

AGREEMENT FOR ART SERVICES

THIS AGREEMENT is made and entered into this ___ day of _____, by and between the Martin County Board of County Commissioners, a political subdivision of the State of Florida ("COUNTY") and _____, having an address at _____ ("ARTIST").

1. The COUNTY has approved a recommendation to commission the ARTIST to create public art for the _____ (such public art hereinafter referenced as "Work of Art") as more fully set forth in Exhibit A; and
 2. The ARTIST is willing and able to create the Work of Art for the COUNTY on the terms and conditions set forth below; and
 3. The COUNTY and the ARTIST wish to enter into this AGREEMENT for the ARTIST's Services for the Project.
- NOW THEREFORE, in accordance with the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

SECTION 1. SCOPE OF SERVICES

- 1.1. General. The ARTIST shall perform or provide all services and furnish all supplies, materials and equipment necessary for the design, execution, fabrication and installation of an untitled Work of Art, in accordance with a Proposal submitted to and approved by Martin County, attached hereto as Exhibit A and incorporated herein by this reference in its entirety.
- 1.2. Procedure. The ARTIST shall determine the artistic expression, size, material, texture, color, specific location and method of fabrication of the Work of Art, subject to review and acceptance by the County Administrator, as provided below.
- 1.3. The Proposal, in a form satisfactory to the COUNTY and the ARTIST, contains the following:
 - 1.3.1. A Scope of work that includes the project cost;
 - 1.3.2. A detailed list of any subcontractors who will be performing services for the ARTIST on the Work of Art, including a description of the services to be provided by each subcontractor;
 - 1.3.3. A detailed list of all proposed materials to be utilized by the ARTIST, including but not limited to, the style, type, and color of all materials;
 - 1.3.4. A detailed performance schedule depicting the sequence in which activities are to occur, including completion dates for each activity, as well as a final completion date for the Work of Art; and
 - 1.3.5. Insurance as required herein.
- 1.4. Upon execution of this AGREEMENT, the ARTIST shall prepare and submit to the appropriate local officials finalized drawings or other graphic material as is necessary to obtain any necessary approvals for the commencement of fabrication and installation of the Work of Art.

2. SECTION 2. COMPENSATION

- 2.1. Firm Fixed Price. The COUNTY shall pay the ARTIST a fixed fee of _____, which will constitute full compensation for any and all materials and services to be performed and furnished by the ARTIST under this AGREEMENT, including but not limited to the ARTIST's fee, materials, studio, fabrication, insurance, engineering, travel, and operating costs applicable to the Work of Art, all as set forth in Exhibit A; and any reasonable costs incurred by the ARTIST for this work which are not the responsibility of the COUNTY. Prices shall remain firm for the duration of this AGREEMENT and any renewals or extensions.
- 2.2. Method of Payment. The COUNTY will make payment to the ARTIST in two (2) equal installments set forth in the Fixed Fee and Payment Schedule attached hereto and incorporated herein. The ARTIST shall request such payment, by submitting:
 - 2.2.1. A properly completed and notarized invoice for progress payment submitted in detail sufficient for audit purposes;
 - 2.2.2. Photographic evidence of the stage of completion; and
 - 2.2.3. An updated Schedule of Contract Values indicate the value of suitably stored material as well as labor performed and materials incorporated into the work for each subdivision of the performance schedule during the period for which the invoice is prepared.
- 2.3. The invoices shall contain sufficient detail for pre and post audit of the work performed for which the invoice is submitted, as set forth above and shall be submitted to the COUNTY's Project Manager as set forth in Paragraph 13.5. Upon approval by the COUNTY's Project Manager, the COUNTY will process for payment in accordance with the Local Government Prompt Payment Act and remitted by check to the ARTIST at the address set forth in Paragraph 13.5.

3. SECTION 3. GENERAL CONDITIONS

- 3.1. Time of Performance. The parties agree that time is of the essence. Any and all services by the ARTIST and the ARTIST's subcontractors in connection with the Work of Art shall commence upon "Notice to Proceed" issued by the COUNTY's Project Manager and shall proceed with due diligence until complete in accordance with the performance schedule. Any and all services including installation by the ARTIST and the ARTIST's subcontractors in connection with the Work of Art shall be completed by _____. All

services shall be in accordance with the performance schedule submitted by the ARTIST and approved by the COUNTY. Reasonable extensions may be granted by the COUNTY in the event that conditions beyond the ARTIST's control, or Acts of God, render compliance with the construction schedule impossible. The COUNTY shall be the sole judge of what conditions are "beyond the ARTIST's control".

