

For Design Submission for the _____ Project

**COMMISSION AGREEMENT
BETWEEN
CULTURAL COUNCIL OF GREATER JACKSONVILLE, INC.
AND [ARTIST]
FOR PREPARATION OF DESIGN FOR AN ARTWORK
AND IF SUCH DESIGN IS ACCEPTED,
FOR THE FABRICATION AND INSTALLATION OF SUCH ARTWORK
FOR THE _____ PROJECT**

Administrative Award, Bid No.: _____

This Commission Agreement (the “Agreement”) is made and entered into this ___ day of _____, 2019, by and between Cultural Council of Greater Jacksonville, Inc. (“CCGJ”), a Florida not for profit corporation, and [Name of Artist] (“Artist”) for the personal services of Artist. (CCGJ and Artist together may be referred to herein as the “Parties”.)

RECITALS

WHEREAS, the City of Jacksonville, a consolidated government under the laws of the State of Florida (“City”) has a public art program, the “Art in Public Places Program”;

WHEREAS, the Art in Public Places Program is administered by CCGJ, pursuant to the Ordinance Code Chapter 126, Part 9 and the (the “Underlying City/CCGJ Agreement”);

WHEREAS, as administrator for the Project, CCGJ issued a Request for Qualifications on _[INSERT DATE___ (the “RFQ”) and, in response to Artist’s submission, whether based on Artist’s qualifications and/or submission of a conceptual design, the ASP (defined below) has selected Artist to submit a detailed design for the Project, on the terms of this Agreement;

WHEREAS, Artist expressly understands that Artist’s design is not guaranteed to be accepted for fabrication and completion for the Project;

WHEREAS, Artist has agreed to provide Artist’s personal services, including, without limitation, to create and submit a Design Proposal (defined below), and, if a finalized design is accepted, to create, fabricate and install the artwork in accordance therewith, all subject to the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the mutual obligations set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE 1
INCORPORATION OF RECITALS; DEFINITIONS

1.1 The recitals set forth above (“Recitals”) are integral to and incorporated as terms of this Agreement.

1.2 The following definitions shall apply in this Agreement, in addition to other terms specifically defined in the Recitals or elsewhere in this Agreement.

1.2.1 Approved Design Proposal. The Design Proposal for which Artist receives a Design Proposal Acceptance.

1.2.2 Art in Public Places Committee (“APPC”). CCGJ’s Art in Public Places Committee which is responsible for receiving, reviewing and acting on the recommendations of the Art Selection Panel.

1.2.3 Artist’s Services. All of the services provided and required to be provided by Artist (and/or Artist’s contractors, assistants and employees) under this Agreement.

1.2.4 Art Selection Panel (“ASP”). The Art Selection Panel for this Project formed pursuant to Section 126.907, Ordinance Code.

1.2.5 Artwork. The physical object and objects comprising the artwork and all drafts, maquettes, drawings and versions thereof that are delivered and/or are required to be delivered hereunder by Artist (and/or Artist’s contractors, assistants and employees) based on the Approved Design Proposal.

1.2.6 Contract Administrator. The Director of CCGJ’s Art in Public Places Program or any individual authorized by CCGJ to act in that capacity in connection with this Agreement. Artist may rely on the Contract Administrator for instructions and approvals from CCGJ, but the Contract Administrator has no authority to increase amounts paid or payable to Artist hereunder. The Contract Administrator is currently Christie Holechek and may be changed by CCGJ on written notice to Artist in accordance with the Notices provisions of this Agreement.

1.2.7 Design Phase. The stage during which Artist creates and delivers the Design Proposal to CCGJ to articulate the proposed Artwork and the specifications and details of its composition, materials, fabrication, installation, and the details of Artist’s Services to be provided therewith, the specific location at the Site where the Artwork will be installed, and the budget and schedules for all of the foregoing.

1.2.8 Design Phase Work. All Work performed (or to be performed) by, at the request of, or on behalf of Artist, in the Design Phase.

1.2.9 Design Proposal. The proposal required to be submitted by the Artist during the Design Phase.

1.2.10 Design Proposal Acceptance. The written notice issued and signed by the Contract Administrator notifying the Artist that the Design Proposal has been accepted by CCGJ.

1.2.11 Fabrication and Installation Phase. The phase following the Design Phase during which take place the execution, fabrication, transportation, delivery, installation, Project cataloging and all other services and goods associated with integration (if applicable) and installation of the Artwork in accordance with Approved Design Proposal, as well as the inspection and acceptance of the Artwork by CCGJ and the City, and delivery to the City of ownership of the Artwork.

1.2.12 Fabrication and Installation Phase Work. All Work performed (or to be performed) by, at the request of, or on behalf of Artist, in the Fabrication and Installation Phase.

1.2.13 Final Acceptance. The CCGJ's written acceptance of installation and delivery of the Artwork in its final form, in accordance with this Agreement and the provisions of Section 2.4.5.4.

1.2.14 Project. The project covered by this Agreement pursuant to which the particular item or items of public art is selected, fabricated, and installed in the City in accordance with this Agreement.

1.2.15 Reviewing Entities. Those entities arranged by CCGJ to review and/or approve an aspect of the Project, which may include, without limitation, the City, City departments such as Public Works, APPC, ASP, and art conservators.

1.2.16 Site. The location(s) or vicinity where the Artwork is to be installed initially is _____, and the particular place at such location where the Artwork will be placed will be specifically identified in the Approved Design Proposal.

1.2.17 Work. All labor, materials, services, communications, submittals, other items and/or deliverables furnished by, at the request of, or on behalf of Artist in connection with this Agreement, including, without limitation, the Design Phase Work and the Fabrication and Installation Phase Work, the Artwork and all of Artist's Services.

ARTICLE 2 **PROCESS**

2.1 Performance by Artist Personally. Except as expressly authorized herein and agreed by CCGJ in writing, all of Artist's obligations under this Agreement shall be performed and provided personally by Artist.

2.2 Phases. The services to be performed and deliveries to be made by Artist hereunder shall be done in two phases: (a) the Design Phase and, if the design is accepted in accordance with this Agreement, (b) the Fabrication and Installation Phase. The Design Phase shall commence upon execution of this Agreement and, if the design is accepted in accordance with this Agreement, shall be followed by the Fabrication and Installation Phase.

2.3 Design Phase.

2.3.1 After execution of this Agreement by both Parties, and no later than _____, 2018, Artist shall deliver to CCGJ a Design Proposal that, at a minimum, complies with the requirements set forth in **Exhibit A** hereto, and also includes the following:

.1 The Artwork design, including but not limited to (a) the Artwork's design, appearance, dimensions, color(s), material(s), weight, texture(s), method of attachment, support-related components, and location on the Site, and (b) drawings, specifications, and any other construction documents (as applicable) for the Artwork;

.2 A proposed budget for all of Artist's estimated costs to be incurred in connection with its obligations hereunder and all payments to be paid by CCGJ to Artist under this Agreement, including line items for each of the amounts to be paid by Artist to third parties for specific services and materials;

.3 A proposed schedule of payments to Artist for all Fabrication and Installation Phase Work with specified milestones for said payments (which schedule may include, as specified by CCGJ, allocation of a contingency amount equal to up to ten percent (10%) of the total anticipated payments to be paid to Artist hereunder, the unused portion of which would be paid to Artist as part of the final payment due on execution by Artist and CCGJ of the Final Completion Report) (an example of the payment schedule is provided as **Exhibit B** solely for general guidance);

.4 A timeline for completion of the Fabrication and Installation Phase;

.5 Weathering expectations and expected lifetime of the Artwork;

.6 All maintenance recommendations for the Artwork, including but not limited to expected aging of work, maintenance materials and schedule, instructions for physical removal from the Site, and estimated costs of any such maintenance (provided that Artist understands that inclusion in the Approved Design Proposal does not obligate CCGJ and/or the City to provide such recommended maintenance on the Artwork);

.7 A list of contractors, subcontractors, suppliers, and vendors to be engaged by Artist to assist Artist in completing the Fabrication and Installation Phase;

.8 Any Site preparation or other such measures (e.g., removal of signage, surface preparation, landscape removal, exterior lighting, electricity supply and costs, sidewalk permits, street and/or parking meter closure obligations, etc.) that needs to be performed. Artist shall identify those measures that Artist is going to perform and shall separately identify those measures that need to be performed and provided (or arranged to be performed or provided) by CCGJ ("City Site Preparations");

.9 If the cost of or responsibility for any City Site Preparations are proposed to be borne by entities other than Artist or CCGJ (e.g., the City, JEA, etc.), proof, such as a signed commitment letter from an officer of such entity, that such entities have agreed to cover such costs;

.10 A draft, based upon available information, of the Public Art Catalogue Form in the format attached hereto as **Exhibit C** (it being understood that Artist shall keep this form updated throughout the Design Phase and the Fabrication and Installation Phase, and shall deliver a final updated version prior to Final Acceptance);

.11 “For bid purposes only” insurance certificates or other such evidence establishing Artist’s ability to timely obtain all insurance required under this Agreement;

.12 If specifically requested by CCGJ, as part of the Design Proposal, create and deliver a maquette (or three dimensional miniature sculpture) representative of the proposed Artwork; and

.13 Such other information as CCGJ may reasonably require.

