

Contract No.

INDEPENDENT ARTIST AGREEMENT

SITE NAME PUBLIC ART PROJECT

ARTIST'S NAME

This Contract, which is effective on the date it is fully executed, is between the COUNTY OF SANTA CRUZ, hereinafter called COUNTY, and **Artist's Name**, hereinafter called ARTIST. COUNTY and ARTIST are each a "Party" to this Contract and are collectively the "Parties" to this Contract.

Whereas, the ARTIST has been selected pursuant to procedures adopted by the COUNTY to design, fabricate, deliver and install a work of art, on such terms and conditions as stated below;

Now therefore, the parties agree as follows:

1. DUTIES.

ARTIST agrees to design, fabricate, deliver, and install a work of art, generally described as follows: **Describe project, dimensions, title if any, medium, etc.** The work of art is intended to be installed **list install location and address** (hereafter called "Site"). **More detailed description, methods, etc.** A more detailed description of the ARTIST's duties is included in Attachment A, "Scope of Services," and incorporated herein by reference. Images and dimensions of the proposed work are included in Attachment A.1, "Artist Proposal." For purposes of this Agreement, the specific work of art created by ARTIST shall be referred to as the "WORK" and the range of duties required of ARTIST under this Agreement to design, fabricate, deliver, and install the artwork shall be referred to as the "WORK."

2. COMPENSATION.

COUNTY agrees to pay, and ARTIST agrees to receive, compensation for the performance of its services under this Contract as follows: payment not to exceed \$, as set forth in further detail in Attachment B, "Terms of Payment." All requests for payment must be accompanied by a detailed invoice and submitted to: County of Santa Cruz Department of Parks, Open Space and Cultural Services, Attn: Kathy DeWild, 979 17th Avenue, Santa Cruz, California 95062.

COUNTY agrees to exercise due diligence in the payment of invoices received from ARTIST provided no claims have been made against the WORK. If a claim(s) has/have been filed against the WORK within 45 days of acceptance, final payment will be withheld until COUNTY can ascertain the basis and amount of said claim. COUNTY will consider and determine the claim(s) and it will be the responsibility of ARTIST to furnish information and details as may be required by the COUNTY to determine the facts or contentions involved in the claim(s). Failure to submit such information within 60 days of being notified by the COUNTY will be sufficient action for denying final payment. Furthermore, COUNTY may use final payment and any other contract funds not yet disbursed to ARTIST to pay any outstanding claim(s).

3. **TERM.**

The term of this Contract shall be upon approval by the Board of Supervisors until the WORK described herein is completed and installed as indicated in Attachment A, "Scope of Services."

4. **RIGHT, TITLE AND INTEREST TO THE WORK; RISK OF LOSS.**

A. All work produced under this CONTRACT shall be the property of the COUNTY. All documents including, but not limited to, reproducible copies of tracings, drawings, estimates, field notes, investigations, design analysis and studies which are prepared in the performance of the creation of the WORK are to be and remain the property of the COUNTY and are to be delivered to the Department of Parks, Open Space and Cultural Services at 979 17th Avenue, Santa Cruz, California 95062.

B. Upon final payment to ARTIST, all right, title and interest in the WORK shall become vested in the COUNTY. ARTIST will retain all right, title and interest to any designs that are rejected by the COUNTY.

C. ARTIST bears the risk of damage to or loss of the WORK until title passes to the COUNTY, and shall take all necessary measures to protect the WORK from loss or damage until title passes. ARTIST, at ARTIST's own expense, shall rebuild, repair, restore and make good all damage to any portion of the WORK that occurs prior to title passing to the COUNTY. However, ARTIST is not responsible for damage occurring during installation of the WORK through the sole negligence of COUNTY or COUNTY's general contractor.

5. **INTELLECTUAL PROPERTY AND PUBLICITY RIGHTS.**

A. Copyright. Subject to usage rights and licenses granted to COUNTY hereunder, ARTIST shall retain all 17 U.S.C. §106 copyrights in all original works of authorship produced under this Agreement. ARTIST's copyright shall not extend to predominantly utilitarian aspects of the WORK, such as landscaping elements, furnishings, or other similar objects. If ARTIST is comprised of two or more individual persons, the individual persons shall be deemed joint authors of the WORK.

B. COUNTY's Intellectual Property License. ARTIST grants to COUNTY and to COUNTY's agents, authorized contractors, and assigns, an unlimited, non-exclusive and irrevocable license to do the following with respect to the WORK, the WORK, and any original works of authorship created under this Agreement, whether in whole or in part, in all media (including electronic and digital) throughout the universe:

(1) Implementation, Use and Display. COUNTY may use and display the WORK. To the extent the ARTIST's WORK under this Agreement involves design elements that are incorporated by COUNTY into the design of the Site, COUNTY may implement such elements at the Site.

(2) Reproduction and Distribution. COUNTY may make, display and distribute, and authorize the making, display and distribution of, photographs and other 2-

dimensional reproductions. COUNTY may use such reproductions for any COUNTY-related purpose, including advertising, educational and promotional materials, brochures, books, flyers, postcards, print, broadcast, film, electronic and multimedia publicity, gifts for the COUNTY benefactors, documentation of COUNTY's public art collection, and catalogues or similar publications. COUNTY shall ensure that such reproductions are made in a professional and tasteful manner, in the sole and reasonable judgment of the COUNTY. Any proceeds from the sale of any such reproductions shall be used to maintain and support COUNTY's public art collection or for any other public purposes that COUNTY deems appropriate. The license granted hereunder does not include the right to create reproductions on 3-dimensional items such as tote-bags, T-shirts, coffee mugs and similar merchandise. Such reproductions may only be created pursuant to separate license agreements with ARTIST.

(3) Public Records Requests. Any documents provided by ARTIST to COUNTY are public records and COUNTY may authorize third parties to review and reproduce such documents pursuant to public records laws, including the California Public Records Act.

C. Third Party Infringement. The COUNTY is not responsible for any third-party infringement of ARTIST's copyright and is not responsible for protecting the intellectual property rights of ARTIST.

