

**PINELLAS COUNTY  
ARTS COUNCIL**

**[PROJECT TITLE]  
PUBLIC ART PROJECT**

**Contract No. – ARTWORK DESIGN & FABRICATION**

**THIS AGREEMENT** is made and entered into by and between PINELLAS COUNTY, by and through the Pinellas County Arts Council, hereinafter referred to as the "County" and **[ARTIST(S) NAME]**, an individual whose address is **[STREET ADDRESS, COUNTY, STATE, ZIP]** hereinafter referred to as the "Artist".

**WITNESSETH:**

**THAT WHEREAS, PINELLAS COUNTY** is implementing a public art program pursuant to COUNTY Code, No. 00-17; and

**WHEREAS,** the Artist has been selected to fabricate, deliver and install works of art, hereinafter referred to as the "Work", such Work to be integrated into **name of site**, hereinafter referred to as the "Site", after consultation with the staff of the Pinellas County Arts Council, the staff of other appropriate County departments and, if requested by the Executive Director of the Pinellas County Arts Council or an authorized representative, with designated citizen groups; and

**WHEREAS,** both parties wish to reasonably promote and maintain the integrity and clarity of the Artist's ideas and statements as represented by the Work; and

**WHEREAS,** the County Administrator of Pinellas County, Florida as authorized and empowered to execute contracts for works of art and other enhancements to adorn public spaces and buildings in the County; and

**WHEREAS,** the County desires to enter into an Agreement with the Artist to complete the Work at the Site and the Artist is willing and able to provide such services and such Work under the Agreement as may be required by the County as an independent contractor;

**NOW, THEREFORE,** for and in consideration of the premises and the mutual covenants and considerations herein contained, and subject to the terms and conditions hereinafter stated, it is agreed by and between the County and the Artist as follows:

**SECTION I -- SERVICES OF THE ARTIST**

A. General

1. As used in this Agreement, unless the context otherwise requires: "Work" means the work of art as ultimately conceived, designed, fabricated, transported, delivered and installed by the Artist, after consultation with the staff of the Pinellas County Arts Council, the staff of other appropriate County departments and, if requested by the Executive Director of the Pinellas County Arts Council or an authorized representative, with designated citizen groups and others. The Work includes all physical components of the complete artwork including but not limited to associated foundations, bases, mounting brackets or devices, and all other miscellaneous components necessary to complete the fabrication and installation of the artwork.
2. The Artist shall perform all services and furnish all supplies, material and equipment as necessary for the execution and fabrication of the Work, including but not limited to, payment for all necessary permits,

taxes, insurance, supplies, materials, small tools, equipment, artist consultants, lighting requirements and all other items incidental to producing a complete and acceptable Work, and shall, either directly or through qualified sub-consultants, undertake the transportation and installation of the Work at the Site.

3. The Artist shall determine the artistic expression, scope, design, color, size, material, and texture, subject to review and acceptance by the County as set forth in this Agreement.
4. The Artist shall be solely responsible for designing, fabricating, constructing, delivering and installing the Work in compliance with all applicable County, State and/or Federal laws, ordinances, statutes, codes, regulations, and/or requirements which affect construction or installation of the Work.
5. The Artist shall comply with all applicable laws, statutes, ordinances, regulations, and administrative requirements including but not limited to safety and engineering regulations and requirements of the County, with special attention to requirements for scaffolding.
6. The Artist shall not make any public information release in connection with services performed under this Agreement without the prior written permission of the County.
7. The Artist and all agents and employees shall observe and comply with all prevailing Federal, State and County laws, ordinances, regulations and requirements which in any way affect conduct or work required under this Agreement. The Artist shall at the Artist's sole expense obtain all permits, licenses and approvals required (including any seal certifying the structural soundness and safety of the Work which may be required) and shall comply with all laws in connection therewith.
8. It is understood and agreed that the County's authorized contracting officer shall be the Executive Director of the Pinellas County Arts Council or an authorized representative and that officer shall be the sole contact for administering this Agreement. The Artist may discuss the Work or its requirements with various departments of the County, but all specific direction to or requests of the Artist must be authorized by the Executive Director of the Pinellas County Arts Council or an authorized representative.
9. If requested, the Artist shall assist in filing any documents required to secure approval of all governmental authorities having jurisdiction.

B. Artist's Final Design Proposal

1. The Artist will submit a final design proposal, a schedule, and a cost estimate for the Work, more fully described in Exhibit "A" attached hereto and made a part of this Agreement to the Executive Director of the Pinellas County Arts Council, which requires approval by the Public Art & Design Committee. No modifications to this proposal shall be allowed without the prior written approval of the Public Art & Design Committee.

C. Purchasing Materials

1. Upon written execution of this agreement, the Artist shall commence purchasing materials and fabricating the Work.
2. The Artist shall avoid specification and purchase of materials or finishes known to be hazardous or potentially hazardous.

