

ART IN STATE BUILDINGS AGREEMENT

UF PROJECT NO. UF-### (insert project title)

THIS AGREEMENT is made and entered into by and between THE UNIVERSITY OF FLORIDA BOARD OF TRUSTEES (hereinafter "UNIVERSITY"), and insert artists's name (hereinafter "ARTIST").

WHEREAS, in accordance with the provisions of Section 255.043, Florida Statutes, UNIVERSITY has received authorization from the Florida Department of State, Division of Cultural Affairs, Florida Arts Council, to expend funds for a commissioned work of art for the University of Florida; and

WHEREAS, it is the desire of UNIVERSITY and ARTIST to establish the terms and conditions under which the work of art shall be created, fabricated and installed in the place designated herein.

NOW, THEREFORE, for and in consideration of the covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which hereby acknowledged, the parties agree as follows:

ARTICLE 1 SCOPE OF SERVICES

1.1. General.

- A. Pursuant to Section 255.043, Florida Statutes, the Florida Arts Council approved the acquisition of one (1) work of art entitled insert title/name of art (hereinafter the "WORK"), described as:
insert description of art, including materials to be used
- B. ARTIST shall perform or provide all services and furnish all supplies (including photographs of the WORK pursuant to Section 1.1, and the copyright pursuant to Section 3.8 E), materials, and equipment necessary for the design, execution, fabrication, transportation and installation of the WORK on UNIVERSITY'S campus OR (other for off-campus) insert description of location.
- C. ARTIST shall determine the artistic expression, scope, size, material, texture, color, location and method of fabrication of the WORK, subject to review and acceptance by UNIVERSITY, as set forth in this Agreement.
- D. ARTIST shall obtain the approval of his/her design from the Florida Arts Council.
- E. Upon execution of this Agreement, ARTIST shall commence the fabrication, site preparation and installation of the WORK in accordance with the construction schedule contained in ARTIST's Plan (hereinafter defined in Section 1.2).
- F. ARTIST is responsible for obtaining all necessary permits, if any are required, for placement of the WORK on UNIVERSITY property. UNIVERSITY will assist ARTIST in determining what permits are required. UNIVERSITY represents that this Agreement is in compliance with the requirements of all UNIVERSITY agencies, committees, or similar UNIVERSITY organizations governing placement of works of art, landscaping, building adornment, or beautification or any other UNIVERSITY authority that has jurisdiction over this project.
- G. ARTIST is responsible for the preparation and submission of finalized drawings or other graphic materials needed for obtaining any approvals or permits for the commencement of fabrication and installation of the WORK.

- H. Upon ARTIST's procurement of all necessary permits and/or approvals, ARTIST shall commence fabrication, site preparation, and installation of WORK in accordance with the construction schedule contained in ARTIST's Plan required by Section 1.2.
- I. UNIVERSITY shall have the right to review the progress of the WORK at reasonable times and shall provide at least three (3) days advance notice to ARTIST prior to any review.
- J. ARTIST shall submit progress reports to UNIVERSITY, at reasonable intervals, if requested in writing by UNIVERSITY.
- K. ARTIST shall present to UNIVERSITY in advance, for further review and approval, a written proposal for any significant changes in the scope, design, color, size, material, or texture of the WORK not permitted by or not in substantial conformity with ARTIST's Construction Method and/or Plan. A significant change includes, without limitation, any change in the scope, design, color, size, material, texture or location of the site of the WORK which affects installation, scheduling, site preparation, or maintenance for the WORK or the concept of the WORK, as represented in ARTIST's Construction Method and/or Plan.
- L. ARTIST shall provide UNIVERSITY and the Florida Arts Council the following photographic documentation of the completed and installed WORK:
 - i. four (4) 10" glossy black and white, prints of each panel of the WORK and negatives; and
 - ii. copies, via electronic mail or disk, of digital photographs of the completed WORK. Provide at least four shots, including shots of the installed WORK in its entirety and in context with the surrounding environ (three-dimensional works) and detailed shots (two-dimensional works). Digital images shall be publication quality and high resolution (300+ dpi).
- M. ARTIST shall provide an affidavit stating that the materials used to frame, display, and/or construct the WORK are durable, structurally sound, and appropriate to the environmental conditions in which the WORK will be displayed.
- N. ARTIST shall provide written instructions for the care, maintenance, and preservation requirements for the WORK, as well as handling instructions in the event the WORK should have to be moved.
- O. After the WORK is complete and installed, and ARTIST has complied with all the provisions of this Agreement, UNIVERSITY shall provide ARTIST with final acceptance of the WORK.

