

BEFORE THE METRO CONTRACT REVIEW BOARD

FOR THE PURPOSE OF) RESOLUTION NO. 00-2962
AUTHORIZING A SOLE SOURCE)
AGREEMENT WITH THE REGIONAL) Introduced by Mike Burton
ARTS AND CULTURE COUNCIL) Executive Officer

WHEREAS, Metro has historically supported the work of the Regional Arts and Culture Council (RACC) which serves and enriches the Metro region; and

WHEREAS, Metro has a Percent for Art Program which requires that 1% of the construction budget of major construction projects be utilized to acquire public art; and

WHEREAS, RACC has unique and significant experience in administering Percent for Art Programs for several governments and agencies; and

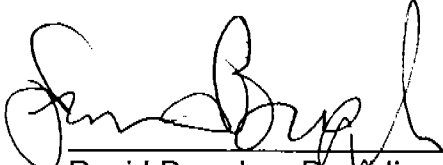
WHEREAS, Metro has recently initiated a major building project to expand the Oregon Convention Center.

BE IT RESOLVED:

That the Metro Council, acting as the Contract Review Board, accepts the findings in the attached staff report and finds RACC to be the sole source provider of needed art related services,


That the Metro Council, acting as the Contract Review Board, authorizes the Executive Officer to sign agreement with RACC as shown in Exhibit 1.

ADOPTED by the Metro Council this 29th day of June, 2000.



David Bragdon, Presiding Officer

Approved as to Form:



Daniel B. Cooper, General Counsel

Exhibit 1

AGREEMENT

THIS AGREEMENT, dated as of July 1, 2000, is by and between Metro , a metropolitan service district organized under the laws of the State of Oregon and the 1992 Metro Charter, located at 600 NE Grand Avenue, Portland, OR 97232-2736, and the Regional Arts and Culture Council, (RACC), a nonprofit entity legally chartered under applicable federal law and state statute, whose address is 620 SW Main #420, Portland, Oregon 97205.

WITNESSETH:

WHEREAS, Metro and MERC have historically supported the work of the Regional Arts and Culture Council (RACC) which serves and enriches the Metro region; and

WHEREAS, Metro and MERC have a Percent for Art Program which requires that 1% of the construction budget of major construction projects be utilized to acquire public art; and

WHEREAS, RACC has unique and significant experience in administering Percent for Art Programs for several governments and agencies; and

WHEREAS, past Metro and MERC projects which have included successful Percent for Art Programs are the original Oregon Convention Center, Metro Headquarters and the Expo Hall "E", all of which utilized the services of RACC to assist with the selection and implementation of the program; and

WHEREAS, Metro has recently initiated a major building project to expand the Oregon Convention Center.

NOW, THEREFORE, in recognition of their mutual interests, the parties agree to the following terms and conditions.

A. SCOPE OF WORK

RACC will manage for and with MERC the public art program for the Oregon Convention Center Expansion Project which includes both new pieces of public art and relocation of existing pieces. RACC will perform all tasks necessary for a successful program. The major tasks to be performed are listed below.

1. Committee

Establish and staff the project's art committee with the following membership:

- Metro Councilor (David Bragdon)
- MERC Commissioner and a liaison from RACC's Public Art Advisory Committee (George Bell)

- Project Architect (Bob Frasca)
- Event Manager of OCC (Lisa Grau-Mercer)
- Two Professional Artists (Larry Kirkland and Elizabeth Mead)
- OCC Expansion Advisory Committee (Harold Lasley)
- Two Members at Large (Terri Hopkins and Carol Edelman)

RACC will schedule meetings, keep meeting minutes and perform follow-up research and other activities as directed by the committee.

2. *Charrette*

In the event a design charrette is determined to be appropriate, RACC will coordinate and participate in such activity.

3. *Prospectus*

RACC will prepare, produce and distribute a prospectus and other appropriate documentation describing the project and the selection process. The final prospectus shall be reviewed and approved by MERC prior to distribution.

4. *Selection Process*

RACC will coordinate the selection process by responding to questions from proposers, preparing slide screening (including any written material to facilitate selection process), return of material and communications with semi-finalists.

5. *Post-Selection Activities*

RACC will coordinate the post-selection activities by communication with selected and rejected artists, assisting with contract negotiations, review artist's progress payment requests, communication with artists, committee members and other project personnel as required during fabrication and installation.

6. *Miscellaneous Activities*

RACC will perform the following miscellaneous activities as required and requested:

- Presentations to appropriate officials and media groups
- Assist in dedication ceremony(s)
- Assist with media relations
- Final project wrap-up

7. *Schedule*

RACC shall commence activities immediately upon the execution of this Agreement and shall work diligently to perform all tasks in a timely fashion. Both MERC and RACC

anticipate that all tasks can be completed simultaneous with the completion of the building project, which is scheduled for October 2002.

7. *Notice*

RACC's activities as program manager will be included in all media advisories and printed materials related to the project's Percent for Art Program.

8. *Compensation*

As compensation for services performed, MERC will pay RACC a total not to exceed \$65,000. Administrative costs associated with the art program, such as printing and mailing prospectus, travel, lodging and other typical expenses related to out-of-town artists involved in the planning or selection phases, and costs related to art committee meetings will be additional charges to be reimbursed at cost by MERC. Such additional charges will not exceed \$16,000. Payment shall be made to RACC based on the following schedule:

1 st payment:	July 1, 2000	\$16,250
2 nd payment:	June 1, 2001	\$16,250
3 rd payment:	June 1, 2002	\$16,250
4 th payment:	October 1, 2002	\$16,250

RACC shall request payment by invoice addressed to MERC's Project Manager. MERC shall make payment within 30 days of payment request.