3.2. Ownership of Documents. Upon completion of the Work of Art and acceptance by the COUNTY, all designs and other materials developed by the ARTIST and submitted to the COUNTY for the purpose of this AGREEMENT shall become the property of the COUNTY.

3.3. Inspection. The COUNTY shall have the right at reasonable times upon three (3) days prior written notice to review the progress of the Work of Art during the fabrication thereof and to receive progress reports from the ARTIST.

3.4. Code Compliance. All work shall be done in compliance with all applicable State of Florida, Martin County and, where applicable, any municipal codes.

3.5. Assignment, Transfer or Subcontracting. A material element of this AGREEMENT is the personal skill, judgement and creativity of the ARTIST. Therefore, the ARTIST shall not assign, transfer or subcontract the creative and/or artistic portions of the Work of Art to another party without the express prior written approval of the COUNTY.

3.6. Warranty of Title. The ARTIST warrants that the Work of Art covered in this AGREEMENT shall be the result of the artistic effort of the ARTIST and that, unless otherwise stipulated, the Work of Art shall be unique, an edition of one. The ARTIST shall deliver the Work of Art free and clear of any liens, claims or other encumbrances of any type arising from the acts of the ARTIST. Upon delivery of the Work of Art, the ARTIST shall furnish a signed and sworn statement to this effect.

3.7. Warranty of Quality. The ARTIST warrants the Work of Art shall be consistent with the Proposal submitted to and approved by the COUNTY. The ARTIST warrants the Work of Art shall be free of defects in material and workmanship and that the ARTIST shall correct any such defects which appear for a period of one (1) year from final acceptance of the Work of Art, at the ARTIST's expense. It is understood by the COUNTY that the Work of Art has been designed and built by the ARTIST as a Work of Art. Any use by the COUNTY for purposes other than for adornment of the site as a Work of Art voids any warranties by the ARTIST.

3.8. Title to the Work of Art. Title to the Work of Art shall vest in the COUNTY at the time of final acceptance by the COUNTY. ARTIST agrees that the Work of Art shall not be photographed, videotaped or otherwise publicized or used in marketing, promotion and/or fundraising, in any manner whatsoever by or on behalf of ARTIST, except as part of ARTIST's portfolio. The Work of Art shall not be associated with the COUNTY without prior written permission from the County Administrator. Use of the COUNTY seal is prohibited at all times.

3.9. Risk of Loss. The ARTIST shall bear the full risk of loss of, or damage to, the Work of Art until all services have been completed and the Work of Art is accepted by the COUNTY. The ARTIST will take such measures as are necessary to protect the Work of Art from loss or damage.

3.10. Insurance. The ARTIST must maintain insurance in at least the amounts required throughout the term of this AGREEMENT or any renewals or extensions. Coverage must include the ARTIST and any assistants performing work under this AGREEMENT who are either an employee or volunteer for the ARTIST.

3.10.1. The COUNTY shall be exempt from, and in no way liable for, any sums of money which may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the ARTIST and/or subcontractor providing such insurance.

3.10.2. The ARTIST shall arrange for, and/or ensure that all subcontractors have arranged for commercial general liability insurance to protect him or herself and any subcontractor performing work required by this AGREEMENT from claims for damage for personal injury, claims for accidental death, as well as from claims of property damage which may arise from operations under this AGREEMENT whether such operations are by the ARTIST or by any subcontractor or anyone directly employed by either of them. Coverage must extend to damage to COUNTY Works of Art while in the ARTIST's care, custody and control and while performing work as described in this AGREEMENT. The policy should include Contractual Liability to cover the hold harmless and indemnity provision as set forth in this AGREEMENT. A per project limit of liability is required. A waiver of subrogation must be included (under policy of both ARTIST and any subcontractors). The amounts of such insurance shall at a minimum be as follows:

Each Occurance -	\$1,000,000
Personal/Advertising Injury -	\$1,000,000
Products/Completed Operations Aggregate -	\$2,000,000
General Aggregate -	\$2,000,000
Fire Damage -	\$100,000 and 1 fire
Medical Expense -	\$10,000 any 1 person

Additional Insured requirement: An additional insured endorsement **must** be attached to the certificate of insurance and must include coverage for completed operations (should be ISO CG20101185 or current editions of CG0237 & CG2010) under the General Liability policy.

