

Contract No. _____

**INDEPENDENT ARTIST AGREEMENT
FELTON LIBRARY PUBLIC ART PROJECT**

THIS CONTRACT is entered into this ____ day of _____, 20____, by and between the COUNTY OF SANTA CRUZ, hereinafter called COUNTY, and _____, hereinafter called ARTIST.

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 follow;

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: _____

_____ The work of art is intended to be installed at the _____ (hereafter called "Site"). A more detailed description of ARTIST's duties is included in Attachment A (Scope of Work) and incorporated herein by reference. 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 WORK shall be referred to as the "WORK."

2. **COMPENSATION.**

In consideration for ARTIST accomplishing said result, COUNTY agrees to pay ARTIST \$_____. Payment shall be made as set forth in Attachment B (Payment Schedule). It is understood that total compensation for all services, deliverables and travel in this Contract shall not exceed \$_____. 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: [REDACTED] until the WORK described herein is completed and installed as indicated in Attachment A.

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; and

(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. **EARLY TERMINATION.**

Either party hereto may terminate this contract at any time by giving 30 days written notice to the other party. 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. 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.

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

ARTIST shall exonerate, indemnify, defend, and hold harmless COUNTY (which for the purpose of this Agreement shall include, without limitation, its officers, agents, employees and volunteers) from and against:

A. Any and all claims, demands, losses, damages, defense costs, other legal costs, or liability of any kind or nature which COUNTY may sustain or incur or which may be imposed upon it at any time for injury to or death of persons, or damage to property as a result of, arising out of, or in any manner connected with the ARTIST'S performance under the terms of this Contract, excepting any liability arising out of the sole negligence of the 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).

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 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 the 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.

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 \$1,000,000 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.

(4) Professional Liability Insurance in the minimum amount of \$ _____ combined single limit, if, and only if, this Subparagraph is initialed by ARTIST and COUNTY here: _____/_____.

(5) Fine Arts Insurance or other insurance against loss in the minimum amount of \$ _____, to cover the fair market value of the WORK, if, and only if, this Subparagraph is initialed by ARTIST and COUNTY here: _____/_____. Artist shall obtain such insurance prior to commencing fabrication of the WORK.

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:

**Santa Cruz County
Parks, Open Space and Cultural Services
Attn: Kathy DeWild
979 17th Avenue,
Santa Cruz, CA 95062**

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:

**Santa Cruz County
Parks, Open Space and Cultural Services
Attn: Kathy DeWild
979 17th Avenue,
Santa Cruz, CA 95062**

(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, 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. In addition, the 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) ARTIST shall furnish COUNTY Affirmative Action Office information and reports in the prescribed reporting format (PER 4012) identifying the sex, race, physical or mental disability, and job classification of its employees and the names, dates and methods of advertisement and direct solicitation efforts made to subcontract with Minority-, Women-, Disabled-Owned Business Enterprises.

(3) 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.

(4) ARTIST shall cause the foregoing provisions of this Subparagraph B 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.

ARTIST and COUNTY have reviewed and considered the principal test and secondary factors below and agree that ARTIST is an independent contractor and not an employee of COUNTY. ARTIST is responsible for all insurance (workers compensation, unemployment, etc.) and all payroll related taxes. ARTIST is not entitled to any employee benefits. COUNTY agrees that ARTIST shall have the right to control the manner and means of accomplishing the result contracted for herein.

PRINCIPAL TEST: The CONTRACTOR rather than COUNTY has the right to control the manner and means of accomplishing the result contracted for.

SECONDARY FACTORS: (a) The extent of control which, by agreement, COUNTY may exercise over the details of the work is slight rather than substantial; (b) CONTRACTOR is engaged in a distinct occupation or business; (c) In the locality, the work to be done by CONTRACTOR is usually done by a specialist without supervision, rather than under the direction of an employer; (d) The skill required in the particular occupation is substantial rather than slight; (e) The CONTRACTOR rather than the COUNTY supplies the instrumentalities, tools and work place; (f) The length of time for which CONTRACTOR is engaged is of limited duration rather than indefinite; (g) The method of payment of CONTRACTOR is by the job rather than by the time; (h) The work is part of a special or permissive activity, program, or project, rather than part of the regular business of COUNTY; (i) CONTRACTOR and COUNTY believe they are creating an independent contractor relationship rather than an employer-employee relationship; and (j) The COUNTY conducts public business.

It is recognized that it is not necessary that all secondary factors support creation of an independent contractor relationship, but rather that overall there are significant secondary factors that indicate that ARTIST is an independent contractor.

16. **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.

17. **ACKNOWLEDGMENT.**

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

18. **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.

19. **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.

20. **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 the COUNTY, whichever occurs first. ARTIST hereby agrees to be subject to the examination and audit by the Santa Cruz County Auditor-Controller, 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.

21. **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.

By their signatures to the Contract, each of the undersigned certifies that it is his or her considered judgment that ARTIST engaged under this Contract is in fact an independent contractor.

IN WITNESS WHEREOF, the parties hereto have set their hands the day and year first above written.

(SIGNATURE PAGE FOLLOWS)

1. [REDACTED]

3. COUNTY OF SANTA CRUZ

By: _____
SIGNED

By: _____
SIGNED

PRINTED

PRINTED

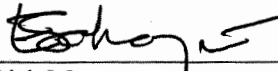
Address: [REDACTED]

Telephone: [REDACTED]

Email: [REDACTED]

2. APPROVED AS TO INSURANCE:

4. APPROVED AS TO FORM:



Risk Management



Office of the County Counsel

DISTRIBUTION: Parks, Auditor-Controller, Risk Management, Contractor

ATTACHMENT A

SCOPE OF WORK

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 [REDACTED].

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 Proposal is due on or before [REDACTED].

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. Detailed illustrations shall be provided to the COUNTY within four weeks of contract approval. The Detailed illustrations must show how the pedestal will be constructed (including any reinforcement), how the sculpture will be attached to the pedestal and how the pedestal will be installed at the Site. 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 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 deliver a CD or thumb drive with 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 B
PAYMENT SCHEDULE**

A. Payment 1 -- Contract Execution

Upon approval of the Agreement by the Board of Supervisors:

\$ [REDACTED]

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.

\$ [REDACTED]

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.

\$ [REDACTED]

CONTRACT TOTAL:

\$ [REDACTED]