D. Credit. ARTIST agrees that all formal references to the WORK and any reproductions of the WORK in any form shall include the following credit: "Collection of the County of Santa Cruz." COUNTY shall credit ARTIST for the WORK upon publication of any two-dimensional reproductions of the WORK.

E. Publicity. COUNTY shall have the right to use ARTIST's name, likeness, and/or biographical information in connection with the display or reproduction and distribution of the WORK, including all advertising and promotional materials regarding COUNTY. ARTIST shall be reasonably available to attend any inauguration or presentation ceremonies relating to the public dedication of the WORK.

F. Trademark. In the event that COUNTY's use of the WORK creates trademark, service mark or trade dress rights in connection with the WORK, COUNTY shall have an exclusive and irrevocable right in such trademark, service mark, or trade dress.

G. Unique. ARTIST warrants that the design of the WORK as expressed in the Proposal is an edition of one, and that neither ARTIST nor ARTIST's agents will execute or authorize another to execute another work of the same or substantially similar image, design, dimensions and materials as the WORK. ARTIST may create works that utilize or incorporate various individual art elements that comprise the WORK, so long as the work utilizing or incorporating such individual elements (1) does not consist predominantly of such elements (2) is not the same or substantially similar in image, design, dimensions and materials as the WORK, and (3) is not displayed in an environment that is the same or substantially similar to the environment in which the WORK is to be displayed at the Site. This warranty shall continue in effect for a period consisting of the life of ARTIST plus 70 years or for the duration of the WORK's copyright protected status, whichever is longer, and shall be binding on ARTIST and ARTIST's heirs and assigns. In the case where ARTIST is comprised of two or more individual

persons or a group of people, the measuring life shall be the life of the last surviving individual person comprising ARTIST. Recognizing that COUNTY has no adequate remedy at law for ARTIST's violation of this warranty, ARTIST agrees that, in the event ARTIST breaches this warranty, COUNTY shall be entitled to enjoin ARTIST's breach. Nothing hereunder shall be construed to constrain ARTIST from creating posters, notecards, or other reproductions of the WORK.

H. Resale Royalty. If COUNTY sells the WORK as an individual piece, separate from or itemized as part of a real property transaction, COUNTY shall pay to ARTIST a resale royalty to the extent required by law, based upon the sale price of the WORK. If COUNTY sells the WORK as a fixture to real property, and if the resale value of the WORK is not itemized separately from the value of the real property, the parties agree that the resale price of the WORK shall be presumed to be less than the purchase price paid by COUNTY under this Agreement. Thus, COUNTY has no obligation to pay resale royalties pursuant to California Civil Code §986 or any other law requiring the payment of resale royalties.

6. **INSTRUCTIONS FOR MAINTENANCE.**

Unless specifically provided in this Agreement, ARTIST shall not be responsible for ongoing maintenance of the WORK. ARTIST shall provide the COUNTY a General Maintenance Plan for the WORK, generally describing anticipated maintenance requirements; a recommended maintenance schedule; anticipated and required care and/or replacement of any part of the WORK and associated moving parts or equipment; and written instructions and manufacturer's specifications for reasonably foreseeable maintenance and preservation activities relating to the WORK. The WORK must be durable, taking into consideration that the Site may be an unsecured public space that may be exposed to elements such as weather, temperature variation, and considerable movement of people and equipment. ARTIST must ensure that all maintenance requirements will be reasonable in terms of time and expense.

Although COUNTY strives to maintain its public art collection in good repair and condition, COUNTY is not required by this Agreement to maintain the WORK to any particular standard. COUNTY may determine to allow the WORK to deteriorate in accordance with the WORK's temporary life span, if deemed appropriate by COUNTY or if COUNTY lacks sufficient funds for required maintenance and/or conservation. If the WORK suffers deterioration, COUNTY shall have sole discretion to determine whether to remove the WORK from display as a result of deterioration, or whether to maintain the WORK on display despite its deteriorated condition.

7. **ARTIST'S WARRANTIES.**

A. Warranty of Title. ARTIST represents and warrants that ARTIST is the sole author of the WORK and that ARTIST is the sole owner of any and all copyrights pertaining to the WORK. ARTIST further represents that the WORK is free and clear of any liens and that there are no outstanding disputes in connection with property rights, intellectual property rights, or any other rights in the WORK or any parts of the WORK.

B. Warranty of Workmanship. ARTIST represents and warrants that, for a period of three years after final acceptance, the WORK will be free of defects in workmanship or materials, including Inherent Defects, and that the WORK will be executed in permanent, non-fugitive materials that will not tend to degrade or fade over long-term installation at the Site.

“Inherent Defect” refers to a quality within the material or materials, which, either alone or in combination, results in the tendency of the WORK to destroy itself. “Inherent Defect” does not include any tendency to deteriorate that is specifically identified in writing and approved by the COUNTY. ARTIST shall, at ARTIST’s sole cost and expense, remedy any defects in workmanship or materials that appear within a period of three years from the date of final acceptance of the WORK by COUNTY.

C. Warranty of Public Safety. ARTIST represents and warrants that the WORK will not contain sharp points or edges or otherwise pose a danger to public health or safety in view of the possibility of misuse, if such misuse is in a manner that was reasonably foreseeable at any time during the term of this Agreement. ARTIST warrants that the WORK will comply with any applicable requirements of the California Uniform Building Code. ARTIST agrees to cooperate with COUNTY in making or permitting adjustments to the WORK if necessary to eliminate hazards or code violations that become apparent after the WORK is finally accepted by the COUNTY.

D. Acceptable Standard of Display. ARTIST represents and warrants as follows:

(1) General routine cleaning and repair of the WORK and any associated working parts and/or equipment will maintain the WORK within an acceptable standard of public display.

(2) Foreseeable exposure to the elements and general wear and tear will cause the WORK to experience only minor repairable damages and will not cause the WORK to fall below an acceptable standard of public display.

(3) With general routine cleaning and repair, and within the context of foreseeable exposure to the elements and general wear and tear, the WORK will not experience irreparable conditions that do not fall within an acceptable standard of public display, including mold, rust, fracturing, staining, chipping, tearing, abrading, and peeling.

