

AGREEMENT FOR THE PROVISION
OF PUBLIC ART FOR THE GRAFFITI ABATEMENT
MURAL PROGRAM
CONTRACT NO. _____

This agreement for the provision of public art (hereinafter "Agreement"), entered into on the dates indicated below, by and between _____ (hereinafter "Artist"), and the City of Tallahassee, a Florida municipal corporation, (hereinafter "City"),

WITNESSETH THAT:

WHEREAS, the City's Graffiti Abatement Program is designed to address the issue of graffiti on both City owned and privately-owned property through enhanced enforcement and removal. In some cases, this may include partnering with owners and local artists to install murals.

WHEREAS, on June 19, 2019, the City Commission adopted Ordinance No. 19-O-20, which created in the City Code of General Ordinances Article VI, Chapter 9 (Sections 9-151-9-153), providing for more rapid removal of graffiti and to help prevent its proliferation.

WHEREAS, the provision of art in public places, whether in the form of freestanding pieces such as sculptures or memorials, murals, architectural embellishments, or other forms incorporated into areas accessible to the public, is an essential component of any great city and makes that city more interesting and vibrant for its residents and visitors; and

WHEREAS, the City desires to facilitate the provision of art in a public place; and

WHEREAS, the City of Tallahassee, under contract and in partnership with Independent Arts Consultant Amanda Karioth Thompson (hereinafter "Consultant"), has selected the Artist to be commissioned to design, fabricate, create and install in a public place an original and appropriate work of art ("Artwork"), all as described in this Agreement; and

WHEREAS, the Artist is qualified and able to perform the services, and is willing to accept the commission as described in this Agreement; and

NOW, THEREFORE, in consideration of the mutual undertakings and covenants contained herein, the Artist and the City hereby agree as follows:

Part I. Term and Termination

- 1.01 This Agreement shall become effective upon full execution of this Agreement as of the date last signed below.
- 1.02 The City may terminate this Agreement at any time by giving at least fifteen (15) days written notice to the Artist. If the Agreement is terminated by the City as provided herein, the City will pay the Artist for the work completed at that time. If the termination is due to the Artist violating any of the covenants, agreements, or stipulations of the Agreement, the City will not be obligated to make any further payments to the Artist.

Part II. Engagement of the Artist; Designation of the Artwork

- 2.01 Subject to the terms and conditions of this Agreement, the City engages the Artist, and the Artist agrees to be so engaged, to design, fabricate and create the Artwork (collectively, hereinafter “the Work”) as described in “**Exhibit A**”, attached hereto, and incorporated herein by reference. The Artist, at their sole expense, shall provide all labor, materials, and supplies necessary to complete the Work.
- 2.02 The Artist shall perform the Work in a satisfactory and competent manner, consistent with the best standards in the Artist’s field, and the Artwork shall be designed and fabricated in a manner that is structurally sound.
- 2.03 Throughout the process of the Work, the City and the Artist shall advise and cooperate with each other with respect to any alteration or revision of the Artwork, including but not limited to a variation in component materials, method of construction, size, and/or appearance, from that which is provided in Exhibit A, or any alteration or revision to the proposed installation site.

Part III. Installation of the Artwork

- 3.01 The Artwork shall be installed and incorporated at the approved and agreed upon site, as depicted in “**Exhibit B**”, attached hereto, and incorporated herein by reference. The Artist shall provide to the City a written description of the manner in which the Artwork shall be installed, including a statement of details addressing any preparatory work which must be performed to prepare the site prior to installation.
- 3.02 If the Installation Site is on City-owned property, the City shall prepare the Installation Site prior to installation and communicate with the Artist in the preparation of the site prior to installation.
- 3.03 The Artist and the City shall agree to the date and time for delivery of the Artwork to the Installation Site. The Artist shall be responsible for and bear the costs of transportation and installation of the Artwork, including but not limited to costs of labor and materials. The Artist shall not be responsible for or bear the costs of permitting.
- 3.04 The Artist shall agree to notify the City at least 3-days in advance of when the Artwork is complete to arrange for the City to apply a permanent (or non-sacrificial) anti-graffiti topcoat, provided by the City, to their finished Artwork.
- 3.05 The Artist shall complete the above-described services related to the installation of the Artwork prior to _____, unless extended in writing by the City in consultation with Consultant.