2.3.2 In preparing the Design Proposal, Artist shall:

.1 Conduct all inspections of the Site as may be necessary to ensure that the existing Site conditions, dimensions, and substrates will support and are otherwise suitable for installation of the Artwork (and Artist’s submission of the Design Proposal shall constitute a representation and warranty that such a determination has been made by Artist);

.2 Make additional Site visit(s), attend collaborative and/or public meetings, and meet and confer with CCGJ and such Reviewing Entities as may be requested by CCGJ; and

.3 Have prepared and delivered any necessary stamped engineering drawings, including those requested by CCGJ or the City.

2.3.3 Review of Design Proposal; Changes; Acceptance.

.1 Upon formal submission by Artist, CCGJ shall make arrangements for the Design Proposal to be reviewed by ASP, APPC, CCGJ and other applicable Reviewing Entities. If the Design Proposal is not approved as submitted, CCGJ may either (a) gather and provide Artist with comments or requested revisions, in which case Artist shall submit a revised Design Proposal incorporating said comments or requested revisions with commercially reasonable promptness and diligence, (b) make arrangements for questions and discussions with Artist, which Artist shall answer or accommodate (as applicable) and incorporate into a revised Design Proposal, which shall be submitted with commercially reasonable promptness and diligence; and/or (c) may send Artist a Design Proposal Disapproval. Artist expressly understands that CCGJ shall have the right not to approve the Design Proposal if it is not approved by ASP, APPC, CCGJ and all of the Reviewing Entities.

.2 If the Design Proposal is disapproved, whether or not after revisions have been requested and/or made, CCGJ shall notify Artist (the "Design Disapproval Notice"). Upon Artist's receipt of such Design Disapproval Notice, this Agreement shall terminate.

.3 The Design Proposal may also be approved contingent on it meeting certain conditions or requirements.

.4 If the Design Proposal is approved, or is approved with conditions or requirements, CCGJ shall deliver written notice of such approval to Artist ("Design Approval Notice"). If there are conditions or requirements, those shall be stated in such Design Approval Notice. The Design Proposal, if so approved, shall constitute the "Approved Design Proposal."

.5 If CCGJ determines that changes to the details or specifications of the Artwork or any aspect of the Approved Design Proposal are desired at any time after the Design Approval Notice is issued, CCGJ shall provide the details of the proposed change to Artist, and Artist shall promptly determine whether the requested change can be made and, if so, what other changes to the Approved Design Proposal, including changes to Artist compensation, would be required to implement such changes. If the Parties agree to such changes, they shall be set forth in an amendment to the Approved Design Proposal signed by the Parties. References in this Agreement to the Approved Design Proposal shall mean references to the Approved Design Proposal as amended pursuant to this subparagraph. During negotiations for a proposed change, Artist shall continue performance of this Agreement other than the terms and conditions to be addressed in the proposed change amendment, unless otherwise directed by CCGJ.

2.4 Fabrication and Installation Phase.

2.4.1 If CCGJ issues a Design Approval Notice, and if Artist agrees to proceed to install and fabricate the Artwork on the terms of this Agreement, Artist shall:

.1 Within ten (10) business days of receipt of the Design Approval Notice and, in any case prior to commencing the Installation and Fabrication Phase Work, provide the following to CCGJ:

- Certificate(s) of insurance documenting that Artist has obtained the insurance required under this Agreement;
- Copies of policies providing the insurance required under this Agreement, if requested by CCGJ; and
- Any bond(s) or similar guarantees required under this Agreement or applicable law.

.2 Fabricate (as applicable), deliver and install the Artwork in full accordance with the terms of this Agreement and the Approved Design Proposal (including conformance with any conditions or requirements).

2.4.2 Except for the City Site Preparations that are expressly set forth in the Approved Design Proposal, all Site preparation and other measures required in connection with the design, fabrication, and/or installation of the Artwork shall be the responsibility of the Artist. Without limitation, Artist shall be responsible for the following to the extent not expressly set forth as a responsibility of CCGJ in the Approved Design Proposal:

- .1 Furnishing all labor, materials, equipment, supervision, and other items required for the fabrication and installation of the Artwork in accordance with the Approved Design Proposal;
- .2 Obtaining any required permits or other governmental approvals not identified as a responsibility of CCGJ in the Approved Design Proposal;
- .3 Proper arrangements for maintenance of traffic, parking, and other such measures, as appropriate;
- .4 Surface, structural, and other preparations for the Artwork;
- .5 Safe storage of the Artwork and all related equipment, materials, and component parts prior to installation and completion of the Artwork;
- .6 Keeping the Site premises free from waste materials and rubbish; and
- .7 At the completion of the installation of the Artwork, removal of any waste materials, rubbish, tools, equipment, machinery, spilled or excess paint or materials from the Site attributable to the Artist or the Artwork.

2.4.3 In performing the Work, Artist shall take all reasonable measures to minimize disruption to CCGJ and the City, including, without limitation, the following:

- .1 Obtaining approval of CCGJ prior to delivering or commencing installation of the Artwork;
- .2 Coordinating with CCGJ the dates and times needed for Artist to access the Site for delivery and installation of the Artwork;
- .3 Being present at the Site during the installation process for the Artwork, unless approved otherwise in writing by CCGJ;
- .4 Completing the delivery and installation of the Artwork during the dates and at the times approved by CCGJ.

2.4.4 Public Art Catalogue Form. At the completion of the installation of the Artwork, and as a condition to final payment, Artist shall deliver to CCGJ a complete and accurate Public Art Catalogue Form (based on the prior form supplied with the Design Proposal but updated to include any new information) in the format attached hereto as **Exhibit C**.

2.4.5 Inspections.

.1 During the Fabrication and Installation Phase, CCGJ, the City, and the Reviewing Entities designated by CCGJ for such access and inspections, may access and conduct inspections of the Artwork and the Work for any lawful purpose, including but not limited to determining compliance with the terms of this Agreement and confirming completion status, provided that no such inspections or right to inspect shall create any duty on the part of any inspecting party or entity to discover or determine non-compliance by Artist or otherwise relieve Artist of any liability for any such non-compliance.

.2 During the Fabrication and Installation Phase but before delivery or installation, upon CCGJ request and also when the Artwork is substantially complete, Artist shall provide to CCGJ for review photographs and such other representations and descriptions of the fabricated Artwork and portions thereof as CCGJ may reasonably request, that accurately depict Artist's progress in completing the Artwork. CCGJ's receipt of such confirmation that the Artwork is substantially complete shall be the "Substantial Completion Confirmation".

.3 Upon completion of the installation of the Artwork, Artist shall notify CCGJ and schedule an inspection by CCGJ (and/or those Reviewing Entities designated by CCGJ). CCGJ shall identify any deficiencies in the Artwork (or in the Public Art Catalogue Form) and report the same to Artist in a report (an "Inspection Report"). Artist shall correct any such noted deficiencies within five (5) business days thereafter, or such longer period of time as allowed by CCGJ in writing. Upon correction of such deficiencies, Artist shall redeliver the Public Art Catalogue Form (as applicable) and notify CCGJ that the Artwork is ready for re-inspection. CCGJ shall re-inspect the Artwork within fifteen (15) business days after receipt of such notice. If CCGJ determines that all deficiencies have not been corrected, CCGJ will provide at least one updated Inspection Report to Artist identifying any remaining deficiencies and a deadline within which to address the same. Artist shall promptly submit written notification of Artist's correction of all deficiencies noted by CCGJ, and CCGJ will schedule a final inspection. CCGJ may but shall not be required to provide Artist with additional correction opportunities beyond the two Inspection Reports noted above.

.4 Final Completion Report: If CCGJ and the City determine that the Artwork and the installation thereof is completed in accordance with this Agreement and Section 2.4.5.3, CCGJ will prepare a "Final Completion Report" to be executed by Artist and CCGJ and the City. The Final Completion Report shall include, at a minimum, the location and detailed description of the Artwork and any additional information as determined by CCGJ. The execution of the Final Completion Report by both parties shall constitute Final Acceptance.

ARTICLE 3
STANDARDS FOR WORK

3.1 Professional Standard. Artist shall perform the Work, and require any contractors and subcontractors performing services hereunder to perform the Work, in accordance with standards of care, skill, training, diligence, and judgment provided by highly competent professionals who perform work of a similar nature.

3.2 Subcontractors. Artist shall only engage those contractors and subcontractors who have been identified in the Approved Design Proposal or otherwise approved in writing by CCGJ to perform services under this Agreement. Artist shall not engage or continue to employ, any contractor or subcontractor or any other third party to which the City or CCGJ reasonably objects. If requested by CCGJ, Artist shall deliver to CCGJ a fully executed copy of each of the agreements between Artist and Artist's subcontractors, contractors or other third parties providing services under this Agreement. Artist shall ensure that the total amounts paid to any contractor or subcontractor or any third party do not exceed the fair and reasonable cost of the Work to be performed thereunder.