E. Manufacturer’s Warranties. To the extent the WORK incorporates products covered by a manufacturer’s warranty, ARTIST shall provide copies of such warranties to COUNTY.

8. **ARTIST’S MORAL RIGHTS; COUNTY’S OWNERSHIP RIGHTS.**

The COUNTY, having expended considerable public funds to commission the WORK, and pursuant to its governmental responsibilities, intends to display at the Site the WORK, as originally created by ARTIST, and to maintain the WORK in good condition. Public artworks commissioned by the COUNTY are sometimes integrated into their sites, such that they become an integral, permanent and site-specific part of the building’s architecture or landscaped environment and removal of the WORK would result in significant changes to the WORK and the building’s architecture. COUNTY, however, must preserve complete flexibility to operate and manage COUNTY property in the public’s interest. Therefore, COUNTY retains the absolute right to Alter the WORK in COUNTY’s sole judgment. For example, COUNTY may

alter the WORK to eliminate hazard, to comply with the disabled access laws, to otherwise aid COUNTY in the management of its property and affairs, or through neglect or accident. If, during or after the term of this Agreement, COUNTY finds the Site to be inappropriate, COUNTY has the right to install the WORK at an alternate location that COUNTY chooses in its sole discretion. If the WORK is free-standing such that it can be removed without significant damage to the WORK or the Site, and if the COUNTY authorizes the removal of the WORK, the COUNTY shall take reasonable precautions to minimize Alteration of the WORK during removal.

With respect to the WORK produced under this Agreement, and in consideration of the procedures and remedies specified in this Agreement, ARTIST waives any and all claims, arising at any time and under any circumstances, against COUNTY, its officers, agents, employees, successors and assigns, arising under the federal Visual Artist Rights Act (17 U.S.C. §§106A and 113(d)), the California Art Preservation Act (Cal. Civil Code §§987 et seq.), and any other local, state, federal or international laws that convey rights of the same nature as those conveyed under 17 U.S.C. §106A, Cal. Civil Code §§987 et seq., or any other type of moral right protecting the integrity of works of art. If the WORK is incorporated into a building such that the WORK cannot be removed from the building without Alteration of the WORK, ARTIST waives any and all such claims against any future owners of the Site, and its agents, officers and employees, for Alteration of the WORK.

If COUNTY intends to take any action with respect to the Site or the WORK that would Alter the WORK, other than routine cleaning and maintenance, the following procedures shall apply:

A. Notice. Where time permits, COUNTY shall make reasonable good faith efforts to notify ARTIST at least 20 calendar days prior to authorizing any Alteration of the WORK, at the last phone number or address provided by ARTIST to the Director of Parks, Open Space and Cultural Services or designee. Where time does not permit prior to Alteration of the WORK – for example, in cases of public hazard, accident or unauthorized Alteration – COUNTY shall notify ARTIST within 30 calendar days after such Alteration.

B. Consultation. After receiving such notice, ARTIST shall consult with COUNTY to determine whether the WORK can be restored or relocated and to attempt to come to a mutually agreeable plan for disposition of the WORK. Such consultation shall be without charge by ARTIST unless otherwise specifically agreed in writing. If COUNTY intends to remove the WORK, ARTIST shall consult regarding methods to minimize or repair any Alteration to the WORK caused by such removal and the potential costs of such removal.

C. Restoration. If the WORK is Altered, with or without prior notice to ARTIST, and COUNTY intends to maintain the WORK on display, COUNTY shall make a reasonable good faith effort to engage ARTIST in the restoration of the WORK and to compensate ARTIST for ARTIST's time and efforts at fair market value, which may be the subject of a future Agreement between ARTIST and COUNTY. However, COUNTY has no obligation under this Agreement to restore the WORK to its original condition, to compensate ARTIST for any restoration work, or to maintain the WORK on display. If ARTIST fails or refuses to negotiate with COUNTY in good faith with respect to any restoration, COUNTY may contract with any other qualified art conservator or artist for such restoration.

D. Removal by ARTIST. Where time permits, if COUNTY intends to take action that will destroy or significantly Alter the WORK, such as destruction of all or part of the Site, and COUNTY determines that it will not remove the WORK itself, COUNTY shall allow ARTIST to remove the WORK at ARTIST's expense within 60 days of notice from the COUNTY of the need to remove the WORK, in which case title shall revert to ARTIST. If ARTIST fails to remove the WORK within that 60 day period, COUNTY may Alter the WORK in any manner, at COUNTY's sole discretion.

E. Remedies. If COUNTY breaches any of its obligations under this Section, ARTIST's remedies shall be limited as follows: If COUNTY inadvertently fails to provide a required prior notice of Alteration, COUNTY will provide notice as soon as it discovers the omission, and before Alteration of the WORK if that remains possible. If COUNTY Alters the WORK without providing ARTIST a required prior notice of Alteration, ARTIST shall be given the first right of refusal to restore the WORK at the same location and COUNTY shall make reasonable efforts to provide funding for the restoration. If COUNTY funds cannot be made available after reasonable efforts are made to secure such funding, ARTIST may, but is not obligated to, restore the WORK at ARTIST's expense. If ARTIST elects not to restore the WORK, COUNTY may retain another artist or conservator to restore it, or may Alter the WORK in any manner, at COUNTY's sole discretion.

If COUNTY Alters the WORK without ARTIST's consent in a manner that is prejudicial to ARTIST's reputation, ARTIST retains the right to disclaim authorship of the WORK in accordance with California Civil Code §987(d) and 17 U.S.C. §106A(a)(2).

Except as provided in this Agreement, with respect to third parties who are not officers, employees, agents, successors or assigns of COUNTY, ARTIST retains ARTIST's moral rights in the WORK, as established in the Visual Artists Rights Act (17 U.S.C. §§106A and 113(d)), the California Art Preservation Act (Cal. Civil Code §§987 and 989), or any other local, state, federal or international moral rights laws that protect the integrity of works of art. Accordingly, nothing herein shall prevent ARTIST from pursuing a claim for Alteration of the WORK against a third party who is not an officer, employee, agent, successor or assign of COUNTY. COUNTY has no obligation to pursue claims against third parties to remedy or prevent Alteration of the WORK. However, as owner of the WORK, COUNTY may pursue claims against third parties for damages or to restore the WORK if the WORK has been altered without COUNTY's authorization.

