is a one-time policy that lasts the life of the artwork and protects against faulty installation methods.

5. If you have three or more employees, the agency will want proof of *Worker’s Compensation Insurance*. You will need to sign a waiver if you have fewer than three employees.

Contractual agreements will require proof of insurance that protects the municipality in conjunction with your artwork. There are competitive insurance companies that can provide all of the required forms of insurance with reasonable premiums and ease of doing business. Premiums can range from \$500 to \$1,500 annually. This cost needs to be accurately considered in the total cost of doing the project, especially if you’ve never had such a policy. Once you have completed the application for insurance and have received the approval from the commissioning agency that the coverage meets their requirements, Certificates of Insurance will be provided to the agency. Certificates list all the required coverage, policy numbers, effective dates, cancellation clauses and additional named insured terminology.

The positive side of the insurance process is that once you have obtained all of the coverage required by the commissioning agency, you are also covered for other events such as fairs, exhibitions or other public art projects if they are similar in scope and size. For more information about insurance requirements, contact the commissioning agency you are interested in working with and then share those requirements with your insurance agent.



*Cesar Chavez Tribute, Paula Castillo  
Avenida Cesar Chavez & Broadway SE*

**VARA:** The [Visual Artists Rights Act](#) was passed in 1990 by Congress. It is designed to protect both artists and their artworks in certain formats as part of the existing Copyright Act. Please remember that while VARA is part of the Copyright Act, it protects an entirely different set of rights. The most important features of the Act are to protect the “Rights of Attribution and Integrity,” which is basically the artist’s reputation, and to protect against the “Removal of Works of Visual Art from Buildings” under certain circumstances.

Because VARA can have a significant impact on the potential remodeling or destruction of a public building, most public art agencies very carefully address VARA in the Professional Services or Artwork Commission Contracts. Most VARA clauses in contracts outline the process to be used should a building with an artwork need to be modified. Clarification of the process helps protect both the artist and the agency throughout the duration of the life of the artwork.

You should be familiar with the Act and should always consult legal advice if you have any concerns about your rights. Understanding the subtle differences between Copyright and VARA can be time consuming, but it is valuable knowledge if you plan to participate in many public art opportunities.

*Copyright:* With Albuquerque’s Public Art Program, the artist and the City share joint copyright of commissioned artworks. The City reserves the right to use the image for promotion for the Program, crediting the artist in print, or verbally in the case of a visual presentation. The artist may use the image for his or her own promotion, but may not sell anything with the artwork image on it unless agreed upon by both parties. Joint ownership protects both the artist and the City.

*Additional Services Contracts:* While all public art projects are unique and encounter challenges, most agencies prefer to avoid additional services contracts. However, if the scope of the contract has changed due to unforeseeable circumstances, be prepared to negotiate for your time and services.

*Compensation and Method of Payment:* How many payments will you be receiving, when are they scheduled, and what must you complete to receive each payment? How will this affect your project cash flow needs?

*Time of Performance:* Deadlines matter! Missing a deadline with an agency can have contractual repercussions.

*Guarantee of Workmanship and Material:* A typical guarantee period on all workmanship and material used in the artwork and base is one year. The guarantee will apply to the artist and any subcontractors employed by the artist. The work of art should be designed to last 10-20 years.

*Documentation and Description:* The agency will usually require high-quality images and a written description of the artwork, provided by the artist. It is important to describe the project in your own words as the artist, so that the agency can share your statement with the media and public.



*Portable Grove, Stuart Frost  
Rio Grande Zoological Park  
Africa Exhibit*

*Maintenance Instructions and Maintenance:* When your public art project is complete and ownership has been turned over to the agency, they will be responsible for providing maintenance and upkeep for your artwork. Without your professional, knowledgeable advice and instruction on proper maintenance, the agency's conservators might not have the information they need to work effectively. The agency will usually ask for written instructions to guide them in carrying out maintenance, with the intention of protecting the value, integrity and authenticity of the artwork. During the artist's lifetime and at no charge to the agency, the artist should be prepared to provide advice concerning problems relating to the maintenance of the artwork, unless agreed upon in writing. Artists are often given the first right of refusal to make repairs the first time, however professional conservators are often an important part of a public art program's services.