D. Fabrication

1. The Executive Director of the Pinellas County Arts Council or authorized representative shall have access to review the Artist's Work in progress, to be scheduled at a mutually agreeable time. The Artist shall submit to the Executive Director of the Pinellas County Arts Council progress reports acceptable to the Executive Director of the Pinellas County Arts Council.
2. The Artist shall complete the design, fabrication, transportation and installation of the Work in conformity with the Proposal.
3. The Artist shall present to the Public Art & Design Committee in writing for further review and approval any significant changes in the scope, design, color, size, material or texture of the Work. A change shall be deemed material if it alters the form, fit or function of the Work, or modifies its dimensions by more than five percent (5%).
4. Once the Work has been fabricated, the Artist shall submit a report to the Public Art & Design Committee, accompanied by photographs, slides, or other acceptable documentation substantiating that the fabrication of the Work has been completed. The report shall include plans for installation and lighting and a description of any activities requiring coordination with the County.

E. Delivery and Installation

1. The Artist is responsible for the cost and installation of any lighting and any structural support, footing or base required for the installation of the Work.
2. The Work shall not be delivered to the Site or installed until the Artist has received written approval from the Executive Director of the Pinellas County Arts Council or an authorized representative that the Work has been completed according to the approved design and that specific installation plans submitted by the Artist have been approved by the Executive Director of the Pinellas County Arts Council.
3. Arrangements for access to the Site for installation must be made through the Pinellas County Arts Council or authorized representative. Access to the Site may be scheduled for night or early morning hours to avoid interference with passenger flow, client use, or construction activities. The Artist shall provide the Pinellas County Arts Council with a written list of the workers, vehicles and equipment which will be involved in the installation of the Work at least fifteen (15) days in advance of delivery and installation so that permits can be issued and security and unloading arrangements made. Cost for vehicle parking shall be the responsibility of the Artist.
4. If the Pinellas County Arts Council so elects, it may specify the manner in which the Work shall be delivered to the Site.
5. Following delivery of the Work, the Artist shall install the Work at the Site in such a manner as the Pinellas County Arts Council shall approve and submit all required documentation and information. The Artist shall be responsible for all expenses, labor and equipment for the preparation of the Site and installation of the Work.

6. The Artist shall limit construction operations to the Site unless otherwise approved by the Pinellas County Arts Council. The Artist shall perform no operations of any nature on, over or across premises except such operations as are specifically authorized in plans or specifications, or as authorized by the Pinellas County Arts Council.
7. The Artist shall protect adjoining property and nearby buildings, including County buildings, County roads and public streets or roads from dust, dirt, rubbish or other nuisance arising out of the Artist's operations or storage practices.
8. The Artist shall clean up the Site at frequent intervals and at other times when directed by the Pinellas County Arts Council. At all times while finish work is being accomplished, the Site shall be kept clean, free of dust, construction debris and trash. Directly upon completion of the Work, the Artist shall remove from the Site all equipment and any waste materials not previously disposed of, leaving the Site thoroughly clean and ready for the Pinellas County Arts Council's final inspection.
9. Installation and workers' safety shall be in conformance with the latest Florida health and safety regulations and fire regulations.
10. The Artist shall notify the Pinellas County Arts Council in writing when the Work is installed and all services have been completed to secure final approval and acceptance.

F. Post-Installation

1. Title to the Work passes to the County upon written final acceptance of the complete installed Work by the Pinellas County Arts Council. All risk of destruction, or damage to, the Work or any part thereof from any cause whatsoever shall be borne by the Artist until written final acceptance of the Work. The Artist shall, at the Artist's sole expense, rebuild, repair, restore and make good all such damage to any portion of the Work until Title to the Work has passed to the County. However, the Artist shall not be responsible for repairing any damage caused by job-site contractors or subcontractors not under the Artist's contractual control or supervision.
2. The Artist shall provide information on the Work requested by the Pinellas County Arts Council for its registration files including but not limited to technical and maintenance information in the format provided in attached Exhibits, copyright registration information, updated biographical information, and a statement regarding the Work.
3. The Artist may, as part of this Agreement, be required by the Pinellas County Arts Council with reasonable advance notice to discuss the Work with the general public and/or press/media representatives in special meetings scheduled for this purpose.
4. The Artist shall be available at such time or times as may be agreed between the Pinellas County Arts Council and the Artist to attend inauguration or presentation ceremonies relating to the transfer of the Work to the County. The Pinellas County Arts Council shall use its best efforts to arrange for publicity for the completed Work in such art publications and otherwise as may be determined between the Pinellas County Arts Council and the Artist as soon as practicable following installation.
5. The Artist will provide a plaque identifying the Artist, the title of the Work, the year of completion and the following credit line: "A project of the Percent for Art Program/Pinellas County Arts Council". The plaque shall be publicly displayed on or adjacent to the Work. The Pinellas County Arts Council shall maintain such identification plaque in good repair and shall replace such identification plaque if it is stolen or damaged beyond repair. This plaque shall be created and installed by the Artist prior to final payment. Such plaque shall be designed with the approval of the Pinellas County Arts Council and in compliance with the format presented in Exhibit "G".