F. Definition. For purposes of this Agreement, the terms "Alter" or "Alteration" shall mean, with respect to the WORK, to alter, repair, modify, remove, relocate, sell, dispose of, distort, destroy, mutilate, or deface, as those terms are understood within the context of laws protecting ARTIST's rights to the integrity of their artwork.

9. **ACCESS TO THE DISABLED.** ARTIST acknowledges that, pursuant to the ADA, programs, services and other activities provided by a public entity to the public, whether directly or through ARTIST, may be required to be accessible to persons with disabilities. ARTIST shall provide the services specified in this Agreement in a manner that complies with the ADA. ARTIST shall cooperate with COUNTY and allow COUNTY to take reasonable steps to ensure that the WORK is accessible to the disabled, with respect to the elimination of both

architectural and programmatic barriers. Such cooperation shall include assisting with modifications to the WORK, or preparing or authorizing tactile models, reproductions, or other materials necessary to provide access to the WORK. If requested by COUNTY, ARTIST shall engage a consultant, as part of the project budget, to review the WORK for compliance with the ADA.

10. **ADDITIONAL SERVICES.** If authorized by COUNTY, ARTIST will provide additional services or items (those provided beyond the basic WORK or services as described herein) which shall be paid by a negotiated fee for such item(s) or service(s).

11. **TERMINATION.**

A. **Termination for Cause.** COUNTY may, in its sole discretion, immediately terminate this Contract if ARTIST fails to adequately perform the services required hereunder, fails to comply with the terms or conditions set forth herein, or violates any local, state or federal law, regulation or standard applicable to its performance hereunder. . In the event ARTIST abandons the WORK, defaults on any terms of this Contract or otherwise causes it to be terminated without cause prior to final acceptance of the WORK, ARTIST shall not be owed or paid any further compensation by the COUNTY, and shall remit to the COUNTY all sums of money previously paid under the terms of this Contract, with the exception of those sums of money previously paid for the fabrication of the WORK, if ARTIST turns over a completed WORK to the COUNTY for installation.

B. **Termination Without Cause.** Either party hereto may terminate this contract at any time by giving 30 days' written notice to the other party. Such termination is without penalty to or further obligation of COUNTY.

C. **Termination Due to Insufficient Funding.** COUNTY's obligations under this Contract are contingent upon the availability of local, state and/or federal funds. In the event such funding is reduced or eliminated, COUNTY shall, at its sole discretion, determine whether this Contract shall be amended or terminated. COUNTY shall provide ARTIST at least seven (7) calendar days advance written notice of its intent to amend or terminate this Contract due to insufficient funding.

D. **Compensation Upon Termination.** In the event the COUNTY terminates this Contract without cause, the COUNTY shall only pay ARTIST for work completed and materials purchased towards fabrication of the WORK up to the effective date of the termination. However, this provision shall not limit or reduce any damages owed to COUNTY due to a breach of this Contract by ARTIST.

12. **INDEMNIFICATION FOR DAMAGES, TAXES AND CONTRIBUTIONS.**

To the fullest extent permitted by applicable law, ARTIST shall exonerate, indemnify, defend, and hold harmless COUNTY (which for the purpose of Paragraphs 12 and 13 shall include, without limitation, its officers, officials, agents, employees and volunteers) from and against:

A. Any and all claims, demands, losses, damages, defense costs, expenses (including attorneys' fees and costs), fines, penalties, and liabilities of any kind or nature which COUNTY, ARTIST, or any third party may sustain as a result of, arising out of, or in any manner connected

with ARTIST'S performance or failure to comply with or perform under the terms of this Contract, excepting any liability arising out of the sole negligence of COUNTY. Such indemnification includes any damage to the person(s), or property(ies) of ARTIST and third persons.

B. Any and all federal, state and local taxes, charges, fees, or contributions required to be paid with respect to ARTIST and ARTIST'S officers, employees and agents engaged in the performance of this Agreement (including, without limitation, unemployment insurance, social security and payroll tax withholding).

COUNTY may conduct or participate in its own defense without affecting ARTIST'S obligation to indemnify and hold harmless or defend COUNTY.

Acceptance of the insurance required by this Contract shall not relieve ARTIST from liability under this provision. This provision shall apply to all claims for damages related to ARTIST'S performance hereunder, regardless of whether any insurance is applicable or not. The insurance policy limits set forth herein shall not act as a limitation upon the amount of indemnification or defense to be provided hereunder.

This Paragraph 12 shall survive the termination or expiration of this Contract.

13. **INSURANCE.**

ARTIST, at their sole cost and expense, for the full term of this Contract (and any extensions thereof), shall obtain and maintain, at minimum, compliance with all of the following insurance coverage(s) and requirements. Such insurance coverage shall be primary coverage and non-contributory as respects COUNTY and any insurance or self-insurance maintained by COUNTY shall be considered in excess of ARTIST'S insurance coverage and shall not contribute to it. If ARTIST normally carries insurance in an amount greater than the minimum amount required by COUNTY for this Contract, that greater amount shall become the minimum required amount of insurance for purposes of this Contract. Therefore, ARTIST hereby acknowledges and agrees that any and all insurances carried by it shall be deemed liability coverage for any and all actions it performs in connection with this Contract. Insurance is to be obtained from insurers reasonably acceptable to COUNTY.

If ARTIST utilizes one or more subcontractors in the performance of this Contract, ARTIST shall obtain and maintain Contractor's Protective Liability insurance as to each subcontractor or otherwise provide evidence of insurance coverage from each subcontractor equivalent to that required of ARTIST in this Contract, unless ARTIST and COUNTY both initial here: ____/____.

A. Types of Insurance and Minimum Limits

(1) Workers' Compensation Insurance in the minimum statutorily required coverage amounts. This insurance coverage shall be required unless the ARTIST has no employees and certifies to this fact by initialing here: ____.