Part IV. Final Acceptance

- 4.01 Upon the completion of the Artwork and installation of the Artwork to the Artist’s and the City’s satisfaction, the City shall provide written notice to the Artist of their final acceptance of the Work, which notice shall state that the Work has been completed and the Artwork has been installed as agreed to by the parties and to the satisfaction of the City.
- 4.02 Upon final acceptance, the City and Consultant, shall retain all written documentation regarding the Work, and shall have, for promotional, educational, maintenance and historical purposes only, the right to a copy of all drawings, sketches, designs, and photographs of the Artwork produced prior to and following final acceptance of the Work.
- 4.03 Upon final acceptance, the Artist will be available for a public promotion of the Work.

- 4.04 Upon final acceptance, the Artist shall be available for maintenance for one year after the completion of the Work.

Part V. Compensation

- 5.01 The City shall pay to the Artist for performance of the Work and for the Artwork as provided in this Agreement the sum of \$_____ within thirty (30) days after execution of this Agreement. This amount shall constitute full and complete compensation for the Artist's Work and Artwork. The Artist shall be solely responsible for all expenses necessary for the performance of this Agreement, including any cost overruns.
- 5.02 Payments shall be made to the Artist according to the following schedule:
- a. Within thirty (30) days after execution of this Agreement, the City shall pay the Artist the sum of \$_____.
 - b. Upon installation of the Artwork and final acceptance by the City under Part IV of this Agreement, the City shall pay the Artist the sum of \$_____.

Part VI. Warranty; Indemnification; and Release

- 6.01 The Artist represents and warrants to the City that:
- a. they are the sole creator of the Artwork, and has the full power and authority to enter into this Agreement;
 - b. the Artwork does not infringe upon any copyright or violate any property right or other rights; and,
 - c. no lien or encumbrance exists against the Artwork and that following the transfer of title to the Artwork to the City, no individual or entity will have any right or interest in the Artwork that is prior or superior to the City's right and interest.

The Artist further represents and warrants that the Artwork, as fabricated, will be structurally sound and free of defects in material and workmanship, including any defects consisting of "inherent vice" or qualities which cause or accelerate deterioration of the Artwork, and shall be designed so as routinely not to require extensive or extraordinary maintenance or conservation measures. These warranties shall be in effect for a period of one (1) year after final acceptance of the Artwork under Part IV of this Agreement and transfer of ownership to the City.

- 6.02 Unless otherwise provided, the Artist acknowledges that until the final acceptance of the Work, any injury to property or persons caused by the Artwork or any damage to, theft of, vandalism to, or acts of God affecting the Artwork are the sole responsibility of the Artist, including but not limited to any loss occurring during the creation, storage, transportation, delivery or installation of the Artwork, regardless of where such loss occurs.
- 6.03 The Artist agrees to indemnify and hold harmless the City, its officials, officers, and employees, from and against any and all liabilities, damages, losses, and costs, including, but not limited to reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the Artist and persons employed or utilized by the Artist in the performance

of this agreement.

Part VII. Insurance

- 7.01 The City is self-insured by the State of Florida and is in full compliance with all provisions of Section 768.28, Florida Statutes.
- 7.02 The Artist is solely responsible for any injuries or damages incurred by the Artist, their employees, subcontractors, agents, or associates and agrees to indemnify and hold harmless the City, its agents or employees, for any injuries or damages arising out of, or due to, work performed in accordance with this Agreement. The Artist is not an employee of the City and is not covered under the City's worker's compensation coverage.