## **SECTION II - PERIOD OF SERVICE**

- A. Section I services shall be completed in accordance with the schedule set forth in Exhibit "A" incorporated herein by reference and made a part of this Agreement if approved by the Executive Director of the Pinellas County Arts Council.
- B. As requested, the Artist shall make monthly progress reports to the Pinellas County Arts Council during the term of this Agreement, and the Artist shall provide the Pinellas County Arts Council or its staff with access to the Work during reasonable business hours to review the work and progress in completing the Work.
- C. The Artist shall bear any transportation and storage costs resulting from the completion of the services hereunder prior to the time provided in the schedule for installation.
- D. The County shall grant a reasonable extension of time to the Artist in the event that there is a delay on the part of the County in performing its obligations under this Agreement or in completing the underlying capital project, or if conditions beyond the Artist's control or Acts of God render timely performance of the Artist's services impossible or unexpectedly burdensome.

## **SECTION III - PAYMENTS TO THE ARTIST**

For services described under Section I of this Agreement, the County shall pay the Artist as follows:

- A. An amount not to exceed **spelled out dollar amount (\$--,-----.00)**
- B. All expenses incurred on behalf of the Work shall be paid by the Artist and are included in the basic fee above.
- C. Payment to the Artists shall vary in amount and payment schedule in accordance with the scope of each project. Generally, compensation will be paid to the Artist in three to five installments. A sample payment schedule with three installments is listed below:
  - 1. 40% of contract amount upon approval of the final design proposal, schedule A and other required documents, **spelled out dollar amount (\$--,-----.00)**.
  - 2. 40% of contract amount upon acceptance of fabricated artwork, **spelled out dollar amount (\$--,-----.00)**.  
For payment the following must be provided to the Arts Council by the Artist: documentation of completed artwork, a written bill of sale conveying title to the County for the artwork, a sworn statement of no liens, claims or other encumbrances, and an approved installation plan.
  - 3. 20% of contract amount upon final acceptance of installed artwork **spelled out dollar amount (\$--,-----.00)**.  
Installation of artwork must be approved by the Executive Director of the Pinellas County Arts Council.  
For payment the following must be provided to the Arts Council by the Artist: a written certification of the completion and installation of the artwork, written instructions on the care and maintenance of the artwork.
- D. Payment of the artist's fee shall be made upon submittal of invoices using the form or format provided in Exhibits attached to this Agreement. However, no more than ninety (90%) percent of the total Agreement amount shall be paid before the work is completed and accepted by the County. The County shall make payment to the Artist within thirty days of receipt and approval of the applicable invoice together with a progress report.
- E. Once the Work has been installed and all invoices have been submitted by the Artist and approved payments have been made to the Artist by the Pinellas County Arts Council, funds left in the Agreement account which have not been expended will remain the property of the Pinellas County Public Art Trust Fund.

- F. The Artist shall be responsible for all Federal and State income taxes on the amount of this Agreement, as well as any sales, use or privilege tax which might be required.
- G. The Artist and County agree that no charges or claim for damages shall be made by the Artist for any delays or hindrances during the progress of any portion of the services specified in this Agreement. Such delays or hindrances, if any, shall be compensated for by an extension of time for such reasonable period as may be mutually agreed between the parties. It is understood, however, that permitting the Artist to proceed to complete any services, or any part of them, after the date to which the time of completion may have been extended, shall in no way act as a waiver on the part of the County of any of its legal rights herein.