3.3 Liens. In the event that any liens are claimed in connection with this Agreement that are not attributable to CCGJ's wrongful failure to make undisputed payments, Artist shall within ten (10) days transfer or otherwise discharge any such liens and further indemnify CCGJ and City from and against any claims, suits, demands, losses, costs, and expenses, including reasonable attorney fees, arising out of or in connection with any such liens.

3.4 Time is of the essence. Time is of the essence for all performance required under this Agreement. Artist shall complete all Work in compliance with the timeframes and schedules and so as to meet the milestones established pursuant to the Approved Design Proposal. Notwithstanding the foregoing, Artist shall be entitled to an equitable extension of such time frames, schedules and milestone deadlines to the extent that Artist's performance is unforeseeably and unavoidably delayed by cause(s) outside Artist's control, or is delayed due to action or inaction on behalf of CCGJ or the City, provided that (a) Artist complies with the notice requirements of this Agreement, (b) any such extension shall be effective only if it is in writing and signed by CCGJ, and (c) such equitable extensions shall be Artist's exclusive remedy for any delays. Similarly, CCGJ's delay in performance shall be excused where attributable in whole or in part to cause(s) outside CCGJ's reasonable control.

ARTICLE 4
TERMINATION

4.1 Termination for Convenience. CCGJ may terminate this Agreement at any time, without cause, upon ten business days' prior written notice to Artist.

4.2 Termination for Cause.

4.2.1 Either party may terminate this Agreement for cause if the other party materially breaches this Agreement and fails within a ten (10) day period after notice from the terminating party to commence and continue prompt and diligent correction of the breach.

4.2.2 In addition, CCGJ may terminate this Agreement for cause, effective immediately and without notice or opportunity to cure, in any of the following events:

.1 During the Design Phase, Artist indicates that Artist is unwilling or unable to provide a Design Proposal that meets with the requirements of CCGJ so as to result in an Approved Design Proposal;

.2 Artist fails to comply with the schedules and milestones set forth in the Approved Design Proposal, except as a result of Force Majeure or delays where equitable extensions are granted in accordance with this Agreement;

.3 Artist is found to have submitted a false certification pursuant to Section 287.135, Florida Statutes or otherwise violated any applicable law, rule, code or ordinance; or

.4 Artist has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.

4.3 Effect of Termination.

4.3.1 Payment:

.1 In the event this Agreement is terminated by CCGJ without cause or by Artist for cause, Artist shall be entitled to (a) all amounts due to Artist under this Agreement and/or the Approved Design Proposal for work completed prior to the effective date of termination and (b) any demobilization and other such additional costs reasonably and necessarily incurred by Artist as a result of the early termination, said amount(s) being in full satisfaction of all of the City and CCGJ's payment and other obligations under this Agreement.

.2 In the event this Agreement is terminated by CCGJ for cause:

(a) Artist shall not be entitled to any additional payment under this Agreement;

(b) In the event the Design Approval Notice has been issued and CCGJ chooses to finish the Artwork, CCGJ shall be entitled to recover all costs and expenses it incurs in completing Artist's obligations hereunder, less the amount that would have been payable to Artist hereunder had Artist fully performed in full accordance with the terms of this Agreement, and less any funds recovered by CCGJ under any performance bond or other such guarantee; and

(c) In the event: (i) the Design Approval Notice was not issued, or if (ii) the Design Approval Notice was issued but CCGJ determines that the completion of the Artwork is not practical or desirable, even if such decision requires removal of the Installed

Artwork (defined below) from the Site, in each case of (i) and (ii) CCGJ shall be entitled to recover all amounts paid to Artist hereunder plus any cost and expense of returning the Site to its original condition existing prior to Artist's commencement of Artist's Work hereunder.

.3 In the event Artist becomes incapacitated or dies prior to Final Acceptance, such event shall not be a breach of this Agreement, but for purposes of payment and rights in artwork and CCGJ's right to complete the Artwork, shall be treated in accordance with the provisions applicable to termination by CCGJ for cause.

4.3.2 Rights in Artwork.

.1 In the event this Agreement is terminated by either party prior to Final Acceptance, the following provisions shall apply:

(a) The City shall hold title to the physical copies of the Design Proposal, the Approved Design Proposal, and all drafts thereof delivered to CCGJ and/or the City through to the effective date of such termination ("Delivered Materials").

(b) Artist shall retain the copyright to the Delivered Materials, subject to the provisions of Article 9 of this Agreement and to the City's ownership of title thereto, and further subject to: (i) CCGJ's right and exclusive license, without obligation, to proceed to complete the fabrication and installation of the Artwork if the Design Approval Notice has issued prior to such termination; and (ii) subject to CCGJ's right not to complete the Artwork but instead to choose to remove it from the Site, return it to Artist, and/or to CCGJ's and the City's right to dispose of it, sell it, gift it or reutilize it elsewhere.

(c) Title to any portion of the Artwork installed or delivered to the Site (and to the Artwork as it may be completed under this Agreement) shall pass to and be held by the City upon termination, unless Artist exercises its right to re-take the Artwork under Section 4.3.2.2 below or the Artwork is returned to Artist pursuant to 4.3.2.2 below.

.2 In the event this Agreement is terminated by CCGJ without cause or by Artist for cause prior to Final Acceptance, the following provision shall apply in addition to Section 4.3.2.1 above: Artist shall have the option to retain or re-take physical possession and title to any portion of the Artwork that has been installed or delivered to the Site (collectively "Installed Artwork"), in which case Artist shall, (a) as a condition precedent to re-taking such possession and/or title, within ten (10) business days of such a termination, provide written notice of such an election, (b) within thirty (30) days of any such notice, refund any payments made by CCGJ under this Agreement, and (c) perform or fund such repairs as may be necessary to return the Site to its original condition. In the event Artist fails to make and effectuate such an election, the City shall take physical possession of and title to the Installed Artwork and CCGJ may, at its sole discretion: leave the Installed Artwork in place; complete the Installed Artwork; and/or remove the Installed Artwork from the Site and dispose of it, sell it, gift it, or reutilize it elsewhere.

.3 In the event this Agreement is terminated by CCGJ for cause after the Design Approval Notice has issued, in addition to the provisions of Section 4.3.2.1 above, CCGJ may, at its sole discretion: leave the Installed Artwork in place; complete the Installed Artwork; and/or remove the Installed Artwork from the Site, return it to Artist and/or dispose of it, sell it, gift it, or reutilize it elsewhere.

.4 In the event this Agreement is terminated after the Design Approval Notice has issued, and CCGJ or the City elect to complete the Installed Artwork, Artist shall cooperate with and otherwise facilitate such efforts, such cooperation and facilitation including but not being limited to sharing of relevant information and assignment of third party agreements and/or subcontractor agreements selected by CCGJ for such assignment.

ARTICLE 5 **COMPENSATION**

5.1 Artist Compensation.

5.1.1 Upon execution of this Agreement by both Parties, Artist shall issue an invoice to CCGJ and CCGJ shall pay Artist the sum of _____ (\$_____).

5.1.2 Upon delivery of the Design Proposal, Artist shall issue an invoice to the CCGJ and CCGJ shall pay Artist the sum of _____ (\$_____).

5.1.3 Upon issuance of the Design Approval Notice, if Artist agrees to fabricate and install the Artwork under this Agreement in accordance with the Approved Design Proposal, and Artist has submitted a verified Certificate of Insurance as required by this Agreement, Artist shall issue an invoice to the CCGJ and CCGJ shall pay Artist the sum set forth in the payment schedule that has been approved as part of the Approved Design Proposal (the "Payment Schedule") that is to be paid upon issuance of the Design Approval Notice and approval of the Certificate of Insurance.

5.1.4 Thereafter, CCGJ shall pay Artist the amounts identified in the Payment Schedule as due upon completion of the applicable milestone in the Fabrication and Installation Phase identified therewith, subject to and in accordance with the process outlined in Section 5.2 below.

5.1.5 Any provisions in this Agreement to the contrary notwithstanding, in no event shall the total compensation paid to Artist in connection with the Project exceed [_____] (\$_____). This amount is the maximum amount payable, constitutes a limitation upon CCGJ's obligation to compensate Artist for Work related to this Project, and does not constitute a limitation upon Artist's obligation to perform all items of work required under this Agreement.

5.1.6 Artist expressly understands and agrees that the foregoing payments are the total amounts payable to Artist under this Agreement and must cover all of the Work to be performed by Artist or any subcontractor on Artist's behalf, all vendors, all of Artist's travel (including travel

for installation, site visits, and unveiling ceremonies), insurance, delivery and all other costs and expenses.