9. *Indemnification*

The parties hereby agree that RACC is an independent organization, and that the activities of RACC, their officers, agents and employees shall not constitute actions of MERC or Metro for any purpose. Therefore, RACC hereby agrees to indemnify, hold harmless and defend MERC and Metro, and their respective officers, commissioners, agents and employees, from and against all liabilities, damages, actions, costs, losses, claims and expenses (including attorneys' fees) arising out of activities of RACC, its officers, agents, employees, contractors and invitees.

10. *Termination*

MERC may terminate this Agreement upon giving RACC seven (7) days' written notice. In the event of termination, RACC shall be entitled to payment for work performed to the date of termination. MERC shall not be liable for indirect or consequential damages. Termination by MERC will not waive any claim or remedies it may have against RACC.

11. *Situs*

The situs of this Agreement is Portland, Oregon, and any litigation related hereto shall be governed by the laws of the state of Oregon and conducted in the state circuit court for Multnomah County.

12. *Nontransferability*

This Agreement is binding on each party, its successors, assigns and legal representative and may not, under any circumstances, be assigned or transferred by either party.

13. *Managers*

The manager of this Agreement for Metro shall be:

Scott Moss
Metro
600 NE Grand Avenue
Portland, OR 97232

The manager of this Agreement for RACC shall be:

Eloise Domrosch
RACC
620 SW Main, Suite 420
Portland, OR 97205

All correspondence, payment requests and payment shall be addressed to the respective managers.

B. ENTIRE AGREEMENT

Notwithstanding and succeeding any and all prior agreements or practices, this Agreement constitutes the entire Agreement between the parties, and may only be expressly modified in writing signed by both parties.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates hereinafter indicated and as follows:

Regional arts and Culture Council

Metro

By _____

By _____

Print Name _____

Print Name _____

Title _____

Title _____

Date _____

Date _____

OPERATIONS COMMITTEE REPORT

CONSIDERATION OF RESOLUTION NO. 00-2962, FOR THE PURPOSE OF AUTHORIZING A SOLE SOURCE AGREEMENT WITH THE REGIONAL ARTS AND CULTURE COUNCIL

Date: June 29, 2000

Presented by: Councilor Washington

Committee Recommendation: At its June 21, 2000, meeting, the Operations Committee voted 3-0 to recommend Council adoption of Resolution No. 00-2962. Voting in favor: Councilors Atherton, Washington, and Monroe. Voting against: none. Absent: none.

Background: Scott Moss, Assistant ASD Director, presented the staff report. He explained that the proposed agreement is a multi-year contract with the Regional Arts and Culture Council (RACC) to assist in implementing the state-mandated Percent for Art program as it relates to new construction at the Oregon Convention Center (OCC). The Percent for Art program directs that not less than 1% of the direct construction funds of new or remodeled public buildings with construction budgets of \$100,000 or greater be used to acquire art work attached to, or an integral part of, the building.

Metro code section 2.04.062 requires Council approval of all sole source agreements over \$2,500. The proposed contract is for a maximum of \$81,000 (\$65,000 for services and up to \$16,000 for reimbursable expenses), and will extend through the life of the OCC expansion. Funds to pay for the contract are already included in the project budget, and will be drawn from the OCC Project Capital Fund. If OCC project funds become unavailable, the contract will be terminated.

Metro and RACC have a history of working together to manage art at Metro facilities. RACC has experience in the market and will participate in the selection of art, and negotiation of artist's terms and conditions. Moss stated that RACC's expertise in this area represents a financial efficiency, and would reduce the workload otherwise required of Metro staff, while allowing Metro to support RACC in its efforts to enrich the public by providing art and culture to the region.

Committee Issues/Discussion: Councilor Atherton asked for clarification on how the 1% was calculated. Moss replied that the estimated total budget for the OCC expansion project is approximately \$80 million, of which \$800,000 can be considered direct construction costs under the Percent for Art program guidelines. One percent of this amount is \$80,000.

There was no further committee discussion.

STAFF REPORT

FOR THE PURPOSE OF AUTHORIZING A SOLE SOURCE AGREEMENT WITH THE REGIONAL ARTS AND CULTURE COUNCIL.

Date: July 6, 2000

Presented by: Scott Moss

PROPOSED ACTION

Adopt Resolution No. 00-2962 authorizing a sole source agreement with the Regional Arts and Culture Council (RACC).

EXISTING LAW

Metro Code section 2.04.062 requires Council approval of all sole source agreements over \$2,500.

FACTUAL BACKGROUND AND ANALYSIS

Metro and RACC have enjoyed a long-standing relationship for managing art at Metro facilities. Metro is a regional sponsor of RACC, which serves and enriches the arts in the region. The Oregon Convention Center Expansion will be subject to Metro's One Percent for Art program and will need the expertise of RACC in the selection of art.

Findings

Operational Efficiency

Contracting directly with RACC creates operational efficiencies. RACC is knowledgeable with art and artists in the region and provides efficiency in contracting for art projects.

Public Benefits

The public benefits by supporting RACC. RACC works to enrich the public by providing art and culture to the region.

Specialized Expertise

RACC enjoys staff with special expertise in the selection and maintenance of art. RACC staff knows artists in the region and assists in the contracting process and with contracting disputes.

Market Conditions

RACC has expertise in the market and participates in the selection and negotiation of artists terms and conditions.

Budget/Financial Efficiencies

RACC's assistance with selection, implementation, artists negotiation, and contracting will be of significant value to Metro, reduce workload otherwise required of Metro staff and provide financial efficiencies.

BUDGET IMPACT

The RACC contract is \$65,000 for the life of the expansion project.

EXECUTIVE OFFICER RECOMMENDATION

The Executive Officer recommends approval of Resolution No. 00-2962.

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