#### **SECTION IV -- ARTIST'S REPRESENTATIONS AND WARRANTIES**

- A. The Artist represents and warrants to the County that the fabrication and installation of the Work will be performed in a workmanlike manner and that the Work will be free of defects in workmanship or materials, including inherent vice, and that the Artist will, at the Artist's own expense, remedy any defects due to faulty workmanship or materials, or to inherent vice, which appear within a period of three years from the date the Work is finally accepted by the Pinellas County Arts Council. Any and all such repair completed by the Artist shall be consistent with professional conservation standards as determined solely by the Pinellas County Arts Council. "Inherent vice" refers to a quality within the material or materials which comprise the Work which, either alone or in combination, results in the tendency of the Work to destroy itself.
- B. Warranties provided to the Artist by the sub-contractors shall be for no less than one year. All warranties related to the Work performed by sub-contractors are attached to this Agreement and are hereby incorporated by reference and are considered to define the extent and limitations of warranties extended by the Artist to the County.
- C. The Artist represents and warrants to the County that the Work will not require maintenance substantially in excess of that described in the maintenance recommendations to be provided by the Artist County hereunder.
- D. The Artist represents and warrants to the County that the Work will not contain sharp points or edges which the County deems a danger to the public and agrees to cooperate in making or permitting adjustments to the Work if necessary to eliminate any hazards which become apparent within one year of the date the Work is finally accepted by the County.
- E. The Artist represents and warrants to the County that the Work is solely the result of the artistic efforts of the Artist, and that it will be installed free and clear of any liens, claims or other encumbrances of any type from any source whatsoever.
- F. The personal skill, judgment and creativity of the Artist is an essential element of this Agreement. Therefore, although the parties recognize that the Artist may employ qualified personnel to work under the Artist's supervision, the 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 Pinellas County Arts Council.
- G. The Artist represents and warrants to the County that the Work is unique and an edition of one and does not infringe upon any copyright, and that the Artist will not execute or authorize another to execute another Work of the same design, dimensions and materials as the Work commissioned pursuant to this Agreement. For the purposes of this warranty, if the dimensions of another work exceed 75% of the dimensions of the commissioned Work, the other work shall be deemed to be of the same dimensions as the commissioned Work. This warranty shall continue in effect for a period consisting of the life of the Artist plus 50 years and shall be binding on the Artist's heirs and assigns.

- H. The Artist agrees that the Artist or other's acting on behalf of the Artist will not make reference to or reproduce the Work, or any portion thereof, in a way which reflects discredit on the County or the Work.

#### **SECTION V - THE COUNTY'S RESPONSIBILITIES**

- A. Upon request by the Artist, the County shall furnish the Artist, at no cost to the Artist, the following information or services, provided however that the County does not guarantee the accuracy of information provided and assumes no liability therefore:
1. One copy of all available data pertinent to the work, and information relative to policies, standards, criteria, and studies. However, the Artist shall be responsible for searching the records and requesting information required.
  2. Examination of materials and information submitted by the Artist and render decisions pertaining thereto promptly, to avoid unreasonable delay in the progress of the Artist's Work. The County shall keep the Artist advised concerning the progress of the County review of the Work. Response to the Artist's written request for decisions shall be made as soon as possible.
- B. The County shall not intentionally destroy, damage, alter, modify or change the Work except under conditions outlined in the Pinellas County Arts Council's "Guidelines for Review and Disposition of Art". The County agrees that the Work shall be properly maintained, taking into account the instructions of the Artist.
- C. The County agrees that it will not use the work or the Artist's name in a way which reflects discredit on the Work or on the name of the Artist or on the reputation of the Artist as an artist.

#### **SECTION VI - INSURANCE**

- A. The Artist shall procure and maintain throughout this Agreement until Title to the Work passes to the County:
1. Worker's compensation and employer's liability insurance with limits of no less than \$100,000 each accident. If the Artist has no employees as defined by Florida Statutes and Regulations, and the Artist submits a letter so stating, this requirement may be waived in writing by the Pinellas County Arts Council.
  2. Inland marine insurance floater on all risk with limits equal to the cost of replacing materials and labor, and a deductible not to exceed \$1,000 each loss, with any loss payable to the County as its interests may appear. The County may, in its sole discretion, accept as alternate security, an approved builder's risk policy.
  3. General liability insurance, with limits of not less than \$1,000,000 each occurrence, combined single limit bodily injury and property damage, completed operations, contract liability and, if any subcontracted work, independent contractors.
  4. Automobile liability insurance, with limits of not less than statutory requirements including coverages for owned, non-owned and hired vehicles, as applicable.
- B. Insurance policies required under the terms of this Agreement shall be endorsed as follows:
1. In the general liability policy, name as additional insureds the County and its officers, agents and employees.

2. In the general and automobile liability policies, provide that the policies are primary insurance to any other insurance available to the additional insureds, with respect to claims arising out of this Agreement, and that the insurance applies separately to each insured against whom claim is made or suit is brought.
  3. In the general and automobile liability policies, provide 30 days written notice of cancellation, non-renewal or reduction in coverages mailed to:
- C. Certificates of insurance evidencing worker's compensation, inland marine coverage, general liability and endorsements set forth above shall be furnished to the County upon execution of this Agreement. Upon request certified copies of all policies shall be furnished to the County. If any insurance policy is due to expire during the life of this Agreement, the Artist shall provide a Certificate of Renewal evidencing the required insurance coverage to the County not less than fifteen (15) calendar days prior to the expiration date.

## **SECTION VII -- GENERAL CONSIDERATIONS**

A. Records

Records of the Artist's expenses pertaining to the Work and records of accounts between the County and the Artist shall be kept on a generally recognized accounting basis, and shall be available to the County or its authorized representative for audit during normal business hours.