5.2 Method of Billing and Payment.

5.2.1 Payment Applications.

.1 Progress Payment Applications. Within fifteen (15) days after the completion of each milestone in the Payment Schedule for which Artist seeks payment (except for final payment), Artist shall submit to CCGJ a progress payment application, which shall be dated and numbered and shall:

- (a) Identify all milestones completed by Artist, the milestone for which payment is sought, the date Artist completed the milestone for which payment is sought, the amount previously paid by CCGJ for Work under this Agreement, the amount sought by Artist in the payment application;
- (b) Confirm that all required insurance is being maintained; and
- (c) At CCGJ and/or City's reasonable discretion and request, include such other documentation, proving payment of, and the absence of payment disputes involving, the subcontractors and vendors of Artist.

.2 Final Payment Application. Within sixty (60) days of the completion of the installation of the Artwork and all Work required under this Agreement, including any items listed in an Inspection Report issued in accordance with Section 2.4.5.3 above, Artist shall submit a final payment application, which shall clearly identify that it constitutes Artist's final payment application in connection with the Artwork, identify the amount previously paid to Artist on account of the Work and the Artwork and the amount Artist seeks as final payment, all information requested above in Section 5.2.1.1, and include the following:

- (a) A sworn, notarized Certificate that the Artwork has been installed in full accordance with the terms of this Agreement or identifying any variations from the terms of this Agreement;
- (b) A certification of payment to subcontractors and suppliers in the form of **Exhibit F**, and final and complete releases of claims for payment, including liens and bond claims, from each contractor, subcontractor and supplier, confirming that final payment has been made for all materials supplied and labor furnished in connection with the Work and that no liens remain on the Artwork or Site; and
- (c) Such other documentation as CCGJ of the City may reasonably require, including but not limited to the final cataloging and updated Public Art Catalogue form.

.3 All payment applications shall be submitted (until the Contract Administrator notifies the Artist of a different addressee) via email to the CCGJ Contract Administrator at Christie@culturalcouncil.org or via US mail to:

The Cultural Council of Greater Jacksonville
Attn: Director Art in Public Places
300 Water Street, Suite 201
Jacksonville, FL 32202

5.2.2 Payments.

.1 If a payment application meets the requirements of this Agreement and payment is otherwise due to Artist, payment shall be made within thirty (30) days after CCGJ's receipt of the payment application (and Artist's invoice).

.2 If a payment application does not meet the requirements of this Agreement, CCGJ will reject the payment request or invoice within twenty (20) business days of receipt. The rejection will be written and specify the deficiency and the action necessary to make the payment application proper. If a corrected payment application is then submitted, the corrected payment application will be paid or rejected within ten (10) business days after the date the corrected payment request or invoice is received.

.3 In addition, CCGJ may withhold payment otherwise due, or recover payments previously made, as appropriate, on account of any of the following:

- (a) The Work performed by Artist is defective and has not been remedied within ten days of request;
- (b) Third party claims have been filed in connection with Artist's Work or payments due third parties from Artist, or reasonable evidence indicating probable filing of such claims;
- (c) Failure of Artist to make payments properly to subcontractors or suppliers;
- (d) Reasonable evidence that Artist's obligations or the Work cannot be completed for the unpaid balance under this Agreement;
- (e) Reasonable evidence that Artist's obligations or the Work will not be completed within the time requirements of this Agreement and that the unpaid balance is insufficient to cover related damages to CCGJ; or
- (f) Failure to carry out Artist's obligations or the Work in accordance with this Agreement, or to comply with any term, condition, or requirement of this Agreement.

5.2.3 In the event this Agreement is terminated for any reason, the provisions of Section 4 applicable to payment shall apply, and any amounts due Artist shall be withheld by CCGJ until all documents that are required to be provided to CCGJ under this Agreement are provided.

5.2.4 Payment will be made to Artist by check payable to _____, mailed to the following address:

Artist
Address

If the foregoing payment process requires CCGJ to make or send payments other than to Artist, Artist agrees that payment in accordance with the above provision 5.2.4 shall constitute payment to Artist. If more than one artist is creating the Artwork under this Agreement, payment to the above recipient shall constitute payment to both and the artists themselves shall be responsible for allocating payment among themselves.

5.2.5 As a condition precedent to payment, Artist shall provide the federal identification number or social security number of Artist on a W-9 form provided by CCGJ upon signing and returning this Agreement.

5.3 Underlying Agreement; Condition on Payment. The Parties acknowledge the Underlying City/CCGJ Agreement will be or has been provided to Artist on request, is incorporated herein by reference, and that funding for the Project is being provided pursuant to such Underlying City/CCGJ Agreement. Any contrary provisions notwithstanding, any right to payment hereunder is expressly conditioned upon Artist's compliance with all obligations imposed in the City/CCGJ Agreement on CCGJ contractors and subcontractors and upon CCGJ's receipt and possession of corresponding funds from the City under the Underlying City/CCGJ Agreement. CCGJ will make good faith efforts to obtain and retain such funding; however, in no event shall CCGJ owe Artist a payment that has not been or is not being funded by the City.

5.4 Acceptance of final payment by the Artist shall constitute a waiver of claims by Artist arising out of or in connection with this Agreement, except those previously noticed in writing in accordance with this Agreement and identified as unsettled at the time of Artist's final payment application.

ARTICLE 6 **INDEMNIFICATION AND LIMITATION OF LIABILITY**

6.1 Indemnification. Artist hereby agrees to the indemnification obligations set forth on **Exhibit E**. Artist shall likewise bind all subcontractors in writing to the indemnification obligations set forth or acknowledged in this Section 6.1.

6.2 Limitation of Liability. Neither party shall be liable for the other party's special, indirect, punitive, or consequential damages (including damages resulting from lost data or records other than costs incurred in the recovery thereof), or for the other party's lost profits, or lost revenue, even if the party has been advised that such damages, lost profits, or lost revenue, are possible. These limitations of liability shall not apply to any claim that the Artwork or any Work infringes upon the intellectual property rights of any third party, or to any indemnification obligation under this Agreement.

ARTICLE 7
INSURANCE AND BONDS

7.1 Artist's insurance and bonding obligations are set forth in **Exhibit D**, which is attached and incorporated herein, and Artist shall comply therewith.

ARTICLE 8
WARRANTIES

8.1 Original Art. Artist warrants and represents to CCGJ that the design and Artwork being commissioned is the original product solely of Artist's own creative efforts, is original and not copied from any other work, and the Artwork exists only in a single edition.

8.2 Warranty of Quality. Artist warrants and represents to CCGJ that the Artwork shall be free of defects in material and workmanship, including without limitation any defects consisting of "inherent vice" or qualities accelerating the deterioration of the Artwork, and that Artist shall correct, at Artist's expense, any such defects which appear within a period of one (1) year from Final Acceptance of the Artwork or completion of any repairs under this section, as applicable.

8.3 Warranty of Non-Toxic/Safety. Artist warrants and represents to CCGJ that the materials, means and methods of installation, and other such qualities of the Artwork as installed, are safe and not toxic or harmful to human health and/or the environment.

8.4 Materials/No Liens. Artist warrants and represents to CCGJ that all materials used will be new unless otherwise specified as repurposed material in the Approved Design Proposal. Artist shall deliver the Artwork to CCGJ and the City and the title thereto to the City free and clear of any liens, including, without limitation, mechanics, supplier and subcontractor liens.

8.5 Intellectual Property Warranty. Artist warrants and represents to CCGJ that the Work and the Artwork will not infringe upon or violate the rights of others, including, without limitation, the copyright, trademark, trade secret, patent or other intellectual property rights of others, the privacy or right of publicity of others, or contain any material that is defamatory. Artist further agrees that the Artwork shall not utilize any material in which another person has any intellectual property rights unless Artist first secures permission from CCGJ to include such material, obtains all necessary written permission from the property owner, and provides CCGJ with all requested documentation identifying the material and the permission. In addition, if Artist uses or intends to use any third party-owned material, process or procedure in connection with the Artwork, Artist shall disclose (clearly identify and mark as third party-owned material) such material in the Design Proposal.

8.6 Warranty of Authorization. Artist warrants and represents to CCGJ that Artist possesses full power to enter into this Agreement and to convey the rights herein granted to CCGJ and the City without the consent of any third party.

8.7 Licenses. Artist warrants and represents to CCGJ that Artist and all of its subcontractors have all necessary licenses, permits and authorizations required by all applicable governmental agencies and authorities to perform the Work required under this Agreement.

ARTICLE 9 **RIGHTS IN ARTWORK**

9.1 Artist shall retain the copyright to the Artwork, subject to the terms and restrictions set forth in this Agreement. Artist shall obtain written assignments of title to the Artwork for the benefit of the City from any consultants, subcontractors, suppliers or any others contributing to the Artwork, and shall obtain assignments and agreements for the benefit of Artist, of all intellectual property rights in such contributions, so that Artist is entitled to grant to CCGJ and the City the rights, licenses and waivers granted in this Agreement and in connection with the Artwork.

9.2 Other than for CCGJ under this Agreement, Artist agrees only to reproduce the Artwork in two dimensional photographs and to use such reproductions only as part of Artist's portfolio of past work and in exhibitions and printed publications of Artist's work. Artist agrees not to create any other reproductions of the Artwork nor authorize others to do so, and agrees not to create three dimensional reproductions of the Artwork, nor permit others to do so, except as CCGJ expressly permits in writing. In any photographs, reproductions or drawings made or permitted to be made by Artist, Artist shall use reasonable efforts to credit the Artwork as created as part of the Art in Public Places Program of the City of Jacksonville.