*Formal Acceptance and Ownership of the Work:* Usually within 30 days after the artist has informed the agency that the artwork has been installed, the agency will inform the artist in writing that the artwork has been completed and installed according to the terms of the agreement and issue a formal Notice of Acceptance (NOA), or the agency will address issues that remain preventing formal acceptance of the work. Once the NOA is issued the agency then becomes the owner of the work. A final payment is usually withheld until the NOA and transfer of ownership is issued.

*Assignment of the Work:* The services described in the contract will be performed by the artist and not assigned to anyone else without prior written consent. The agency wants to be sure they are getting authentic art from the artist. This does not mean that the artists cannot hire subcontractors, but they must be overseen by the artist.

*Distortion, Mutilation and Destruction of Work:* The agency agrees not to distort, mutilate or otherwise modify the artwork in a manner which is prejudicial to the artist's honor or reputation, nor will the agency destroy the work during the artist's lifetime. This is the basic premise of VARA. However, the Visual Artists Rights Act allows the artist to waive some or all of the artist's rights. The artist can make a written request to the agency that the artwork no longer be represented as a work of the artist. Sometimes situations arise, even years later, when artwork must be moved or removed. Public art agencies recognize that this is a serious concern, and usually have a deaccession or decommission policy and procedure to fairly assess the ultimate outcome of site changes on the artwork.

*Repairs and Restoration:* The agency will make a reasonable effort to consult with the artist concerning substantial repairs to and restoration of the work. To the extent the agency determines appropriate, the artist will be given the opportunity to perform substantial repairs to and restoration of the work. By considering the long-term conservation issues for your artwork during the proposal stage, you are better able to guarantee the life (and success) of your project.



*Tingley Art Fence, Susan Wink  
Tingley Beach Drive*

*Removal or Relocation:* If for any reason the artwork must be removed or moved from the original site to a new location, the agency will make a reasonable attempt to notify the artist in writing. The artist may advise or consult with the agency regarding removal or moving of the work. The federal Visual Artists Rights Act will help determine the agency's requirements for the artwork's new site.

## QUESTIONS EVERY ARTIST SHOULD ASK BEFORE AGREEING TO A PUBLIC ART COMMISSION

- Are you familiar with current technology applicable to your art methods?
- Have the materials you plan to use for your art held up well over time? How long?
- Should you consider using different materials to improve the quality and longevity of your art?
- If you were asked to create a larger work of art, will the materials hold up to the stress of a larger scale?
- Are you using cheaper materials to meet your budget? Does this affect the quality of your work?
- Does your work require special lighting, temperature and/or humidity controls?
- Your work looks good sketched out and as a maquette, but will it look good at the site?

Consider foot and auto traffic, noise, lighting, angles, and the overall environment.

- Will the colors and surfaces hold up to sunlight, temperature changes, graffiti, water, wind?
- Will reasonable measures be taken to ensure that your art is protected from abuse?
- Can you guarantee your work longer than one year?
- Do you need to subcontract any portion of your work?
- Are you subcontracting with professionals in their field? Will they meet your deadline requirements?
- Do your subcontractors guarantee their workmanship? Are you prepared to guarantee their work?
- What type of ongoing maintenance does your art require? Can anyone do the repairs and maintenance?
- Should special materials and equipment be used for maintenance?
- Do you wish to be notified when maintenance and repairs are needed?
- Are you aware of any specific maintenance practices that could damage your art?
- Does the agency you are working with have policies for decommissioning (permanently removing) artworks?
- Do the policies include notifying the artist of a decommission move?
- Do you want the right to buy back your art?
- Do you understand everything stated in your contract?
- Should you have your own legal counsel review your contract?
- Can you live with all the terms of the contract?



*Mestizaje* (detail), Emanuel Martinez  
South Broadway Cultural Center  
1025 Broadway SE

It is important to remember that just like any public process - or art process, for that matter - there will be ups and downs along the way. You never know exactly what sort of artwork will appeal to art selection committees, arts boards, elected officials or the general public. The important things to remember include: knowing how the process is governed, knowing how to submit the best proposal possible and understanding your rights and responsibilities once you have been selected to undertake a project. We hope this handbook serves as a guide for navigating this process and is helpful to artists who want to get involved in making public art. Feel free to contact the public art program if you have questions, at [cabq.gov/publicart](http://cabq.gov/publicart).