B. Alteration in Character of Work

The goal of the parties is a Work which represents the creative talents of the Artist and satisfies the specifications of the County. The parties recognize that they must consult closely in order to accomplish these goals and that changes in the design may become desirable as the Work is fabricated, under the Artist's personal supervision, in conformity with the approved design, see Exhibit "A". The Work shall not deviate from the approved design unless the change is approved in writing by the Executive Director of the Pinellas County Arts Council or an authorized representative.

C. Termination

The County and the Artist hereby agree to the full performance of the covenants contained herein, except that the County reserves the right, at its discretion and without cause, to terminate or abandon the services provided for in this Agreement, or abandon any portion of the project for which services have been performed by the Artist.

1. In the event the County shall abandon the service or any part of the services as herein provided, the County shall notify the Artist in writing, and immediately after receiving such notice, the Artist shall discontinue advancing the work under this Agreement and proceed to close said operations under the Agreement.
2. Upon such termination or abandonment, the Artist shall deliver to the County all work entirely or partially completed, together with all unused materials supplied by the County.
3. The Artist shall determine the percentage of work completed and submit such estimate to the County for evaluation. The County shall have the right to inspect the Artist's work to verify the work completed.
4. The Artist shall receive a fee for the percentage of the work actually completed as compensation in full for services performed to the date of such termination. This fee shall be equal to any project related payments owed to the Artist and to the Artist's subcontractors, and shall be in an amount to be agreed upon mutually by the Artist and the County. If there is no mutual agreement, the final determination shall be made in accordance with Section VII, Paragraph O. "Disputes". However, in no event shall the fee ever exceed that set forth in Section III of this document. The County shall make this final payment within sixty (60) days after the Artist has delivered the last of the partially completed items.

5. The Artist may obtain termination only if the County should substantially fail to perform its responsibilities as provided herein. In the event of termination, all finished or unfinished work relating to the preparation of the Work paid for by the County shall become the property of the County.
6. The death or incapacity of the Artist shall automatically terminate this Agreement. Neither the Artist nor the Artist's estate shall have any further right to perform hereunder. County shall pay the Artist's estate or the Artist the compensation payable for any services rendered prior to such termination not heretofore paid reduced by the amount of additional costs which shall be incurred by the County by reason of such termination.

D. Communications

All notices, requests, demands and other communications which are required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given upon the delivery or receipt thereof, as the case may be, if delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, as follows:

1. if the County, to: Executive Director  
Pinellas County Arts Council  
14700 Terminal Blvd., Suite 229  
Clearwater, FL 33762
2. if the Artist, to: **Artist's Name**  
**Artist's Address**  
**Artist's Phone #**

E. Additional Work

Additional work, when authorized by the Executive Director of the Pinellas County Arts Council or an authorized representative, shall be compensated for by a fee mutually agreed upon between County and the Artist.

F. Ownership of Documents

The County shall have the right to graphically reproduce the documents produced by the Artist solely for the purposes of publicity or exhibition, provided that such reproduction is credited to the Artist.

G. Ownership and Reproduction Rights

1. Title to the Work shall pass to the County upon written notice to the Artist of final acceptance.
2. The Artist retains: (1) all rights to the Work under the Copyright Act of 1976, 17 U.S.C. & 101, et seq., as amended by the Visual Artists Rights Act of 1990, and any successor act; and (2) all rights expressly granted in this agreement.
3. The Artist hereby grants the County the exclusive right to display the Work, and two-dimensional reproductions of the Work, and to loan the Work and such reproductions to others with authority to display it publicly.
4. The Artist hereby authorizes the County to make, and to authorize the making of, photographs and other two-dimensional reproductions of the Work for educational, public relations, arts promotional and other non-commercial purposes. For the purposes of this Agreement, the following are among those deemed to be reproductions for non-commercial purposes: brochures and pamphlets pertaining to the County; reproduction in exhibition catalogues, books, slides, photographs, postcards, posters, and calendars; in art magazines, art books and art and news sections of newspapers; in general books and magazines not primarily devoted to art but of an educational, historical or critical nature; slides and film strips not intended for a mass audience; electronic media and television from stations operated for educational purposes or on programs for educational purposes from all stations. On any and all such reproductions,

the County shall place a copyright notice in the form and manner required to protect the copyright in the Work under the United States copyright law.

5. The County agrees that unless the Artist requests to the contrary in writing, all references to the Work and all reproductions of the Work shall credit the Work to the Artist.
6. The Artist agrees that all formal references to the Work and noncommercial reproductions of the Work under the Artist's control shall include the following credit line: "A Project of the Percent for Art Program, Pinellas County Arts Council."

H. Waiver of Rights under 17 U.S.C. §106A(a)

The Artist understands and agrees that, as to the Artist's rights in the Work, the provisions of this Article shall control over the provisions of 17 U.S.C. §106A(a), and shall constitute a waiver by the Artist of any rights in the Work set out in or otherwise granted by 17 U.S.C. §106A(a).