9.3 Artist hereby grants to CCGJ and the City a license to make photographic, digital and other two-dimensional reproductions of the Artwork and to use, reproduce, display, distribute, publish and sell them to promote the City, CCGJ, the Artwork and/or the Art in Public Places Program of the City of Jacksonville. Artist further acknowledges and agrees that the City, CCGJ and their designees may include images of the Artwork in films, documentaries, power points, books, articles, web sites and other material and works promoting, depicting or related to the City, CCGJ, the Artwork, and/or the Art in Public Places Program of the City of Jacksonville.

9.4 In addition to the rights set forth elsewhere in this Agreement, the City shall own title to the Initial Design, the Design Proposal, the Approved Design Proposal and all materials provided to CCGJ by or on behalf of Artist under this Agreement, and Artist hereby grants to CCGJ and the City the right to reproduce, display, distribute, and publish them (and permit others to do so) for any purpose to promote the City, CCGJ, the Artwork, and/or the Art in Public Places Program of the City of Jacksonville. Artist agrees not to reproduce such materials without CCGJ permission.

9.5 Unless title to the Artwork has passed earlier in accordance with Article 4 above, title to the final Artwork shall pass to the City upon execution of the Final Completion Report by Artist and CCGJ and the City. At any time prior to title transfer, all risk of destruction or damage to the Artwork, or any part thereof, from any cause whatsoever, shall be borne by Artist. Artist shall, at Artist's sole expense, fully repair and restore the Artwork as to any destruction or damage that occurs before title has transferred from the Artist to the City, or that is caused otherwise by Artist or Artist's subcontractors, employees or agents.

9.6 Artist acknowledges and consents that the Artwork may become an integral part of or may be affixed to the architecture of the Site or portions thereof, and acknowledges and consents that installation, affixation and/or integration of the Artwork may subject the Artwork to future removal, destruction, distortion, mutilation or other modification, including, without limitation, in connection with its removal and/or the renovation, destruction, or redevelopment of the applicable building, structure, or site or change of use thereof.

9.7 Artist expressly agrees that CCGJ and/or the City and their designees shall have the right to remove, relocate, repair, de-accessioned and destroy the Artwork without liability to the Artist or others, provided that if Artist has completed the Artwork in accordance with this Agreement:

9.7.1 Artist shall be notified if the City plans to destroy, de-accession, or radically repair the Artwork on a non-emergency basis, by providing notice to Artist in accordance with the “Notices” section of this Agreement.

9.7.2 With respect to non-emergency repairs to the Artwork, the City shall use reasonable efforts to have the repairs performed in accordance with recognized principles of repair, restoration or conservation.

9.8 In the event of a conflict between this Article 9 or Article 10 and the provisions of Section 126.908, Ordinance Code, as amended, the provisions of Section 126.908 shall control.

9.9 Except as expressly stated otherwise in this Agreement, to the fullest extent permitted by law, Artist’s rights under the Visual Artists Rights Act of 1990 (VARA), 17 U.S.C. §106A, are hereby waived.

ARTICLE 10
ARTIST CREDIT

10.1 Provided Artist completes the Artwork in accordance with this Agreement:

10.1.1 CCGJ shall, at its expense as part of the public art project, prepare and install a plaque or sign at the Site for as long as the Artwork remains on the Site, identifying Artist, the title of the Artwork, and the year of completion.

10.1.2 If CCGJ or the City significantly modify the Artwork as installed intentionally after Final Acceptance (and not as a result of the passage of time, effect of the elements, or maintenance or non-maintenance), and Artist in good faith believes that Artist’s reputation may be materially harmed thereby, Artist shall contact CCGJ and the Parties shall discuss in good faith how the Artwork may be repaired or corrected to Artist’s reasonable satisfaction. If the Parties cannot agree on corrections or repairs to be made, or if corrections or repairs are agreed upon but not made within a reasonable period of time, Artist may request removal of Artist’s name from the plaque or sign, in which event such name shall be removed reasonably promptly thereafter from the plaque or sign, as Artist’s sole remedy for any modification of the Artwork under this Agreement.

ARTICLE 11
MISCELLANEOUS

11.1 Publicity/Artist Appearances. Artist shall not issue (nor permit to be issued by the others) any public information releases through any media, including social media, regarding the Artwork or the services performed pursuant to this Agreement without prior written approval of CCGJ. CCGJ and its designees shall have the right to refer to and use Artist's name, likeness and biographical information in connection with the Artwork and discussions, depictions and reproductions thereof, except as expressly provided otherwise herein. Artist expressly agrees to participate in planned appearances arranged by the CCGJ to promote the Artwork, and to allow photographers, videographers, filmmakers, writers and similar personnel designated by CCGJ, to interview, photograph, film and record Artist, capture the creative process in connection with the Artwork, and use the results, in connection with films, videos, documentaries and/or other works CCGJ plans to make about the Art in Public Places Program and/or projects related thereto or resulting therefrom. Artist shall assist CCGJ and secure any necessary permission from Artist subcontractors who may appear in such works.

11.2 Additional Documents. The parties shall execute and cause to be executed such documents and shall take such steps and cause such steps to be taken as may be reasonably requested by the other party to effectuate the intent of this Agreement.

11.3 Compliance with laws. Artist shall comply and require all of its contractors, subcontractors and third parties, to comply, with all applicable provisions and requirements of the Underlying City/CCGJ Agreement, and all applicable federal, state and local laws and ordinances, including, without limitation, the Public Records Law, F.S. Ch. 119 (a copy of which is available online at <http://www.leg.state.fl.us/Statutes>); and Ordinance Code Chapter 118, Part 6 and Chapter 126, Part 9 (a copy of the ordinance code is available online at <http://library.municode.com>), each of which as amended from time to time, and all of which are incorporated herein by reference.

11.4 Audit Right and Retention of Records. Artist shall, by written contract, require its subcontractors to agree to all the requirements and obligations contained in this section. Artist and each of its subcontractors performing Work under this Agreement shall: (a) maintain financial and accounting records and conduct transactions in accordance with generally accepted accounting principles, Florida Statutes, and the requirements of the City Ordinance Code; and (b) maintain and retain and make available at reasonable times, for examination and audit by CCGJ and the City, all books, accounts, financial records, supporting documents, statistical records, and all other documentation pertinent to this Agreement, the Work and/or any City funds received or spent, for the longer of (i) required retention period of the Florida Public Records Act, Chapter 119, Florida Statutes, if applicable, (ii) five (5) years after termination of this Agreement; or (iii) such longer period required by applicable law. If any audit has been initiated and audit findings have not been resolved at the end of the applicable retention period, the books, records, and accounts shall be retained until resolution of the audit findings.

11.5 Inspections and Reports. Artist and each of its subcontractors performing Work under this Agreement shall allow CCGJ and the City to enter their premises for the purpose of conducting on-site evaluations in connection with the Project and its progress. Upon CCGJ request, Artist

shall provide, and require any of its respective contractors or subcontractors to provide, narrative progress reports on the Project in a form and with such information as is requested by CCGJ from time to time.

11.6 Nondiscrimination. Artist shall comply with the non-discrimination provisions of Sections XX (Civil Rights) and XXI (Equal Employment Opportunity) of the Underlying City/CCGJ Agreement, a copy of which shall be provided to Artist on request. Artist shall not discriminate on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, pregnancy, or gender identity and expression in the performance of this Agreement. Artist shall maintain a policy of nondiscrimination, as defined by Section 126 Part 4 of the Jacksonville Ordinance Code, and shall permit reasonable access to Artist's records for CCGJ and the City to ascertain compliance therewith. Artist represents that it has adopted and will maintain a policy of nondiscrimination as defined by the above Ordinance throughout the term of this Agreement. Artist agrees that if any of the obligations of this Agreement are to be performed by a subcontractor, the foregoing provisions of this paragraph shall be part of the agreement with such subcontractor.

11.7 Public Entity Crimes Act. Artist represents that it is familiar with the requirements and prohibitions under the Public Entity Crime Act, Section 287.133, Florida Statutes, and represents that its entry into this Agreement will not violate that Act. In addition to the foregoing, Artist further represents that there has been no determination that it committed a "public entity crime" as defined by Section 287.133, Florida Statutes, and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether Artist has been placed on the convicted vendor list. Notwithstanding any provision in this Agreement to the contrary, if any representation stated in this paragraph is false, CCGJ shall have the right to immediately terminate this Agreement for cause.

11.8 Discriminatory Vendor List. Artist represents that it has not been placed on the discriminatory vendor list, as defined by Section 287.134, Florida Statutes. CCGJ may terminate this Agreement effective immediately, without any further obligation to Artist, upon learning that such representation is false or if Artist or any of Artist's contractors, officers or employees providing services or any of the Work in connection with this Project, is placed on the discriminatory vendor list.