(2) Automobile Liability Insurance for each of ARTIST’S vehicles used in the performance of this Contract, including owned, non-owned (e.g. owned by ARTIST’S employees), leased or hired vehicles, in the minimum amount of \$500,000 combined single limit per occurrence for bodily injury and property damage. This insurance coverage is required unless the ARTIST does not drive a vehicle in conjunction with any part of the performance of this Contract and ARTIST and COUNTY both certify to this fact by initialing here:

_____/_____.

(3) Comprehensive or Commercial General Liability Insurance coverage at least as broad as the most recent ISO Form CG 00 01 with a minimum limit of \$2,000,000 per occurrence, and \$2,000,000 in the aggregate, including coverage for: (a) products and completed operations, (b) bodily and personal injury, (c) broad form property damage, (d) contractual liability, and (e) cross-liability.

B. Other Insurance Provisions

(1) If any insurance coverage required in this Contract is provided on a “Claims Made” rather than “Occurrence” form, ARTIST agrees that the retroactive date thereof shall be no later than the date first written above (in the first paragraph on page 1), and that it shall maintain the required coverage for a period of three (3) years after the expiration of this Contract (hereinafter “post Contract coverage”) and any extensions thereof. ARTIST may maintain the required post Contract coverage by renewal or purchase of prior acts or tail coverage. This provision is contingent upon post Contract coverage being both available and reasonably affordable in relation to the coverage provided during the term of this Contract. For purposes of interpreting this requirement, a cost not exceeding 100% of the last annual policy premium during the term of this Contract in order to purchase prior acts or tail coverage for post Contract coverage shall be deemed to be reasonable.

(2) All policies of Comprehensive or Commercial General Liability Insurance shall be endorsed to cover the County of Santa Cruz, its officials, employees, agents and volunteers as additional insureds with respect to liability arising out of the work or operations and activities performed by or on behalf of ARTIST, including materials, parts or equipment furnished in connection with such work or operations. Endorsements shall be at least as broad as ISO Form CG 20 10 11 85, or both CG 20 10 10 01 and CG 20 37 10 01, covering both ongoing operations and products and completed operations.

(3) All required insurance policies shall be endorsed to contain the following clause: “This insurance shall not be canceled until after thirty (30) days’ prior written notice (10 days for nonpayment of premium) has been given to:

**County of Santa Cruz [Enter
Department Name]
Attn: [Enter Title of Department
Contact] [Enter Street Address]
[City], CA [Zip Code]”**

Should ARTIST fail to obtain such an endorsement to any policy required hereunder, ARTIST shall be responsible to provide at least thirty (30) days' notice (10 days for nonpayment of premium) of cancellation of such policy to the COUNTY as a material term of this Contract.

(4) ARTIST agrees to provide its insurance broker(s) with a full copy of these insurance provisions and provide COUNTY on or before the effective date of this Contract with Certificates of Insurance and endorsements for all required coverages. However, failure to obtain the required documents prior to the work beginning shall not waive the ARTIST's obligation to provide them. All Certificates of Insurance and endorsements shall be delivered or sent to:

County of Santa Cruz
[Enter Department Name]
Attn: [Enter Title of Department Contact]
[Enter Street Address]
[City], CA [Zip Code]

(5) ARTIST hereby grants to COUNTY a waiver of any right of subrogation which any insurer of said ARTIST may acquire against the COUNTY by virtue of the payment of any loss under such insurance. ARTIST agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the COUNTY has received a waiver of subrogation endorsement from the insurer.

14. EQUAL EMPLOYMENT OPPORTUNITY.

During and in relation to the performance of this Contract, ARTIST agrees as follows:

A. ARTIST shall not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, physical or mental disability, medical condition (cancer related), marital status, sexual orientation, age (over 18), veteran status, gender, pregnancy or any other non-merit factor unrelated to job duties. Such action shall include, but not be limited to, the following: Recruitment; advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training (including apprenticeship), employment, upgrading, demotion, or transfer. The ARTIST agrees to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this non-discrimination clause.

B. If this Agreement provides compensation in excess of \$50,000 to ARTIST and if ARTIST employs fifteen (15) or more employees, the following requirements shall apply:

(1) ARTIST shall, in all solicitations or advertisements for employees placed by or on behalf of ARTIST, state that all qualified applicants will receive consideration for employment without regard to race, color, creed, religion, national origin, ancestry, physical or mental disability, medical condition (including cancer-related and genetic characteristics), marital status, sexual orientation, age (over 18), veteran status, gender, pregnancy, or any other

non-merit factor unrelated to job duties. Such action shall include, but not be limited to, the following: recruitment; advertising, layoff or termination, rates of pay or other forms of compensation, selection for training (including apprenticeship), employment, upgrading, demotion, or transfer. In addition, ARTIST shall make a good faith effort to consider Minority/Women/Disabled Owned Business Enterprises in ARTIST'S solicitation of goods and services. Definitions for Minority/Women/Disabled Owned Business Enterprises are available from the COUNTY General Services Purchasing Division.

(2) In the event of ARTIST'S non-compliance with the non-discrimination clauses of this Agreement or with any of the said rules, regulations, or orders, said ARTIST may be declared ineligible for further agreements with the COUNTY.

(3) ARTIST shall cause the foregoing provisions of this Subparagraph 14B(1) and 14B(2) to be inserted in all subcontracts for any work covered under this Agreement by a subcontractor compensated more than \$50,000 and employing more than fifteen (15) employees, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

15. **INDEPENDENT CONTRACTOR STATUS.**

COUNTY and ARTIST agree that in performing its obligations under this Contract, ARTIST, including their officers, agents, employees, and volunteers, is at all times acting and performing as an independent contractor, in an independent capacity, and not as an officer, agent, servant, employee, joint venturer, partner, or associate of COUNTY.

Because of its status as an independent contractor, ARTIST has no right to employment rights or benefits available to COUNTY employees. ARTIST is solely responsible for providing to its own employees all employee benefits required by law. ARTIST shall save COUNTY harmless from all matters relating to the payment of ARTIST'S employees, including all payroll related taxes. COUNTY has no right to control, supervise, or direct the manner or method of ARTIST'S performance under this Contract, but COUNTY may verify that ARTIST is performing according to the terms of this Contract.