1.2. Plan.

- A. Simultaneously with the execution of this Agreement, ARTIST shall submit to UNIVERSITY, in a form generally accepted in ARTIST's field, a Plan containing the following data:
 - i. a detailed budget for the design, fabrication and installation of the WORK, including site preparation and photography pursuant to subsection 1.1 L;
 - ii. a detailed description of ARTIST's construction method showing materials and processes;
 - iii. a detailed construction schedule depicting activities contemplated to occur, showing the sequence in which ARTIST proposes such activities to occur, and the projected date of commencement, duration and completion date of each activity;
 - iv. the name and address of all subcontractors who will be performing services or materials for ARTIST on the WORK, including a description of the services or materials to be provided by each subcontractor; and
 - v. a detailed list of all proposed materials to be utilized by ARTIST, including but not limited to structural and exposed materials for the WORK.
- B. On or before the expiration of thirty (30) days after the receipt of ARTIST's Plan, UNIVERSITY shall notify ARTIST, in writing, of, its approval or disapproval, of the Plan, said approval not to be unreasonably withheld.

- C. If UNIVERSITY determines that the Plan is not feasible due to unforeseen practical considerations, it shall provide ARTIST, in writing, a statement of its reasons for such determination. ARTIST shall modify the Plan until it is approved by UNIVERSITY, such approval not to be unreasonably withheld.

ARTICLE 2 COMPENSATION

2.1. Firm Fixed Price. UNIVERSITY shall pay ARTIST a firm fixed price of **{spell out dollar amount} dollars (\$xx,xxx.xx)**, which shall constitute full compensation for all services performed and materials furnished by ARTIST under this Agreement, including ARTIST's fee.

2.2. Method of Payment. Provided ARTIST has fulfilled all of its obligations under the Agreement at the time for payment (including, but not limited to, submittal of "The Plan"), the price shall be paid in the following installments, each installment to represent full and final payment for all services and materials provided prior to payment thereof.

- A. Recognizing that ARTIST has invested time and expense in preliminary design coordination with UNIVERSITY and the State of Florida, UNIVERSITY shall pay ARTIST **{spell out dollar amount} dollars (\$xx,xxx.xx)** within thirty (30) days of receipt of an invoice from ARTIST.
- B. UNIVERSITY shall pay ARTIST **{spell out dollar amount} dollars (\$xx,xxx.xx)** based upon ARTIST having completed at least 50% (fifty percent) of the WORK after ARTIST submits:
- i. an invoice and an affidavit signed by ARTIST certifying that the WORK is a minimum of 50% (fifty percent) complete, and
 - ii. a photograph documenting the extent of completion.

Payment will be made within thirty (30) days of UNIVERSITY's receipt of such items.

- C. UNIVERSITY shall pay ARTIST **{spell out dollar amount} dollars (\$xx,xxx.xx)** upon ARTIST completing and installing the WORK, and presenting to UNIVERSITY:
- i. An invoice and a written certification of completion and installation of the WORK;
 - ii. a written bill of sale conveying title and an irrevocable copyright license to UNIVERSITY pursuant to Section 3.8;
 - iii. a written affidavit of materials pursuant to subsection 1.1M;
 - iv. written instructions for care, maintenance, preservation and handling pursuant to subsection 1.1N;
 - v. a sworn statement of no liens, claims, or other encumbrances pursuant to Section 3.6;
 - vi. written acceptance of the WORK by UNIVERSITY's User Agency Representative or designee; and
 - vii. photographs of the installed WORK pursuant to subsection 1.1L.