11.9 Independent Contractor. Artist is an independent contractor under this Agreement and shall be solely responsible for the means, methods, techniques, sequences and procedures utilized in the full performance of this Agreement. Artist shall not have the right to bind CCGJ or the City to any obligation not expressly undertaken by CCGJ or City under this Agreement.

11.10 Third Party Beneficiaries. The parties acknowledge that there are no third party beneficiaries to this Agreement, except for the City and except as specifically provided in the indemnity provisions.

11.11 Joint and Several. In the event this Agreement is between CCGJ and more than one artist, each artist shall be jointly and severally responsible for their own and the other artist's

compliance with, and obligations under, this Agreement. References to “Artist” hereunder shall be deemed reference to both artists, individually and together.

11.12 Notices Generally. In order for a notice to a party to be effective under this Agreement, notice must be delivered in writing in person, which notice shall be effective upon receipt, or the notice may be sent via email with a contemporaneous copy thereof sent via U.S. first class mail, postage prepaid, in each case to the recipients/addresses set forth below and shall be effective upon mailing of the first class notice. The addresses for notice shall remain as set forth herein unless and until changed by providing notice of such change in accordance with these procedures.

FOR CCGJ:
Cultural Council of Greater Jacksonville, Inc.
Attn: Christie Holechek
300 West Water Street, Suite 201
Jacksonville, Florida 32202
Email Address: christie@culturalcouncil.org
Telephone: 904-358-3600, ext. 12

FOR ARTIST:

Address
Email Address:
Telephone:

11.13 Assignment and Performance. The personal skill, judgment, and creativity of Artist are essential elements of the Artwork. Artist may employ qualified personnel to work under Artist's supervision, with CCGJ approval in each case, but Artist shall not assign, transfer, delegate or subcontract the creative and artistic portions and responsibilities of the Artwork to another person. Neither this Agreement nor any right or interest or obligation herein may be assigned, transferred, subcontracted, or encumbered by Artist without the prior written consent of CCGJ.

11.14 Conflicts. Artist agrees that neither it nor any of Artist’s employees will have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Artist’s loyal and conscientious exercise of the judgment and care required to perform under this Agreement. Artist will comply with the provisions of Section 126.112, Jacksonville Ordinance Code, with respect to required disclosures by public officials who have or acquire a financial interest in a bid or contract with the City, to the extent the parties are aware of same. Artist shall require its subcontractors to comply with these provisions as well.

11.15 Waiver of Breach. The failure of either party to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach under this Agreement shall not be deemed a waiver of any subsequent breach.

11.16 Severability. In the event any part of this Agreement is found to be unenforceable by any court of competent jurisdiction, such provision(s) shall be given the nearest permissible meaning to that stated herein. If no such meaning can be given, such provision(s) shall be severed from this Agreement. In either event, the balance of this Agreement shall remain in full force and effect.

11.17 Joint Preparation. This Agreement has been jointly prepared by the Parties hereto and shall not be construed more strictly against either party.

11.18 Headings and Interpretation. The headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as “herein,” “hereof,” “hereunder,” and “hereinafter,” refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires.

11.19 Governing Law, Venue, and Waiver of Jury Trial. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. The Parties agree that the exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state or federal courts located in Duval County, Florida. BY ENTERING INTO THIS AGREEMENT, ARTIST AND CCGJ HEREBY EXPRESSLY WAIVE ANY AND ALL RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CAUSE OF ACTION OR CLAIM ARISING FROM, RELATED TO, OR IN CONNECTION WITH THIS AGREEMENT.

11.20 Amendments. No modification or amendment to this Agreement shall be effective unless it is in writing and executed by authorized representatives of each party.

11.21 Prior Agreements. This Agreement represents the final and complete understanding of the Parties regarding the subject matter hereof and supersedes all prior and contemporaneous negotiations and discussions regarding that subject matter. There is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document.

11.22 Incorporation by Reference. All Recital clauses stated above are true and correct and are incorporated herein by reference. The attached Exhibits and Schedules hereto, are also incorporated into and made a part of this Agreement.

11.23 Survival. The following provisions, as well as any other provisions which by their plain meaning are intended to survive termination or expiration of this Agreement, shall survive termination or expiration of this Agreement: Article 3 Standards for Work; Article 4 Termination; Sections 5.3 and 5.4; Article 6 Indemnification and Limitation of Liability; Article 7 Insurance and Bonds; Article 8 Warranties; Article 9 Rights in Artwork; Article 10 Artist Credit; and Article 11 Miscellaneous.

11.24 Rights and Remedies. The rights and remedies set forth in this Agreement are without prejudice to any other rights and remedies existing under applicable law or otherwise, except where liability is expressly limited or a remedy is expressly stated to be a party's sole remedy.

11.25 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement. Signatures provided by facsimile or by e-mail delivery of a .pdf-format file shall have the same force and effect as an original signature.

IN WITNESS WHEREOF, the Parties have made and executed this Agreement through their duly authorized representatives.

CULTURAL COUNCIL OF GREATER JACKSONVILLE, INC.

By _____
Title: _____

Date: _____

[ARTIST]

Signature: _____
Date: _____

EXHIBIT A

GENERAL CRITERIA FOR PROJECT

Without limiting the criteria by which the Artwork may be evaluated, at a minimum:

The Artwork shall conform to the criteria set forth in the RFQ for the Project.

The Artwork shall also conform to the following standards:

The Artwork will be a work(s) of art to which the general public has open and easy access and which will enrich and give dimension to the public environment, and which reflects generally accepted community standards of aesthetic appeal and artistic expression and exhibit artistic excellence.

The Artwork will be compatible with and shall enhance the architecture and general environment of the City.

The Artwork may be specific to a particular site and in such case may relate to the function and the users of the facility, to the history or population of the neighborhood and may become part of the architecture.

Acceptable forms of public art shall include all visual arts mediums, including, but not limited to, painting, drawing, original prints, mixed media, sculpture, bas relief, mobiles, murals, kinetic art, electronic art, photography, clay, glass, fiber and textiles, as well as art which may be functional (e.g. doors, gates, furniture, flooring and walls).

The Artwork shall not include items that are mass-produced or of standard design.

The Artwork shall be created by artists of appropriate status who are generally recognized by recognized art professionals as artists of serious intent and recognized ability. Such artists may not be a member of the project architectural, engineering, or design team or of the Art in Public Places Committee, Art Selection Panel or the Cultural Council Board or their respective staffs.

In addition, the Artist shall in designing the Artwork, conduct and incorporate research about the environment, architectural heritage, history, cultures, community makeup, and perceived identity of the Site area and take into account the specific existing architectural and iconic nature of buildings and other artwork in the surrounding landscape of the Site

EXHIBIT B
SAMPLE PAYMENT SCHEDULE AND MILESTONES
FOR FABRICATION AND INSTALLATION PHASE

<u>Milestone</u>	<u>Payment Amount</u>
Upon execution of the Agreement	\$XXXXXX
Upon delivery of the Design Proposal	\$XXXXXX
Issuance of Design Approval Notice and after Compliance with requirements of Section 2.4.1.1, including, without limitation, certificates of insurance.	\$XXXXXX
Upon CCGJ's determination that Artist has complied with the requirements of Section 2.4.5.2. (Substantial Completion)	\$XXXXXX
Execution by Artist and CCGJ and the City of the Final Completion Report.	\$XXXXXX (including any amounts remaining of contingency, if applicable)

EXHIBIT C
PUBLIC ART CATALOGUE FORM

To be filled out by Artist, dated and signed at each of following stages:

- Upon submission of Design Proposal***
- As Updated Design Proposal, with modifications based on design review***
- With Accepted Design Proposal, with any modifications to update from Design Proposal prior to acceptance***
- For Final Acceptance of Artwork, to certify actual materials, methods and maintenance update***
- For Warranty Work or Maintenance Work that results in changes to original Catalogue Form***

I. GENERAL INFORMATION	
Project Title:	
Artwork Title:	
Address & Location:	
Today's Date	
II. ARTIST INFORMATION	
Vendor #:	
Index Code:	
Sub-object:	
Name of Artist Company:	
Name of Artist or Artists	
Name for use on plaque and public relations materials (if differs from above):	
AKA, if applicable	
Address:	
E-mail:	
Website (if any):	
Phone:	O: M: H: Fax:
One paragraph biography of Artist (including DOB and birthplace):	
Photograph of Artist (attached):	
III. OBJECT INFORMATION	

Medium (list all if multiple)	
Placement (physical positioning):	
Distance to closest body of water	
Distance to trees, name of trees and describe relation of artwork to trees	
Distance to and relation to and amount of vehicular traffic (heavy, light)	
Intended human interaction, if any	
Possible unintended human interaction	
Map	
Describe nearby solar or electrical lighting or ambient light and how may affect impact of artwork	
Other Environmental Factors & Landscaping Description (including factors which may affect the condition of the artwork such as sunlight, etc)	
Object Dimensions in inches & Weight in pounds (list by piece if multiple):	H:
	W:
	D:
	Weight:
Base/ Support Systems Dimensions & Weight:	H:
	W:
	D:
	Weight:
Attach drawings and construction documents per Updated Design Proposal of Artwork and support system	
Plaque material, verbiage & placement (with input from CCGJ):	
Artist statement of intent for plaque (one sentence)	
Interior Lighting (type and positioning):	
Exterior Lighting (type and positioning and estimated cost)	
Explain how Artwork will be visible by day and night:	
Inscription or marks:	