I. Repair and Restoration

Maintenance of the Artwork shall be the responsibility of the County. The County shall maintain the Artwork and/or make minor or emergency repairs without the Artist's approval or consultation, provided such work is performed in accordance with recognized principles of conservation as determined by the Pinellas County Arts Council. It is the policy of the Pinellas County Arts Council to consult with the Artist regarding repairs and restoration which are undertaken during the Artist's lifetime when that is practicable only when such work does not comply with the maintenance guidelines provided by the Artist. To facilitate consultation, the Artist will notify the Pinellas County Arts Council of any change in the Artist's permanent address. If the Artist is unable or unwilling to perform any necessary repairs or restoration, the County will cause to have such work performed at the County's own expense in accordance with recognized principles of conservation.

J. Removal or Relocation

Notwithstanding any provision of law, the parties agree that removal, destruction or relocation of the Work may occur. While it is the County's intent to permanently retain and publicly display the Artwork it has acquired through the Percent for Art program, circumstances may arise that would make it prudent for the County to remove an Artwork from public display. The Artist hereby acknowledges that the Artwork when installed, will be incorporated within and made a part of the Site in such a way that removing the Artwork from the Site, or destruction or modification of "Site" may cause the destruction, distortion, mutilation, or other modification of the Artwork. The Artist hereby acknowledges that the Artwork, when installed, will be the property of the County. The Artist therefore agrees that the County shall have absolute right incidental to its ownership of the Site and the Artwork to remove, relocate, replace, transport, transfer, sell, or store, in whole or in part (such actions being referred to herein as "Removal"), or to alter, change, modify, or destroy, (such actions being referred to herein as "Alterations"), the Artwork at such times as the County shall deem necessary in order to exercise its powers and responsibilities with respect to the Site. The County shall make a good faith effort to notify the Artist in writing 90 days in advance of such removal. To the extent the uses of the Artwork under this section violate any rights the Artist may have under the provisions of federal or state law, including without limitation the Visual Artist's Rights Act of 1990, the Artist hereby waives those rights to preservation of the Artwork provided by those laws; provided, however, that Artist shall retain any right to disclaim authorship of the Artwork pursuant to and under the conditions set forth in the Visual Artist's Rights Act of 1990.

K. Public Hazard

In the event that the County determines that the Artwork presents an imminent hazard to the public, the County may authorize the removal of the Artwork without approval of the Artist. The Artist shall be notified within thirty (30) days of such action, and the County shall then consider options for the final disposition, repair, reinstallation, maintenance or deaccession of the Artwork. In the event that the Artwork cannot be removed without being irreparably damaged or destroyed, the Artist hereby agrees to waive any rights the Artist may have under the Visual Artist's Rights Act of 1990, provided, however, that the Artist shall retain any right to disclaim authorship of the Artwork pursuant to and under the conditions set forth in the Visual Artist's Rights Act of 1990.

L. Completeness and Accuracy of the Artist's Work

The Artist shall be responsible for the completeness and accuracy of the Artist's work, prepared or completed under the Artist's obligation for work provided under this Agreement.

M. Claims Against the County

1. The Artist hereby agrees to indemnify and save and hold harmless the County, any of its departments, agencies, officers, or employees from all damages, claims or liabilities and expenses (including Attorney's fees) arising out of or resulting in any way from the performance of professional services for the County in the Artist's capacity as a consultant, and caused by any error, omission, or negligent act of the Artist or any person employed by the Artist, or of any others for whose acts the Artist is legally liable.
2. The Artist agrees to indemnify and save and hold harmless the County, any jurisdiction or agency issuing permits for any work included in the project, and their respective directors, officers, officials, agents, employees and volunteers (hereinafter referred to as "Indemnitee") from and against any and all claims, demands, actions, liabilities, damages, losses, or expenses (including court costs, attorney's fees, and costs of claim processing, investigation and litigation)(hereinafter collectively referred to as "Claims") for personal injury (including death) or property damage caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the Artist or of any of the Artist's directors, officers, agents, employees, volunteers, or subcontractors. This indemnity includes any claim or amount arising or recovered under the Workers' Compensation Law or arising out of the failure of the Artist to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising from the negligent or willful acts or omissions of the Indemnitee, be indemnified by the Artist from and against any and all Claims. It is agreed that the Artist will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable.
3. In the event that the services of the Artist are integrated into, combined or otherwise coordinated with the services by third parties not within the control of the Artist, the Artist shall not be responsible for such third party services. If any part of the Artist's work depends for proper execution or results upon the work of a third party, the Artist shall, prior to proceeding with the work, report to the County any apparent discrepancies or other defects in such other work that renders it unsuitable for proper execution or results. The Artist shall not be responsible for any liability or failure to fulfill the Artist's obligations due to such discrepancies or defects. Failure of the Artist to report a discrepancy or defect shall constitute acceptance of third party work as fit and proper except as to defects that may subsequently become apparent in such third party work. Any costs caused by defective or ill-timed work by others shall not be borne by the Artist.
4. The Artist shall not be responsible for the acts or omissions of the County, the County's consultants, any contractors, any subcontractors, any subconsultants, any of the agents or employees, or any other persons, aside from those retained by the Artist, who are performing any of the work related to the artistic services provided for in the terms of this Agreement.