Payment will be made within thirty (30) days of UNIVERSITY's receipt of all the items listed in subsection 2.2 C above.

2.3. Vendor Ombudsman. A Vendor Ombudsman has been established within the UNIVERSITY'S Office of Finance and Administration. The duties of this office include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s) from the UNIVERSITY. The Vendor Ombudsman may be contacted at 352-392-1241.

ARTICLE 3 GENERAL CONDITIONS

3.1. Time of Performance. All services by ARTIST and ARTIST's subcontractors shall be performed and completed in accordance with the construction schedule submitted by ARTIST, **i.e., will be completed no later than {insert completion date}**. UNIVERSITY shall always grant a reasonable extension of time to ARTIST in the

event there is a delay on the part of UNIVERSITY in performing its obligations under this Agreement or if conditions beyond ARTIST's control, such as, Acts of God, render timely performance of ARTIST's services impossible or unreasonably burdensome. Failure to fulfill obligations due to conditions beyond either party's reasonable control will not be considered a breach of contract provided that such obligations shall be suspended only for the duration of such conditions.

3.2. Ownership of Documents. Upon completion of the WORK and final acceptance by UNIVERSITY, all studies, drawings, designs, maquettes, and models prepared and submitted under this Agreement by ARTIST shall be returned to ARTIST and shall belong to ARTIST. UNIVERSITY may select and ARTIST shall convey to UNIVERSITY, at no additional cost to University, one (1) of the original drawings submitted as part of the proposal. UNIVERSITY represents that such drawing will be used by it solely for exhibition.

3.3. Code Compliance. UNIVERSITY will identify to ARTIST the codes or applicable statutes or regulations, if any, governing the installation of the WORK. ARTIST shall insure that the WORK and its installation comply with such codes or applicable statutes or regulations within reasonably defined parameters. Any cost overrun due to UNIVERSITY's change in ARTIST's approved Plan or construction method constituting an expenditure of more than two percent (2%) of total budget of this Agreement will be borne by UNIVERSITY.

3.4. Assignment, Transfer or Subcontracting. A material element of this Agreement is the personal skill, judgment and creativity of ARTIST. Therefore, ARTIST shall not assign, transfer or subcontract the creative and artistic portions of the WORK to another party without the prior written approval of UNIVERSITY.

3.5. Equal Employment Opportunity and Non-Discrimination. In connection with the execution of this Agreement, ARTIST or his subcontractors shall not discriminate against employees or applicants for employment because of race, religion, color, age, sex, ancestry, marital status, physical handicap, place of birth or national origin. ARTIST shall take affirmative actions to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, age, ancestry, marital status, physical handicap, place of birth or national origin. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; and selection for training, including apprenticeship.

3.6. Warranty of Title. ARTIST warrants that the WORK covered by this Agreement shall be the result of the artistic efforts of ARTIST and that, unless otherwise stipulated herein, the WORK shall be unique, an edition of one, and not infringe on any copyright. ARTIST shall deliver the WORK free and clear of any liens, claims or other encumbrances of any type arising from the acts of ARTIST and shall furnish a signed and sworn statement to this effect.

3.7. Warranty of Quality. ARTIST warrants that the WORK shall be free of defects in material and workmanship, including any defects consisting of "inherent vice" or qualities which cause or accelerate deterioration of the WORK and that ARTIST shall correct, at ARTIST's expense, any such defects which appear during the two (2) year period after final acceptance of the WORK by UNIVERSITY.

3.8. Title and Copyright.

- A. Title to the WORK shall vest in UNIVERSITY at the time of the final acceptance by UNIVERSITY.
- B. ARTIST retains all rights of Copyright except 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 UNIVERSITY. ARTIST grants to UNIVERSITY and its assigns an irrevocable license to make two-dimensional reproductions of the WORK for non-commercial purposes, including but not limited to public information, brochures, media publicity, and catalogues or similar publications.
- C. All reproductions by UNIVERSITY shall contain a credit to ARTIST and a copyright notice in substantially the following form: "[c{insert artists's name}, {insert year of completion}]."