16. **NOTICES.**

A. **Contact Information.** The persons having authority to give and receive notices provided for or permitted under this Contract include the following:

For COUNTY:

[Job Title]
[Department Name]
[street address]
[City, State, Zip Code]
[email address]

For ARTIST:

[Job Title]
[Legal Name of ARTIST]
[street address]
[City, State, Zip Code]
[email address]

B. **Change of Contact Information.** Either Party may change the information in Paragraph 16.A by giving notice as provided in Paragraph 16.C.

C. Method of Delivery. Each notice between ARTIST and COUNTY provided for or permitted under this Contract must be in writing, state that it is a notice provided under this Contract, and be delivered either by personal service, by first-class United States mail, by an overnight commercial courier service, or by Portable Document Format (PDF) document attached to an email.

(1) A notice delivered by personal service is effective upon service to the recipient.

(2) A notice delivered by first-class United States mail is effective three (3) COUNTY business days after deposit in the United States mail, postage prepaid, addressed to the recipient.

(3) A notice delivered by an overnight commercial courier service is effective one (1) COUNTY business day after deposit with the overnight commercial courier service, delivery fees prepaid, with delivery instructions given for next day delivery, addressed to the recipient.

(4) A notice delivered by telephonic facsimile transmission or by PDF document attached to an email is effective when transmission to the recipient is completed (but, if such transmission is completed outside of COUNTY's business hours, then such delivery is deemed to be effective at the next beginning of a COUNTY business day), provided that the sender maintains a machine record of the completed transmission.

17. **NON-ASSIGNMENT OR TRANSFER.** The personal skill, judgment and creativity of ARTIST are essential elements of this Contract. Therefore, although the parties recognize that ARTIST may employ qualified personnel to work under ARTIST's supervision, ARTIST shall not assign, transfer or subcontract the creative and artistic portions of the WORK to another party without the prior written consent of the COUNTY.

18. **ACKNOWLEDGMENT.** ARTIST shall acknowledge in all reports and literature that the Santa Cruz County Board of Supervisors has provided funding to ARTIST.

19. **SUCCESSORS AND ASSIGNS.** The COUNTY and ARTIST each binds themselves, partners, successors, assigns and legal representatives to the other party to this Contract and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants of this Contract. Neither the COUNTY nor ARTIST shall assign, sublet or transfer an interest in this Contract without the written consent of the other. In no event shall any contractual relation be created between any third party and the COUNTY.

20. **NO KICK-BACK.** ARTIST warrants that no person has been employed or retained to solicit or secure this Contract upon an agreement or understanding for commission, percentage, brokerage or contingent fee and that no member of the COUNTY Council, or an employee of the COUNTY of Santa Cruz has any interest, financially or otherwise, in the ARTIST's business.

21. **INSPECTIONS, AUDITS, AND PUBLIC RECORDS.**

A. Inspection of Documents. ARTIST shall make available to COUNTY, and COUNTY may examine at any time during business hours and as often as COUNTY deems reasonably necessary, all of ARTIST'S records and data with respect to the matters covered by this Contract, excluding attorney-client privileged communications. ARTIST shall, upon request by COUNTY, permit COUNTY to audit and inspect all of such records and data to ensure ARTIST'S compliance with the terms of this Contract.

B. Retention and Audit of Records. ARTIST shall retain records pertinent to this Contract for a period of not less than five (5) years after final payment under this Contract or until a final audit report is accepted by COUNTY, whichever occurs first. ARTIST hereby agrees to be subject to the examination and audit by the Santa Cruz County Auditor-Controller-Treasurer-Tax Collector, the Auditor General of the State of California, or the designee of either, for a period of five (5) years after final payment under this Contract.

C. Public Records. COUNTY is not limited in any manner with respect to its public disclosure of this Contract or any record or data that ARTIST may provide to COUNTY. COUNTY's public disclosure of this Contract or any record or data that ARTIST may provide to COUNTY may include but is not limited to the following:

i. COUNTY may voluntarily, or upon request by any member of the public or governmental agency, disclose this Contract to the public or such governmental agency.

ii. COUNTY may voluntarily, or upon request by any member of the public or governmental agency, disclose to the public or such governmental agency any record or data that ARTIST may provide to COUNTY, unless such disclosure is prohibited by court order.

iii. This Contract, and any record or data that ARTIST may provide to COUNTY, is subject to public disclosure as a public record under the California Public Records Act (California Government Code, Title 1, Division 10, beginning with section 7920.000) ("CPRA").

iv. This Contract, and any record or data that ARTIST may provide to COUNTY, is subject to public disclosure as information concerning the conduct of the people's business of the State of California under Article 1, section 3, subdivision (b) of the California Constitution.

v. Any marking of confidentiality or restricted access upon or otherwise made with respect to any record or data that ARTIST may provide to COUNTY shall be disregarded and have no effect on COUNTY's right or duty to disclose to the public or governmental agency any such record or data.

D. Public Records Act Requests. ARTIST shall cooperate with COUNTY with respect to any COUNTY demand for requested records.

i. If COUNTY receives a written or oral request under the CPRA to publicly disclose any record that is in ARTIST'S possession or control, and which COUNTY has a right, under any provision of this Contract or applicable law, to possess or control, then COUNTY may

demand, in writing, that ARTIST deliver to COUNTY, for purposes of public disclosure, the requested records that may be in the possession or control of ARTIST. Within five (5) COUNTY business days after COUNTY's demand, ARTIST shall (a) deliver to COUNTY all of the

requested records that are in ARTIST'S possession or control, together with a written statement that ARTIST, after conducting a diligent search, has produced all requested records that are in ARTIST'S possession or control, or (b) provide to COUNTY a written statement that ARTIST, after conducting a diligent search, does not possess or control any of the requested records.

ii. If ARTIST wishes to assert that any specific record or data is exempt from disclosure under the CPRA or other applicable law, it must deliver the record or data to COUNTY and assert the exemption by citation to specific legal authority within the written statement that it provides to COUNTY under this section. ARTIST'S assertion of any exemption from disclosure is not binding on COUNTY, but COUNTY will give at least ten (10) calendar days' advance written notice to ARTIST before disclosing any record subject to ARTIST'S assertion of exemption from disclosure.

iii. ARTIST shall indemnify COUNTY for any court-ordered award of costs or attorney's fees under the CPRA that results from ARTIST'S delay, claim of exemption, failure to produce any such records, or failure to cooperate with COUNTY with respect to any COUNTY demand for any such records.

iv. This provision shall not prohibit ARTIST from seeking a protective order to prevent the disclosure of records ARTIST has deemed or marked as confidential or restricted or proprietary.