Part VIII. Copyright and Reproduction Rights

- 8.01 Notwithstanding the passage of title of the WORK to the CITY, ARTIST retains Copyright for the WORK as limited by this section. In view of the intention that the WORK in its final dimension shall be unique, ARTIST shall not make any additional, duplicate, two-dimensional reproductions of the final WORK, nor shall ARTIST grant permission to others to do so, except with the prior written permission of CITY. ARTIST grants to CITY and its assigns an irrevocable royalty free license in perpetuity to make two-dimensional reproductions of the WORK for non-commercial purposes in its original and derivative forms, in any and all formats, platforms and means, now existing or created in the future, including physical, electronic, internet and on social media.
- 8.02 All reproductions by CITY shall contain a credit to ARTIST and a copyright notice.
- 8.03 The City and Consultant retain the right to publish and distribute photographs, drawings, or other forms of reproductions of the Artwork as installed and formally accepted by the City, for reference, promotional, educational, and scholarly purposes. The City and Consultant agree not to make commercial use of the Artwork without the Artist's written consent. If such consent is obtained from the Artist, all reproductions of the Artwork by the City and Consultant shall contain a credit to the Artist that states the Artist's name, year of creation, and the name of the City.
- 8.04 The Artist agrees to include on or in any form of reproduction of the Artwork initiated or authorized by the Artist, a credit stating that the Artwork was commissioned by the City, in partnership with Consultant.
- 8.05 Artist agrees to indemnify and defend City from all claims, demands, liabilities and suits of any nature arising out of, or because of, a claim of infringement, including all costs and expenses, including reasonable attorneys' fees, all other legal expenses and costs of dispute resolution and litigation for infringement action brought against City.

Part IX. Maintenance, Repair, and Restoration

- 9.01 If, within the time-period specified in Section 6.01 of this Agreement, the Artwork exhibits any structural or cosmetic defect or flaw in violation of the Artist's warranty, the Artist shall repair the Artwork or replace any defective component of the Artwork at no cost to the City. All repairs or cures to defects shall be consistent with professional conservation standards.
- 9.02 Except as provided in Section 9.01, after the written notice of final acceptance has been issued, the City shall maintain and protect the Artwork as it reasonably determines, being responsible for the

care, custody, maintenance, and security of the Artwork. Any required maintenance of the Artwork shall be carried out by the City with the intention of protecting the value, integrity, and authenticity of the Artwork.

- 9.03 After the expiration of the warranty period, the City will make a reasonable effort to consult with and gain the approval of the Artist in all matters concerning repairs, restoration, or removal of the Artwork.

Part X. Relocation or Removal of the Artwork; Disposal of Artwork

- 10.01 Upon final acceptance of the Artwork, the City shall have the authority and sole discretion thereafter to remove, or remove and relocate, the Artwork from the original Installation Site. The City shall make a reasonable attempt to notify the Artist in writing if for any reason the City intends to remove the Artwork from the Installation Site and/or to relocate the Artwork at a new site. The Artist may advise or consult with the City regarding any such removal or relocation. If any damage occurs to the Artwork during or after the removal or relocation of the Artwork, it is the sole responsibility of the City to repair and restore the Artwork at the City's cost, if the City, in their sole discretion decides to repair and restore the Artwork. At any time and for any reason, the City, in their sole discretion, may dispose of the Artwork.

Part XI. Non-Destruction, Alteration, or Modification of the Artwork

- 11.01 To the extent required by applicable federal law or other applicable laws and regulations, the City shall not intentionally destroy or modify the Artwork in any way whatsoever during the Artist's lifetime without first making a reasonable effort to locate and inform the Artist; however, this section does not limit the City's rights in Section X nor shall it apply to modifications caused by the passage of time, sale of property, the inherent nature of the materials or the result of conservation, lighting or placement in connection with public presentation.
- 11.02 If any significant modification occurs to the Artwork after final acceptance by the City under Section 4.02 of this Agreement, whether such change is intentional, unintentional, or malicious, and if the Artist makes a written request to the City that the Artwork no longer be represented as the work of the Artist, then the Artwork shall no longer be so represented.

Part XII. General Provisions

- 12.01 Independent Contractor. The parties agree that the Artist is an independent contractor as that term is commonly used and is not an employee of the City. As such, the Artist is solely responsible for all taxes, and none shall be withheld from the sums paid to him or her. The Artist acknowledges that he/she is not insured in any manner by the City for any loss of any kind whatsoever. The Artist has no authority, express or implied, to bind or obligate the City in any way.
- 12.02 Notices. All notices, requests, and other communications that a party is required or elects to deliver pursuant to this Agreement shall be in writing and shall be delivered personally or by facsimile or electronic mail (with confirmation), or by a recognized overnight courier service or by United States mail, first-class, certified or registered, postage prepaid, return receipt requested, to the other party or parties at its or their address set forth below:

if to the Artist: _____ (enter name and address)

if to the City: Jeanie Green, Housing and Community Resilience, City of Tallahassee, 435 N.