3.10.3. Worker's Compensation Insurance for all employees of the ARTIST as required by Florida Statutes, Chapter 440. In case any class of employees engaged in hazardous work under this AGREEMENT at the site of the project is not protected under the Worker's Compensation statute, the ARTIST shall provide, and cause each subcontractor to provide adequate insurance, satisfactory to the COUNTY for the protection of its employees not otherwise protected. Coverage to include Employers Liability \$100,000 each accident, \$100,000 each Disease/Employee and \$500,000 each Disease/Maximum. A waiver of subrogation endorsement must be included (under policy of both Contractor and any subcontractors).

3.10.4. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the Work of Art, in amounts not less than \$100,000 per person, and \$300,000 per occurrence for bodily injury, and \$50,000 per occurrence for property damage.

3.10.5. The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operation of the ARTIST. All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, and the companies must be rated "A" for management and not less than Class "X" for strength by the latest edition of Best's Insurance Guide, published by A. M. Best Company, Oldwick, New Jersey, or its equivalent, subject to approval by the COUNTY. The provision of adequate insurance coverage is solely the responsibility of the ARTIST. The COUNTY shall in no way be liable for any claims or damages which accrue as a result of inadequate insurance coverage. All coverages shall be Primary and include a Waiver of Subrogation.

3.10.6. The ARTIST shall furnish a certificate of insurance to the COUNTY prior to the commencement of work on the Work of Art which certificate shall clearly indicate that the ARTIST or his/her subcontractors have retained insurance in the type, amount, and classification as required for strict compliance with this section and that no material changes or cancellations of insurance shall be effective without thirty (30) days prior written notice to the COUNTY. The Certificate shall name the Martin County Board of County Commissioners, 2401 SE Monterey Rd, Stuart, FL 34996 as additional insured. Compliance with the foregoing requirements shall not relieve the ARTIST of his liability and obligations under this AGREEMENT. This certificate of insurance shall be in force prior to the ARTIST's beginning work on the Work of Art and shall remain in force until at least thirty (30) days after the ARTIST's Notification of Completion.

3.11. Independent Contractor. The ARTIST is an independent contractor and nothing in this AGREEMENT shall be construed as constituting the ARTIST an employee, agent or representative of the COUNTY. The ARTIST shall not be supervised by an employee or agent of the COUNTY. The ARTIST acknowledges that it is responsible for complying with the provisions of the Immigration Reform and Control act of 1986 located at 8 U.S.C. 1324, et. Seq. and regulations relating thereto, as either may be amended from time to time. Failure to comply with the above provisions shall be considered a material breach and shall be grounds for immediate termination of this AGREEMENT, at the discretion of COUNTY.

3.12. Indemnification. The ARTIST and his subcontractors agree to indemnify and hold free and harmless, assume legal liability for and defend, the COUNTY its officers, employees and agents, from and against any and all actions, claims, liabilities, assertions of liability, losses, costs and expenses, including but not limited to attorney's fees, reasonable investigative and discovery costs, court costs, claim or claims for bodily injury or death of persons and for loss of or damage to property, in law or in equity, of every kind and nature whatsoever, which in any manner directly or indirectly may arise or be alleged to have arisen, or resulted or alleged to have resulted from the negligent acts or omissions or other wrongful conduct of the ARTIST and its subcontractors, employees, and agents or by, or on account of, any claim or amounts recovered under the "Workers Compensation Law" or of any other laws, by-laws, ordinance, order or decree in connection with the ARTIST's performance of services pursuant to this AGREEMENT. The ARTIST's obligation under this article shall not include indemnification of the COUNTY and its officers, employees and agents, from and against liabilities, losses, costs and expenses attributable to negligent acts or omissions or other wrongful conduct of the COUNTY and its officers, employees and agents or for negligent acts or omissions or other wrongful conduct which occurs or is alleged to have occurred after title to the Work of Art passes to the COUNTY in accordance with this AGREEMENT. The parties each agree to give the other party prompt notice of any claim coming to its knowledge that in any way directly or indirectly affects the other party. The ARTIST shall invoice the COUNTY for ten dollars (\$10.00); such said ten dollars (\$10.00) from the COUNTY is given in exchange for the ARTIST giving the COUNTY the indemnification provided above.

3.13. Termination Of Agreement.

3.13.1. Termination For Cause or by Mutual Agreement. This AGREEMENT may be terminated by either party: 1) upon seven (7) business days written notice; 2) by mutual agreement; or 3) should one party fail substantially to perform in accordance with its terms through no fault of the other.