E. This Paragraph 21 shall survive the termination or expiration of this Contract.

22. **PRESENTATION OF CLAIMS.** Presentation and processing of any or all claims arising out of or related to this Contract shall be made in accordance with the provisions contained in Chapter 1.05 of the Santa Cruz County Code, which by this reference is incorporated herein.

23. **ATTACHMENTS.** ARTIST shall comply with the requirements of the following attachments to this Contract, each of which is incorporated herein by reference:

Attachment A, "Scope of Services"
Attachment A.1, "Images and Dimensions"
Attachment B, "Terms of Payment"
(enter additional attachments here)

Unless explicitly stated in an attachment, the language in the body of this Contract controls should a conflict arise between the language in the body of this Contract and any attachment to this Contract.

24. **LIVING WAGE.** This Contract is covered under Living Wage provisions if this Paragraph is initialed by COUNTY _____.

If Item # 24 above is initialed by COUNTY, then this Contract is subject to the provisions of Santa Cruz County Code Chapter 2.122, which requires payment of a living wage to covered employees. Non-compliance during the term of the Contract with these

Living Wage provisions will be considered a material breach and may result in termination of the Contract and/or pursuit of other legal or administrative remedies.

ARTIST agrees to comply with Santa Cruz County Code section 2.122.140, if applicable.

25. **NON-BINDING UNTIL APPROVED**. Regardless of whether this Contract has been signed by all parties, if the total compensation identified in Paragraph 2 of this Contract is greater than \$200,000, this Contract is not binding on any party until the Contract has been approved by the Santa Cruz County Board of Supervisors.

26. **GENERAL TERMS**.

A. **Compliance with Laws**. ARTIST shall, at its own cost, comply with all applicable federal, state, and local laws and regulations in the performance of its obligations under this Contract, including but not limited to workers compensation, labor, and confidentiality laws and regulations. This shall include, but is not limited to, obtaining the necessary licenses, permits, and any other required authorization to perform the work necessary to complete the terms of this Contract. ARTIST bears sole responsibility for any violation of such laws and regulations by itself and agrees that it will indemnify, defend and hold COUNTY harmless for the consequences of any such violation, as referenced in Paragraph 12 of this Contract.

B. **Standard of Practice**. ARTIST warrants that it has the degree of learning and skill ordinarily possessed by reputable professionals practicing in similar localities in the same profession and under similar circumstances. ARTIST'S duty is to exercise such care, skill and diligence as professionals engaged in the same profession ordinarily exercise under like circumstances.

C. **Prior Acts Ratified**. Any and all acts which may have already been consummated pursuant to the terms and conditions of this Contract are hereby ratified.

D. **Modification**. This Contract may not be modified, and no waiver is effective, except by written agreement signed by both Parties. ARTIST acknowledges that COUNTY employees have no authority to modify this Contract except as expressly provided in this Contract.

E. **Non-Liability of County Officers, Officials, Employees, Agents, Volunteers**. No officer, official, employee, agent, or volunteer of COUNTY shall be personally liable to ARTIST in the event of any default or breach by COUNTY.

F. **Governing Law**. The laws of the State of California govern all matters arising from or related to this Contract.

G. **Jurisdiction and Venue**. This Contract is signed and performed in Santa Cruz County, California. ARTIST consents to California jurisdiction for actions arising from or related to this Contract, and, subject to the Government Claims Act, all such actions must be brought and maintained in Santa Cruz County.

H. Construction. The final form of this Contract is the result of the Parties' combined efforts. If anything in this Contract is found by a court of competent jurisdiction to be ambiguous, that ambiguity shall not be resolved by construing the terms of this Contract against either Party.

I. Headings. The headings and paragraph titles in this Contract are for convenience only and are not part of this Contract.

J. Severability. If anything in this Contract is found by a court of competent jurisdiction to be unlawful or otherwise unenforceable, the balance of this Contract remains in effect, and the Parties shall make best efforts to replace the unlawful or unenforceable part of this Contract with lawful and enforceable terms intended to accomplish the Parties' original intent.

K. No Waiver. Payment, waiver, or discharge by COUNTY of any liability or obligation of ARTIST under this Contract on any one or more occasions is not a waiver of performance of any continuing or other obligation of ARTIST and does not prohibit enforcement by COUNTY of any obligation on any other occasion.

L. No Third-Party Beneficiaries. This Contract does not and is not intended to create any rights or obligations for any person or entity except for the Parties.

M. Force Majeure. Neither Party hereto shall be liable or responsible for delays or failures in performance resulting from events beyond the reasonable control, and without the fault or negligence, of such Party. Such events shall include, without limitation, acts of God, strikes, lockouts, riots, acts of war, epidemics, pandemics, acts of government, fire, power failures, nuclear accidents, earthquakes, unusually severe weather, acts of terrorism or other disasters, whether or not similar to the foregoing.

N. Authorized Signature. ARTIST represents and warrants to COUNTY that:

i. ARTIST is duly authorized and empowered to sign and perform its obligations under this Contract.

ii. The individual signing this Contract on behalf of ARTIST is duly authorized to do so and their signature on this Contract legally binds ARTIST to the terms of this Contract.

O. Integrated Contract. This Contract, including its attachments, is the entire agreement between ARTIST and COUNTY with respect to the subject matter of this Contract, and it supersedes all previous negotiations, proposals, commitments, writings, advertisements, publications, and understandings of any nature unless those things are expressly included in this Contract.