N. Successors and Assigns

The County and the Artist shall each bind themselves, their partners, successors, assigns, and legal representatives to the other party to this Agreement and to the partners, successors, assigns, and legal representatives of such other party in respect to all covenants of this Agreement. Neither the County nor the Artist shall assign, sublet, or transfer any interest in this Agreement without the written consent of the other. In no event shall any contractual relationship be created between any third party and the County.

O. Disputes

In any dispute arising out of an interpretation of this Agreement or the duties required therein not disposed of by agreement between the Artist and the County, the final determination at the administrative level shall be made by the County Administrator.

P. County's Right of Cancellation

All parties hereto acknowledge that this Agreement is subject to cancellation by Pinellas County.

Q. Covenant Against Contingent Fees

The Artist represents and warrants to the County that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for commission, percentage, brokerage, or contingent fee, and that no member of the County Council, or any employee of the Pinellas County has any interest, financially or otherwise, in the Artist's business.

For breach or violation of this warranty, the Pinellas County shall have the right to annul this Agreement without liability, or at its discretion to deduct from the Agreement price or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

R. Equal Opportunity/Affirmative Action

The Artist shall comply with the provisions of this Agreement, including the requirements of County Codes, pertaining to discrimination and accepting applications or hiring employees. The Artist shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, gender, national origin, age or disability nor otherwise commit an unfair employment practice. The Artist will take affirmative action to ensure that applicants are employed, and employees are dealt with during employment, without regard to their race, color, religion, gender, national origin, age or disability. Such action shall include but not be limited to the following: employment, promotion, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship as well as all other labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this Agreement. The Artist further agrees that this clause will be incorporated in all subcontracts and job-consultant agreements of this Agreement entered into by the Artist, except subcontracts for standard commercial supplies or raw materials:

The Pinellas County extends to each individual, firm, vendor, supplier, contractor, and subcontractor an equal economic opportunity to compete for County business and strongly encourages voluntary utilization of Disadvantaged and/or Minority-owned or Women-owned business to reflect both the industry and community ethnic composition.

S. Independent Contractor

The Artist is and shall be an independent contractor and is not an agent or employee of the County . Any provisions in this Agreement that appear to give the County the right to direct the Artist as to the details of doing the Work or to exercise a measure of control over the Work means that the Artist shall follow the wishes of the County as to the results of the Work only, which shall comply with all applicable laws and ordinances.

T. Force Majeure

If either party shall be delayed or prevented from the performance of any act required under this Agreement by reason of acts of God or other cause beyond the control and without fault of the party (financial inability excepted), performance of that act shall be excused, but only for the period of the delay. The time for performance of the act shall be extended for a period equivalent to the period of delay.

U. Immigration Reform and Control Act of 1986

The Artist understands and acknowledges the applicability of the Immigration Reform and Control Act of 1986 to the Artist. The Artist agrees to comply with the Immigration Reform and Control Act of 1986 in performing work under this Agreement and to permit the County to verify such compliance.

V. Non-Waiver Provision

The failure of either party to enforce any of the provisions of this Agreement or to require performance of the other party of any of the provisions hereof shall not be construed to be a waiver of such provisions, nor shall it affect the validity of this Agreement or any part thereof, or the right of either party to thereafter enforce each and every provision.

W. Jurisdiction  
It is mutually understood and agreed that this Agreement shall be governed by the laws of the State of Florida, both as to interpretation and performance. Any action at law, suit in equity or judicial proceeding for the enforcement of this Agreement or any provision thereof shall be instituted only in the courts of the State of Florida.

X. Amendments to the Agreement  
The terms of this Agreement constitute the entire understanding between the parties hereto and no statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid. This Agreement may only be amended or modified by mutual consent of the parties hereto in writing signed by both parties.

This Agreement shall be in full force and effect only when it has been approved by the duly authorized County officials.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of \_\_\_\_\_.