3.13.2. Termination For Convenience. The performance of work under this AGREEMENT may be terminated by the COUNTY in accordance with this clause in whole, or from time to time in part, whenever the COUNTY shall determine that such termination is in the best interest of the COUNTY.

3.13.3. Termination For Lack of Funding. The obligations of the COUNTY under this AGREEMENT are subject to the availability of funds lawfully appropriated for its purpose by the Board of County Commissioners of Martin County, Florida. In the event the COUNTY lacks funds to perform its duties under this AGREEMENT, the COUNTY may terminate this AGREEMENT upon no less than twenty-four (24) hours notice in writing to the ARTIST, sent by courier service or by certified mail, return receipt requested. The COUNTY shall be the final authority as to the availability of funds.

3.13.4. Upon termination of this AGREEMENT, the ARTIST shall be only entitled to payment and profit for that portion of work on the Work of Art that is completed to the time of termination. The percentage of completion of the work on the Work of Art shall be determined based upon the approved Schedule of Values. Where this AGREEMENT is terminated for cause by the COUNTY, such payment to ARTIST shall be reduced by the amount equal to any additional costs incurred by the COUNTY as a result of the termination.

3.14. Publicity and News Releases. The ARTIST shall not, during the performance of this AGREEMENT, disseminate publicity or news releases regarding the Work of Art without prior written approval from the COUNTY. All reproduction by the COUNTY shall contain a credit to the ARTIST.

3.15. Notice. All notices or contacts required under the terms of this AGREEMENT shall be sent to the following:

To the ARTIST: Name
 Address
 Phone
 email
 Fax

To the COUNTY Name Susan Kores
 Martin County Board of Commissioners
 Address 2401 SE Monterey Road
 Phone (772) 320-3095
 email skores@martin.fl.us

3.16. Bill of Sale; Maintenance. The ARTIST shall execute and deliver to the COUNTY a bill of sale with the completion of the Work of Art and acceptance by the COUNTY. After final acceptance of the Work of Art, the COUNTY agrees as follows:

3.16.1. The COUNTY shall keep the Work of Art in good condition and repair and permanently display the Work of Art to the public in a manner suitable to a work of fine art; and

3.16.2. The COUNTY shall not destroy or alter Work of Art, and if during the lifetime of the ARTIST the Work of Art is damaged the COUNTY shall notify the ARTIST in writing of the occurrence and the nature of the damage and shall afford the ARTIST a reasonable opportunity to conduct or supervise the maintenance of the Work of Art at a price to be mutually agreed upon. If the ARTIST does not take steps to commence the maintenance within thirty (30) days after receipt of the notice from the COUNTY, then the COUNTY shall be free to make whatever arrangements it deems appropriate for the proper maintenance of the Work of Art.

3.16.3. In the event that the COUNTY fails to maintain the Work of Art in good condition, the ARTIST shall have the right to disown it as his or her creation and request that the nameplate be removed from the Work of Art until its condition is satisfactorily repaired.

3.17. Entirety of Agreement. This writing embodies the entire agreement and understanding between the parties hereto, and there are no other agreements and understanding between the parties hereto, oral or written, with reference to the subject matter thereof that are not merged herein and superseded hereby. No alteration, change, or modification of the terms of the AGREEMENT shall be valid unless made in writing and signed by both parties hereto. This AGREEMENT, regardless of where executed, shall be governed by and construed according to the laws of the State of Florida.

3.18. The ARTIST shall not pledge the County's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien or any form of indebtedness. The ARTIST further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this AGREEMENT.

3.19. The ARTIST shall comply with the provisions of Chapter 119, Florida Statutes (Public Records Law) in connection with this AGREEMENT. The ARTIST shall comply with public records laws, specifically, the ARTIST shall:

3.19.1. keep and maintain public records required by COUNTY to perform the service;

3.19.2. upon request from COUNTY's custodian of public records, provide COUNTY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law;

3.19.3. ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of this AGREEMENT if the ARTIST does not transfer the records to COUNTY; and

3.19.4. upon completion of this Agreement, transfer, at no cost, to COUNTY all public records in possession of the ARTIST or keep and maintain public records required by COUNTY to perform the service. If the ARTIST transfers all public records to COUNTY upon completion of this AGREEMENT, the ARTIST shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the ARTIST keeps and maintains public records upon completion of this AGREEMENT, the ARTIST shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to COUNTY, upon request from COUNTY's custodian of public records, in a format that is compatible with the information technology systems of COUNTY.