P. Counterpart Execution. This Contract, and any amendments hereto, may be executed in one (1) or more counterparts, each of which shall be deemed to be an original and all of which, when taken together, shall be deemed to be one (1) and the same agreement. This Contract, and any amendments hereto, may be signed by manual or electronic signatures in

accordance with any and all applicable local, state and federal laws, regulations and standards, and such signatures shall constitute original signatures for all purposes. A signed copy of this Contract, and any amendments hereto, transmitted by email or by other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Contract and any amendments hereto.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
[SIGNATURES APPEAR ON FOLLOWING PAGE]

SIGNATURE PAGE

Contract No. _____

ARTIST AGREEMENT

IN WITNESS WHEREOF, the parties hereto agree to the terms set forth above.

2. **(ENTER ARTIST'S LEGAL NAME)**

4. **COUNTY OF SANTA CRUZ**

By: _____
SIGNED

By: _____
SIGNED

PRINTED

PRINTED

Address: _____

Telephone: _____

Fax: _____

Email: _____

1. APPROVED AS TO FORM

Office of the County Counsel

3. APPROVED AS TO INSURANCE

Risk Management

DISTRIBUTION:

- **[Enter Initiating Department Name]**
- Auditor-Controller-Treasurer-Tax Collector
- Risk Management
- *Contractor*

ATTACHMENT A SCOPE OF SERVICES

Phase I. Proposal -- Conceptual Design of Artwork

ARTIST shall deliver a Conceptual Design for the WORK (“Proposal”). “Conceptual Design” shall mean drawings (in plan and elevation) and/or 3-dimensional models, a written description, proposed materials and samples, and a written description of the WORK in sufficient detail that ARTIST’s design intent is clearly expressed. The information provided in Conceptual Design shall be complete enough to fully illustrate the design intent of the WORK.

The Proposal must be approved by the COUNTY’s Board of Supervisors.

It is ARTIST’s responsibility to coordinate ARTIST’s Proposal with the architectural designs for the **install site name**.

The Proposal shall include a Budget for the cost of design, fabrication and transportation of the WORK, as well as a schedule for estimated dates of fabrication completion and installation.

Due Date. The final Proposal was due on or before **BOS review date**, and was submitted by the deadline.

Phase II. Design Development Documents

If requested in writing to do so by the Parks Director or designee as a result of the nature of the WORK, ARTIST shall deliver Design Development Documents, which shall incorporate the further development and refinement of the Proposal, and continue to express the artistic intent of the Proposal. “Design Development Documents” shall mean presentation quality materials, which shall include colored drawings or computer-generated color images (in plan and elevation) and/or 3-dimensional models that accurately reflect the WORK and how it will be installed at the Site, mock-ups, final color and materials samples, proposed fabrication methods, and feasibility studies. When used in reference to the proposed WORK, Design Development Documents shall fix and describe the size and character of the WORK with respect to its relationship to the Site, including architectural, structural, mechanical and electrical systems, materials and other elements as may be appropriate.

The Design Development Documents must be approved by the COUNTY.

Due Dates. Illustrations showing installation details shall be provided to the COUNTY four weeks prior to installation of the WORK. Additional Design Development Documents may be required at a future date to be determined by COUNTY.

Phase III. General Maintenance Plan

ARTIST shall deliver a General Maintenance Plan for the WORK. ARTIST shall deliver all information necessary for the COUNTY to properly care for and maintain the WORK, including information regarding the physical make-up of the WORK, methods and materials, and information about the artistic intent of ARTIST.

The General Maintenance Plan must be approved by COUNTY.

Due Date. The General Maintenance Plan is due on or before completion of the project.

Phase IV. Construction Documents (As Needed)

If requested in writing to do so by the Parks Director or designee as a result of the nature of the WORK, ARTIST shall deliver Construction Documents. Construction Documents shall describe and fix the location, size, materials and character of the WORK with respect to architectural, structural engineering, mechanical and electrical systems, materials, colors, method of attachment and fabrication methods, and other such elements as may be appropriate. Construction Documents must be signed and stamped by design professionals licensed in the State of California as required by the California Building Code and any local amendments thereto.

The Construction Documents must be approved by the COUNTY.

ARTIST shall deliver Mock-ups and Samples, if required by COUNTY.

Due Date. Construction Documents are due on or before: 60 days prior to installation of the WORK at the Site.

Phase V. Fabrication of Artwork

ARTIST shall fabricate the WORK in conformance with the Proposal, Design Development Documents (if any) and Construction Documents (if any). The fabricated WORK may not deviate in size, design or material from the Proposal, Design Development Documents (if any) and Construction Documents (if any) unless the Parks Director or designee has given prior approval of any such deviation in writing.

The final fabricated WORK must be approved by the Parks Director or designee, and ARTIST shall allow the Parks Director or a designee(s) reasonable access to the WORK during fabrication for purposes of inspection.

Due Date. Fabrication of the WORK shall be completed on or before: prior to installation of the WORK at the Site.

Phase VI. Delivery and Installation of Artwork

ARTIST shall deliver the WORK to the Site. ARTIST shall prepare the WORK for transportation in accordance with customary industry standards for the transportation of fine works of art.

ARTIST shall, in conjunction with the Parks Director or designee, determine the optimal time for the delivery of the WORK. Any change in the agreed-upon time for delivery shall require two-weeks written notice by either party.

Photographic Documentation. ARTIST shall provide images of the WORK in progress, as well as images of the completed WORK, for the COUNTY's archives, with the invoice for Payment 3.

Subcontracts. ARTIST shall deliver subcontracts of all or any Work, as well as documentation establishing that all employees, subcontractors and suppliers have been paid in a timely manner.

Due Date. Transportation and Installation are due on or before: Date to be determined by COUNTY.

ATTACHMENT A.1
ARTIST PROPOSAL

**ATTACHMENT B
TERMS OF PAYMENT**

A. Payment 1 -- Contract Execution

Upon approval of the Agreement by the Board of Supervisors:

\$Payment 1

B. Payment 2 -- WORK Fabrication

Upon completion of all shop fabrication and approval by COUNTY, ARTIST may invoice COUNTY for the following amount:
ARTIST must supply support documentation as outlined in contract.

\$Payment 2

C. Payment 3 -- Installation and Final Acceptance

Upon completion of installation and acceptance of the WORK by the COUNTY, ARTIST may invoice for final payment:
ARTIST must supply support documentation as outlined in contract.

\$Payment 3

CONTRACT TOTAL:

\$total