- D. In any public showing of reproductions of the WORK in any form, ARTIST shall use his/her best efforts to insure that credit is given in substantially the following form: "An original work commissioned by the State of Florida Arts Council for the University of Florida, Gainesville, Florida."
- E. ARTIST shall, at his/her expense, register a Copyright in the WORK with the United States Register of Copyrights.

3.9. Acceptance. Provided ARTIST has satisfied its obligations under this Agreement with respect to the WORK, UNIVERSITY shall accept WORK within fifteen (15) business days of the completion of installation by ARTIST.

3.10. Risk of Loss. The artist shall bear the full risk of loss of or damage to the WORK until installation has been completed and UNIVERSITY has finally accepted the WORK. The ARTIST shall take such measures as are necessary to protect the WORK from loss or damage.

3.11. Insurance. ARTIST shall arrange for, and/or ensure that ARTIST and all subcontractors have general liability insurance and Worker's Compensation Insurance to protect ARTIST, UNIVERSITY and any subcontractor performing work covered by this Agreement, from claims for damage for personal injury, including accidental death, as well as from claims of property damage, which may arise from operations under this Agreement whether such operations be by ARTIST or by any subcontractor or anyone directly employed by either of them and the amounts of such insurance shall be as follows:

- A. Unless otherwise exempt, Worker's Compensation Insurance for ARTIST, his/her subcontractors, and his/her employees as required by Chapter 440, Florida Statutes.
- B. Commercial General Liability Insurance, in an amount not less than \$500,000 per occurrence for bodily injury, death and property damage. The State of Florida, the Florida Board of Governors, the University of Florida Board of Trustees must be shown as additional insured with respect to this coverage.
- C. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the WORK, in amounts not less than \$100,000 per person and \$300,000 per occurrence for bodily injury, and \$50,000 per occurrence for property damage.
- D. It shall be understood by UNIVERSITY that the WORK has been designed and built by ARTIST as a work of art. Any use by UNIVERSITY of the WORK for purposes other than for adornment of the site as a work of art does hereby void any warranties by ARTIST.

The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operations of ARTIST. All insurance policies required above shall be issued by companies authorized to do business in the State of Florida, with the following qualifications as to management and financial strength: The company must be rated not less than "A" as to management, and not less than Class "X" as to strength, by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent.

ARTIST shall furnish a certificate of insurance to UNIVERSITY prior to the commencement of operations on UNIVERSITY property, which certificate shall clearly indicate that the ARTIST and/or his subcontractors have obtained insurance in the type, amount and classification as required for strict compliance with this section and that no material changes or cancellation of insurance shall be effective without thirty (30) days prior written notice to UNIVERSITY. Despite any changes to or cancellation of insurance, ARTIST remains responsible for maintaining the required insurance coverage for the duration of the Agreement. Compliance with the foregoing requirements shall not relieve ARTIST of his/her liability and obligations under this Agreement. The certificate of insurance shall continue to remain in force for at least thirty (30) days after ARTIST's completion of the WORK and its installation.

3.12. Independent Contractor. ARTIST is an independent contractor and nothing in this Agreement shall be construed as constituting ARTIST as an employee, agent or representative of UNIVERSITY, the State of Florida or the Board of Governors. ARTIST shall not be supervised by an employee or agent of UNIVERSITY.

3.13. Indemnification. ARTIST agrees to indemnify and hold free and harmless, assume legal liability for and defend (with counsel reasonably acceptable to such parties), the State of Florida, the Board of Governors and the University of Florida Board of Trustees and their officers, employees, agents, and servants, whether they be current or former, from and against any and all actions, claims, liabilities, assertions of liability, losses, costs and expenses, in law or in equity, including but not limited to attorneys' fees at trial and appellate levels, reasonable investigative and discovery costs, court costs, or claims for bodily injury or death of persons and for loss of or damage to property, of every kind and nature whatsoever, which in any manner directly or indirectly may arise or be alleged to have arisen, or resulted or alleged to have resulted from the negligent acts or omissions or other wrongful conduct of ARTIST and/or his/her subcontractors, employees, and agents in connection with ARTIST's performance pursuant to this Agreement. ARTIST's obligation under this section shall not include indemnification of the State of Florida, the Board of Governors, the University Board of Trustees and their officers, employees, servants and agents, from and against any actions, claims, liabilities, assertions of liability losses, costs and expenses which arise from negligent acts or omissions or other wrongful conduct of the State of Florida, the Board of Governors, or the University of Florida Board of Trustees and their officers, employees and agents. The parties each agree to give the other party prompt notice of any claim coming to its knowledge that in any way directly or indirectly affects the other party.