IF ARTIST HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ARTIST'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT COUNTY'S CUSTODIAN OF PUBLIC RECORDS AT (772) 419-6959, Public_Records@martin.fl.us, 2401 SE MONTEREY ROAD, STUART, FLORIDA 34996.

3.20. Federal and State Taxes. The COUNTY is exempt from payment of Florida State Sales and Use Taxes. The ARTIST shall not be exempt from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the COUNTY, nor is the ARTIST authorized to use the COUNTY's Tax Exemption Number in securing such materials. The ARTIST shall be responsible for payment of all federal, state, and local taxes and fees incurred in connection with this AGREEMENT.

3.21. Venue; Choice of Law. The validity, interpretation, construction, and effect of this AGREEMENT shall be in accordance with and governed by the laws of the State of Florida, only. The location for settlement of any and all claims, controversies, or disputes, arising out of or relating to any part of this AGREEMENT, or any breach hereof, as well as any litigation between the parties, shall be Martin County, Florida.

4. SECTION 4. SPECIAL PROVISIONS

4.1. Artist Payment Rights. Pursuant to Section 218.70, Florida Statutes, the Local Government Prompt Payment Act, the ARTIST providing goods and services to the COUNTY should be aware of the following time frames. Upon receipt of a "proper invoice" as set forth in Florida Statutes section 218.72(1), the COUNTY has forty-five (45) days to pay the proper invoice. If payment is not made to the ARTIST within thirty (30) days after the due date, the payment will bear interest at the rate of one (1) percent per month. Payment of such interest shall be in accordance with Florida Statutes section 218.74. Invoices which have to be returned to an ARTIST because of ARTIST preparation errors will result in a delay in the payment. The Invoice shall be submitted to the COUNTY's Project Manager for processing.

4.2. Public Entity Crimes. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in section 287.017, Florida Statutes for Category Two (currently \$25,000) for a period of 36 months from the date of being placed on the convicted vendor list.

A "Public entity crime" means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or with the United States, including, but not limited to, any bid or contract for goods or services, any lease for real property, or any contract for the construction or repair of a public building or public Work, involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.

IN WITNESS WHEREOF, this AGREEMENT has been fully executed on behalf of the parties hereto by its duly authorized representatives, as of the date first written above.

COUNTY:
MARTIN COUNTY, FLORIDA

TARYN KRYZDA
COUNTY ADMINISTRATOR

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

ELIZABETH LENIHAN
ASSISTANT COUNTY ATTORNEY

ARTIST:

**Addendum for
Martin County/Artist Contract or Purchase Order for Commissioned Artwork
FIXED FEE AND PAYMENT SCHEDULE**

Agency shall pay to the ARTIST a fixed fee of _____, which shall constitute full compensation to the ARTIST for all costs incurred in the creation of the Work of Art, including but not limited to fees, materials, labor of the ARTIST and ARTIST's assistants, engineering costs, studio and operating costs applicable to the project, travel costs for the ARTIST to visit and research the site, shipping and crating of the Work of Art to the permanent location, insurance for the ARTIST and ARTIST's assistants and ARTIST's vehicles, and any costs incurred by the ARTIST for installation of the Work of Art at the permanent location which are not the responsibility of the COUNTY.

Payments to the ARTIST shall be made according to the following schedule.

1. \$ _____ upon fifty percent (50%) completion.
2. \$ _____ upon full completion of installed plaque and stand with executed Art Work Maintenance Agreement.

ARTIST DECLARATION FORM

I, _____, do hereby agree to the following requirements as part of this agreement with Martin County and understand that, I am responsible for providing the following:

1. A statement certifying that the materials used to frame, display or construct the work are durable, structurally sound and appropriate to the environmental conditions in which they will be displayed;
2. A signed Art Work Maintenance Agreement; and
3. A signed document which guarantees transfer of all rights of ownership and possession to Martin County at the time of final acceptance of the installed work. Notwithstanding the passage of title to the work to Martin County, the artist maintains the right to render drawings or photographs of the work consistent with the terms of the Agreement for Art Services, with the acknowledgement that Martin County may reproduce faithful images of the work for non-commercial use, including, but not limited to, public information, educational and catalogue purposes without written consent of the artist, but always accompanied by mention of the artist's name, title of work and the year completed.

Artist's Signature

Date

Social Security #

Date of Birth