PINELLAS COUNTY, FLORIDA  
STEPHEN M. SPRATT, County Administrator

By \_\_\_\_\_ Date \_\_\_\_\_  
Executive Director  
Pinellas County Arts Council

By \_\_\_\_\_ Date \_\_\_\_\_  
County Administrator

By \_\_\_\_\_ Date \_\_\_\_\_  
Artist

Attest:

APPROVED AS TO FORM:

By \_\_\_\_\_ Date \_\_\_\_\_  
County Attorney

**EXHIBIT A – ARTIST’S FINAL DESIGN PROPOSAL, SCHEDULE AND BUDGET**

**Contract No.  
Between the Pinellas County  
and Artist’s name**

SUBMITTED BY:

\_\_\_\_\_  
Artist Date

APPROVED:

\_\_\_\_\_  
Executive Director Date  
Pinellas County Arts Council

## EXHIBIT B - PAYMENT SCHEDULE

**Contract No. 00000**  
**Between the Pinellas County**  
**and Artist's name**

All contractual obligations regarding the Work shall begin upon execution of the Agreement and be completed no later than one year from the execution of the Agreement. The schedule and artist's fee payments for completion of the Work phases shall be as follows:

**Artist Fee: \$**

**Agreement TOTAL: not to exceed \$00,000.00**

General Terms Listed Below:

1. **Purchasing Materials and Commencing Fabrication:** Upon approval of the final design proposal and authorization to proceed with the Work, the Artist may submit the required invoice and documentation for 40% of the Artist's fee.
2. **Fabrication:** Upon completion of fabrication of the Work, the Artist shall submit the required invoice and documentation for 40% of the Artist's fee.
3. **Completion of Delivery and Installation of Work:** Upon completion and final acceptance of the Work by the County, the Artist shall submit the required invoice and documentation for 20% of the Artist's fee.

**EXHIBIT C**

**INVOICE**

Payee:  
Address:

Telephone No:  
Date Submitted:

Contract No: **00000**

**PAYMENT FOR: Purchase of Materials**

**Total Amount Payable** \$ \_\_\_\_\_

To insure payment, Artist must submit certificates of insurance as required herein.

\_\_\_\_\_  
Payee's Signature

\_\_\_\_\_  
Social Security Number

Approved by: \_\_\_\_\_  
Executive Director  
Pinellas County Arts Council

\_\_\_\_\_  
Date

**EXHIBIT D**

**INVOICE**

Payee:  
Address:

Telephone No:  
Date Submitted:

Contract No: **00000**

**PAYMENT FOR Completion of Fabrication:**

**Total Amount Payable**                      \$ \_\_\_\_\_

To insure payment Artist must submit:

1. Report to Pinellas County Arts Council accompanied by photographs or slides substantiating that the fabrication of the Work has been completed. Report should include plans for installation and description of activities requiring coordination with County.

\_\_\_\_\_  
Payee's Signature

\_\_\_\_\_  
Social Security Number

Approved by: \_\_\_\_\_  
Executive Director  
Pinellas County Arts Council

\_\_\_\_\_  
Date

**EXHIBIT E**

**INVOICE**

Payee:  
Address:

Telephone No:  
Date Submitted:

Contract No: **00000**

**PAYMENT for Project Completion/Acceptance by County**

**Total Amount Payable** \$ \_\_\_\_\_

To insure payment Artist must submit:

1. Technical and maintenance record using the form or format provided in Exhibit "F".
2. Updated biographical material.
3. Statement about the Work.

\_\_\_\_\_  
Payee's Signature

\_\_\_\_\_  
Social Security Number

Approved by: \_\_\_\_\_  
Executive Director  
Pinellas County Arts Council

\_\_\_\_\_  
Date

**EXHIBIT F - FORMAT FOR TECHNICAL AND MAINTENANCE RECORD**

**Contract No. 00000  
Between the Pinellas County  
and Artist's name**

**I. GENERAL INFORMATION:**

Artist  
Title of artwork  
Location  
General Description

**II. ARTWORK INFORMATION** (in-depth information for overall project and for each individual element)

Medium and Description of Materials (include materials thickness, welding rod alloy or joint material, casting alloy, wax body, glass or fiber type)

Special Methods Utilized in Execution of Artwork (welding or joint method, technique or construction method - attach fabrication drawings)

Material Finish (glaze, paint color and type, sanding grit, tool pattern, patina, surface sealer)

Installation Method(s) (foundation installation structure, bolt/pin size, grout)

Placement of artwork (cautions regarding sunlight, heat, etc.)

**III. VENDORS/PARTS/STORAGE** (include supplier's name, address and phone number, description for all components of project, attach copies of manufacturer specifications whenever possible)

**EXHIBIT F- FORMAT FOR TECHNICAL AND MAINTENANCE RECORD (CONT.)**

**Contract No. 00000  
Between the Pinellas County  
and Artist's name**

**IV. REGULAR MAINTENANCE SCHEDULE** (include cleaning agents and recommended cleaning procedure, yearly maintenance schedule for the entire piece and recommended procedure to check any electrical or mechanical parts that are integrated in this work)

**V. SPECIAL CONSIDERATIONS AND/OR ADDITIONAL PERTINENT INFORMATION**

**EXHIBIT G**

**PLAQUE TEXT**

**Artist's name (in bold)**

Title of Artwork

Year Completed

A Project of the Public Art and Design Program  
Pinellas County Arts Council