Artist's Intent (including site-specificity, if any):	
Description of the design basis and context of the Artwork:	
Public Use:	
Detailed Description:	
IV. Budget	
Research and Design	
Vendor Costs:	Vendor:
	Location
	Cost:
Materials Costs:	
Site Prep Costs	
Assistants	
Other Services Costs:	
Fabrication Costs	
Delivery Costs	
Estimated Travel costs:	
Insurance costs	
Engineering fees	
Permitting fees	
Parking/Traffic control fees	
Artist contingency	
*Warranty Work Costs	
V. FABRICATION INFORMATION	
Photo, description and dimensions of Substantially Completed Piece for Inspection prior to installation	
Material(s) used in Artwork:	
Material Finish and/or Coatings, including priming and graffiti coating:	
List and describe each coat of priming:	
Names and brands of colors:	
Artwork with mechanical, electrical or other technological components	Name of Item:
	Manufacturer info (address, phone, fax, email):

used:	Supplier info (address, phone, fax, email):	
Fabricators (check "YES" or "NO"):	YES	NO
	Name:	
	Address:	
	Phone:	
	Fax:	
	E-mail	
	Website:	
Fabrication method (attach diagrams or drawings):		
Architect/Engineer (check "YES" or "NO"):	YES	NO
	Name:	
	Address:	
	Phone:	
	Fax:	
	E-mail	
Contractors and Vendors List:	Name, Contact :	
	Address:	
	Phone:	
	Fax:	
	E-mail	
VI. INSTALLATION		
*Site drawing /design with art placement, including dimensions for the object and area. *Prior to installation mark/tape off at site ***Both must happen prior to the actual install.		
Delivery Method		
Deliverer if different from artist		
Installer (if different from artist)	Name:	
	Address:	
	Phone:	
	Fax:	
	E-mail	
Installation method (attach diagram of substructure, footings):		
Description of substrate materials:		
List exact details of all components like cables, wiring, bulbs and fasteners including size, length and grade of bolts, screws, nails,		

nuts, plates, braces, etc.:	
List brands of glue, epoxy, etc.	
List supports like pedestals, with accompanying diagrams and attachment methods.	
Installation Schedule- how long will it take -show days/hours	
Parking and Traffic Control description	
Special Tools or Equipment:	
De-installation Methods (step by step):	
Method of securing, anchoring:	
Power supply & source (if applicable):	
Water supply & source (if applicable)	
Anti-graffiti coating, specs & application method and warranty.	
Date of Final Installation:	
VII. MAINTENANCE PLAN (attach schedule of maintenance for specific items: light bulb, electronics etc.)	
Maintenance treatment description:	
Estimated cost of regular maintenance	
Materials/ replacement parts and estimated cost per:	
Maintenance treatment schedule:	
Estimated repair costs:	
Desired appearance of artwork & Aging expectations:	
Aging expectations:	
Expected lifespan of artwork:	
Samples or replacement	Materials list

parts provided to Art in Public Places (please check each & describe installation):	Color Samples	
	Replacement components (including specs)	
	Safety Data Sheets	
	Special Tools	
	Other	
*Sample of repair paint		
Describe in detail method of addressing repairs and cleaning and best practice and tools (eg spray paint or brush paint, soap or no soap)		
Artist Warrants Artwork against defectiveness within first year. Other Warranties (provide copies):		
Other Warranties (provide copies):		
Value of the Artwork (including the Artist's basis for determination of value)		
Other:		

Artist certifies by below signature that the above Artwork Cataloging Information is accurate and acknowledges as part of the Accepted Design Proposal the Artist will update above Artwork Cataloging Document showing any modifications from review of Design Proposal and that at the completion of the project, the Artist will submit an updated Cataloging Document containing the information that is accurate according to the actual methods and materials used in fabrication and installation as part of Artist's Final Acceptance documentation in order to receive final payment. The Artist certifies Inspection of Site and determines it will support the Artwork.

Artist _____

Date: _____

Maintenance & Conservation Completion Log (to be filled out by APP Collections Management Department):			
Date Completed	Assessment/ Maintenance/Conservation	Examined by	Additional Comments

EXHIBIT D
INSURANCE REQUIREMENTS

A. Insurance. Without limiting its liability under this Contract, Artist shall obtain in accordance with this Agreement and in any case prior to commencement of the Fabrication and Installation Phase, and maintain at its sole expense during the life of this Contract (and Artist shall require its contractors, subcontractors, laborers, materialmen and suppliers to provide, as applicable), insurance of the types and limits not less than amounts stated below:

Insurance Coverages

Schedule	Limits
Worker's Compensation Employer's Liability	Florida Statutory Coverage \$ 100,000 Each Accident \$ 500,000 Disease Policy Limit \$ 100,000 Each Employee/Disease

This insurance shall cover the Artist (and, to the extent they are not otherwise insured, its subcontractors) for those sources of liability which would be covered by the latest edition of the standard Workers' Compensation policy, as filed for use in the State of Florida by the National Council on Compensation Insurance (NCCI), without any restrictive endorsements other than the Florida Employers Liability Coverage Endorsement (NCCI Form WC 09 03), those which are required by the State of Florida, or any restrictive NCCI endorsements which, under an NCCI filing, must be attached to the policy (i.e., mandatory endorsements). In addition to coverage for the Florida Workers' Compensation Act, where appropriate, coverage is to be included for the Federal Employers' Liability Act, USL&H and Jones, and any other applicable federal or state law.

Commercial General Liability	\$1,000,000	General Aggregate
	\$2,000,000	Products & Comp. Ops. Agg.
	\$1,000,000	Personal/Advertising Injury
	\$1,000,000	Each Occurrence

Such insurance shall be no more restrictive than that provided by the most recent version of the standard Commercial General Liability Form (ISO Form CG 00 01) as filed for use in the State of Florida without any restrictive endorsements other than those reasonably required by the City's Office of Insurance and Risk Management.

Automobile Liability (Coverage for all automobiles, owned, hired or non-owned used in performance of the Services)	\$1,000,000 Each Occurrence – Combined Single Limit
---	---

Such insurance shall be no more restrictive than that provided by the most recent version of the standard Business Auto Coverage Form (ISO Form CA0001) as filed for use in the State of Florida without any restrictive endorsements other than those which are required by the State of Florida, or equivalent manuscript form, must be attached to the policy equivalent endorsement as filed with ISO (i.e., mandatory endorsement).

Professional Liability	\$1,000,000 Per Claim and Aggregate
------------------------	-------------------------------------

Any entity hired to perform professional services as a part of this contract shall maintain professional liability coverage on an Occurrence Form or a Claims Made Form with a retroactive date to at least the first date of this Contract and with a three year reporting option beyond the annual expiration date of the policy.

Pollution Liability \$1,000,000 per Loss
\$2,000,000 Annual Aggregate

Any entity hired to perform services as part of this contract for environmental or pollution related concerns shall maintain Contractor's Pollution Liability coverage. Such Coverage will include bodily injury, sickness, and disease, mental anguish or shock sustained by any person, including death; property damage including physical injury to destruction of tangible property including resulting loss of use thereof, cleanup costs, and the loss of use of tangible property that has not been physically injured or destroyed; defense including costs charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages; coverage for losses caused by pollution conditions that arises from the operations of the contractor including transportation.

Pollution Legal Liability \$1,000,000 per Loss
\$2,000,000 Aggregate

Any entity hired to perform services as a part of this contract that require disposal of any hazardous material off the job site shall maintain Pollution Legal Liability with coverage for bodily injury and property damage for losses that arise from the facility that is accepting the waste under this contract.

Additional Insurance Provisions

1. Additional Insured: All insurance except Worker's Compensation and Professional Liability shall be endorsed to name the Cultural Council of Greater Jacksonville, Inc., and its members, officials, officers, employees, and agents, and the City of Jacksonville and City's members, officials, officers, employees and agents as Additional Insured. Additional Insured for General Liability shall be in a form no more restrictive than CG2010, Automobile Liability CA2048.
2. Waiver of Subrogation. All required insurance policies shall be endorsed to provide for a waiver of underwriter's rights of subrogation in favor of the Cultural Council of Greater Jacksonville, Inc., and its members officials, officers, employees, and agents, and the City of Jacksonville and its members, officials, officers, employees and agents.
3. Artist's Insurance Primary. The insurance provided by the Artist shall apply on a primary basis to, and shall not require contribution from, any other insurance or self-insurance maintained by the Cultural Council or any Cultural Council members, officials, officers, employees and agents or City or City members, officials, officers, employees and agents.
4. Deductible or Self-Insured Retention Provisions. All deductibles and self-insured retentions associated with coverages required for compliance with this Contract shall remain the sole and exclusive responsibility of the Artist. Under no circumstances will the Cultural Council and its members, officers, directors, employees, representatives, and agents, or City of Jacksonville and its members, officers, directors, employees, representatives, and agents be responsible for paying any deductible or self-insured retentions related to this Agreement.
5. Artist's Insurance Additional Remedy. Compliance with the insurance requirements of this Contract shall not limit the liability of the Artist or its Subcontractors, employees or agent to the Cultural Council or the City or others. Any remedy provided to the Cultural Council or Cultural Council's members, official,

officers, employees, or agents or to the City or City's members, officials, officers, employees or agents shall be in addition to and not in lieu of any other remedy available under this Contract or otherwise.