Macomb St., 3rd Floor, Tallahassee, FL 32301

- 12.03 Governing Law. This Agreement shall be construed in accordance with the laws of the State of Florida and by all applicable municipal ordinances or codes of the City and of Leon County, with exclusive jurisdiction in a court of competent jurisdiction in Leon County, Florida.
- 12.04 Waiver. The delay or inaction of any party in the pursuit of such party's remedies as set forth in this Agreement, or available by law, shall not operate as a waiver of any of that party's rights or remedies.
- 12.05 Severability. If any provision of this Agreement is held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the provision shall be stricken, and all other provisions of this Agreement which can operate independently of such stricken provisions shall continue in full force and effect.
- 12.06 Non-discrimination. The Artist, and any person or firm engaged by the Artist to perform any of the Work pursuant to this Agreement, shall not discriminate against any employee or applicant for employment to be employed in the performance of this Agreement, with respect to her or his hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, because of her or his race, religion, color, gender, gender orientation, sexual identity, sex, handicap, disability, national origin, ancestry, disabled veteran status, or Vietnam-era veteran status. Breach of this section shall be regarded as a material breach of this Agreement.
- 12.07 Conflict of Interest. The Artist certifies and warrants that neither they, nor any of their agents, representatives or employees who will participate in the performance of any part of the Work pursuant to this Agreement shall be employees of or have any contractual relationship with the City if prohibited by Sections 112.311-13, Florida Statutes.
- 12.08 Force Majeure. In the event that any party is unable to perform any of its obligations under this Agreement, or to enjoy any of its benefits, because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter "Force Majeure Event"), the party who has been so affected shall immediately give notice to the other parties and shall take commercially reasonable actions to resume performance. Upon receipt of such notice, all obligations under this Agreement shall be immediately suspended except for payment obligations with respect to service already provided. If the period of nonperformance exceeds sixty (60) days from the receipt of such notice, any party whose ability to perform has not been so affected by the Force Majeure Event may, by giving written notice, terminate this Agreement.
- 12.09 Successors and Assigns. The parties bind themselves and their partners, successors, executors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other parties, in respect to all covenants of this Agreement; except as otherwise provided herein, Artist shall not assign, sublet, or transfer its interest in this Agreement without the written consent of the City. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the City.
- 12.10 Entire Agreement; Amendment. This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, written or verbal, between the Artist and the City with respect to the subject matter of this Agreement. No statements, promises or agreements whatsoever, in writing or verbal, in conflict with the terms of the Agreement have been made by the Artist or City that in any way modify, vary, alter, enlarge, or invalidate any of the provisions and obligations herein stated. This Agreement may be amended and modified only in writing signed by all parties.

12.11 Survival. The following provisions of this Agreement shall survive and be in full force and effect after the termination of this Agreement, for whatever cause: Parts VI, VIII, IX, X, XI and XII.

12.12 Public Records. The Parties acknowledge that the City is a governmental entity subject to the Florida Public Records Law, as governed by Chapter 119, Florida Statutes. In accordance with Section 119.0701, Florida Statutes, the following provisions are included in this contract:

IF THE ARTIST HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE ARTIST’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT CITY OF TALLAHASSEE, TREASURER-CLERK’S OFFICE, RECORDS DIVISION, CITY HALL, 300 SOUTH ADAMS STREET, TALLAHASSEE, FLORIDA 32301, (850) 891-8130, RECORDS@TALGOV.COM.

IN WITNESS WHEREOF, the Artist and the City hereby enter into this Agreement as of the dates indicated below:

ARTIST:

_____ Date: _____
[enter artist’s name]

**CITY OF TALLAHASSEE,
A FLORIDA MUNICIPAL CORPORATION**

_____ Date: _____
Dr. Kimball Thomas
Director, Housing and Community Resilience

ATTEST:

James O. Cooke, IV
City Treasurer-Clerk

APPROVED AS TO FORM:

Kristen Coons McRae
Senior Assistant City Attorney

EXHIBIT A

Rendering and Description of the Design, Fabrication, Creation and Installation of the Artwork

The artist describes the design of “ .”

[insert photo of rendering]

TEMPLAATE

EXHIBIT B

Identification and Description of the Installation Site

Retaining wall located within the right-of-way at the [enter location description].

[enter map of mural site]

TEMPLATE