6. Waiver/Estoppel. Neither approval by the Cultural Council or City nor failure to disapprove the insurance furnished by Artist shall relieve Artist of Artist's full responsibility to provide insurance as required under this Contract.

7. Certificates of Insurance. Artist shall provide the Cultural Council Certificates of Insurance that shows the corresponding Contract Number in the Description, if any, Additional Insureds as provided above and waivers of subrogation. The certificates of insurance shall be mailed to the Cultural Council of Greater Jacksonville, Inc. (Attn: Director of Art in Public Places), 300 W. Water Street, Suite 201, Jacksonville, Florida 32202.

8. Carrier Qualifications. The above insurance shall be written by an insurer holding a current certificate of authority pursuant to chapter 624, Florida State or a company that is declared as an approved Surplus Lines carrier under Chapter 626 Florida Statutes. Such Insurance shall be written by an insurer with an A.M. Best Rating of A- VII or better.

9. Notice. The Artist shall provide an endorsement issued by the insurer to provide the Cultural Council thirty (30) days prior written notice of any change in the above insurance coverage limits or cancellation, including expiration or non-renewal. If such endorsement is not provided then the Artist shall provide a thirty (30) days written notice of any change in the above coverages or limits, coverage being suspended, voided, cancelled, including expiration or non-renewal.

10. Survival. Anything to the contrary notwithstanding, the liabilities of the Artist under this Contract shall survive and not be terminated, reduced or otherwise limited by any expiration or termination of insurance coverage.

11. Additional Insurance. Depending upon the nature of any aspect of any project and its accompanying exposures and liabilities, the Cultural Council may reasonably require additional insurance coverages in amounts responsive to those liabilities, which may or may not require that the Cultural Council and City also be named as an additional insured.

B. Bonds. The Artist shall not perform or commence any singular project within the Work in excess of \$200,000.00 until the following performance bond and labor and material payment bond or other performance security have been delivered to the Cultural Council by the Contractor, in the form approved by the City in accordance with the provisions of Section 255.05, *Florida Statutes*. The Artist shall provide to the Cultural Council, on forms furnished by the City, a 100% Performance Bond and a 100% Labor and Material Payment Bond for the work to be performed under this Contract in an amount not less than the costs shown on the Budget. No qualification or modifications to the Bond forms are permitted.

To be acceptable to the Cultural Council as Surety for Performance Bonds and Labor and Material Payment Bonds, a Surety Company shall comply with the following provisions:

- i. The Surety Company shall have a currently valid Certificate of Authority, issued by the State of Florida, Department of Insurance, authorizing it to write surety bonds in the State of Florida.
- ii. The Surety Company shall have a currently valid Certificate of Authority issued by the United States Department of Treasury under Sections 9304 to 9308 of Title 31 of the *United States*

Code.

- iii. The Surety Company shall be in full compliance with the provisions of the *Florida Insurance Code*.
- iv. The Surety Company shall have at least twice the minimum surplus and capital required by the *Florida Insurance Code* during the life of this Contract.
- v. If the Contract Award Amount exceeds \$500,000, the Surety Company shall also comply with the following provisions:
 - a. The Surety Company shall have at least the following minimum ratings in the latest issue of A.M. Best's Key Rating Guide.

CONTRACT AMOUNT	POLICY HOLDER'S FINANCIAL RATING	REQUIRED RATING
\$ 500,000 TO 1,000,000	A-	CLASS IV
1,000,000 TO 2,500,000	A-	CLASS V
2,500,000 TO 5,000,000	A-	CLASS VI
5,000,000 TO 10,000,000	A-	CLASS VII
10,000,000 TO 25,000,000	A-	CLASS VIII
25,000,000 TO 50,000,000	A-	CLASS IX
50,000,000 TO 75,000,000	A-	CLASS X

- b. The Surety Company shall not expose itself to any loss on any one risk in an amount exceeding ten (10) percent of its surplus to policyholders, provided:
 - 1) Any risk or portion of any risk being reinsured shall be deducted in determining the limitation of the risk as prescribed in this section. These minimum requirements shall apply to the reinsuring carrier providing authorization or approval by the State of Florida, Department of Insurance, to conduct business in this state have been met.
 - 2) In the case of the surety insurance company, in addition to the deduction for reinsurance, the amount assumed by any co-surety, the value of any security deposited, pledged or held subject to the consent of the surety and for the protection of the surety shall be deducted.

EXHIBIT E

Indemnification

Artist (the “Indemnifying Party” or “Indemnifying Parties”) shall hold harmless, indemnify, and defend (with counsel approved by CCGJ and the City), CCGJ, the City, ASP, APPC, the Reviewing Entities, and each of their respective members, officers, directors, officials, employees and agents (collectively the “Indemnified Parties”) from and against, without limitation, any and all claims, suits, actions, losses, damages, injuries, liabilities, fines, penalties, costs and expenses of whatsoever kind or nature, which may be brought against, incurred by, charged to or recovered from any of the Indemnified Parties: (i) as a result of any breach by the Artist of its obligations under this Agreement; or (ii) for:

(a) General Tort Liability, for any negligent act, error or omission, recklessness or intentionally wrongful conduct on the part of the Indemnifying Parties that causes injury (whether mental or corporeal) to persons (including death) or damage to property, whether arising out of or incidental to the Indemnifying Parties’ performance of the Agreement, operations, services or work performed hereunder; and

(b) Environmental Liability, to the extent this Agreement contemplates environmental exposures, arising from or in connection with any environmental, health and safety liabilities, claims, citations, clean-up or damages whether arising out of or relating to the operation or other activities performed in connection with the Agreement; and

(c) Intellectual Property Liability, to the extent this Agreement contemplates intellectual property exposures, arising directly or indirectly out of any allegation that the services, any product generated by the services, or any part of the services, or the Artwork, as contemplated in this Agreement, constitutes an infringement of any copyright, patent, trademark, trade secret or any infringement or violation of any other intellectual property right. If in any suit or proceeding, the services, or any product generated by the services, or the Artwork or portion thereof is held to constitute an infringement and its use is permanently enjoined, the Indemnifying Parties shall, immediately, make every reasonable effort to secure within sixty (60) days, for the Indemnified Parties a license, authorizing the continued use of the service or product or Artwork. If the Indemnifying Parties fail to secure such a license for the Indemnified Parties, then the Indemnifying Parties shall replace the service or product or Artwork with a non-infringing service or product or Artwork or modify such service or product or Artwork in a way satisfactory to CCGJ, so that the service or product or Artwork is non-infringing.

If an Indemnifying Party exercises its rights under this Agreement, the Indemnifying Party will (1) provide reasonable notice to the Indemnified Parties of the applicable claim or liability, and (2) allow the Indemnified Parties, at their own expense, to participate in the litigation of such claim or liability to protect their interests. The scope and terms of the indemnity obligations herein described are separate and apart from, and shall not be limited by any insurance provided pursuant to the Agreement or otherwise. Such terms of indemnity shall survive the expiration or termination of the Agreement.

In the event that any portion of the scope or terms of this indemnity is in derogation of Section 725.06 or 725.08 of the Florida Statutes, all other terms of this indemnity shall remain in full force and effect. Further, any term which offends Section 725.06 or 725.08 of the Florida Statutes will be modified to comply with said statutes.

EXHIBIT F
PAYMENT CERTIFICATION

Project Name: _____
Project Address: _____

1. Except as set forth in Paragraph 2 below, the undersigned hereby certifies that all subcontractors, sub-subcontractors, laborers, materialmen who contracted with Artist, and all professionals as referenced in Section 713.03, F.S. providing labor, materials, or services on the above-referenced project, have been paid all funds to which they are entitled or requested for labor or materials furnished through the following date: _____.
2. The following entities have not been paid the following amounts for the following reasons. A copy of any notices sent to each, explaining in reasonably specific detail the good cause why payment has not been made, is attached to this form.

<u>Entity Name</u>	<u>Amount Unpaid</u>	<u>Reason for Non-Payment</u>
...

3. The undersigned is authorized to execute this Certification on behalf of Artist.

By: _____
(Signature)
Name: _____

Sworn to and subscribed before me this ____ day of _____, 20____, by _____, who is personally known to me or produced _____ as identification.

Signature of Notary Public

(seal)

My Commission Expires: _____