3.14. Termination. In the event of the death or disability of ARTIST to the extent he/she is unable to proceed with the WORK in accordance with Construction Schedule in his/her Plan, UNIVERSITY shall have the option of terminating this Agreement upon ten (10) days, advance written notice to ARTIST or ARTIST's personal representative. If it is determined by ARTIST and UNIVERSITY that the WORK may be completed by a party chosen by ARTIST and following ARTIST's instructions, and such party agrees to accept ARTIST's obligations hereunder, UNIVERSITY shall not terminate the Agreement under this section. Notwithstanding the foregoing, ARTIST shall continue to be obligated hereunder.

3.15. Publicity and News Releases. ARTIST shall not, during the performance of this Agreement, disseminate publicity or news releases regarding the WORK without the prior written approval of UNIVERSITY.

3.16. Notices and Documents. All notices required under the term of this Agreement shall be sent to the following:

To ARTIST:	To UNIVERSITY:	with copies to:
{insert artists's name}	Facilities Planning & Construction	Office of the General Counsel
{insert artists's address}	University of Florida	University of Florida
	232 Stadium / P. O. Box 115050	123 Tigert Hall
	Gainesville, FL 32611-5050	Gainesville, FL 32611
	Attn: {insert PM's name}	

3.17. Restoration. After final acceptance of the WORK, UNIVERSITY agrees as follows:

- A. UNIVERSITY shall keep the WORK in good condition and repair and permanently display the WORK to the public in a manner suitable to a work of fine art, including a permanent and proper nameplate, which shall include "the name of the art work, the name of the artist, and the date of completion".
- B. UNIVERSITY shall not destroy or alter the WORK, and, if during the lifetime of ARTIST the WORK is damaged, UNIVERSITY shall notify ARTIST in writing of the occurrence and the nature of the damage and shall afford ARTIST a reasonable opportunity to conduct and supervise the restoration of the WORK at a price to be mutually agreed upon. If ARTIST does not take steps to commence the restoration within thirty (30) days after the receipt of notice from UNIVERSITY, then UNIVERSITY shall be free to make whatever arrangements it deems appropriate for the proper restoration of the WORK.
- C. In the event that UNIVERSITY fails to maintain the WORK in good condition, ARTIST shall have the right to disown it as his/her creation and request that the nameplate be removed from the WORK until its condition is satisfactorily repaired. This shall be ARTIST's sole remedy in the event UNIVERSITY fails to display and maintain the WORK in accordance with this Section 3.77.

3.18. ARTIST's Address. ARTIST shall notify UNIVERSITY of changes in his/her address. The failure to do so, if such failure prevents UNIVERSITY from locating ARTIST, shall be deemed a waiver by ARTIST of the right subsequently to enforce those provisions of Section 3.17 that require the approval of ARTIST. Notwithstanding this section, UNIVERSITY shall make every reasonable effort to locate ARTIST when matters arise relating to ARTIST's rights under this Agreement.

3.19. Barricades. ARTIST and/or his/her subcontractors shall provide all barricades necessary to protect the WORK and adjacent UNIVERSITY property during the fabrication and installation of the WORK.

3.20. Engineer Certification. Not Required.

3.21. Surviving Covenants. The covenants and obligations set forth in this Agreement shall be binding upon the parties, their heirs, legatees, executors, administrators, assigns, transferees, and all their successors in interest and UNIVERSITY's covenants do attach and run with the WORK.

3.22. Default. The failure of either party to comply with any provisions of this Agreement shall place that party in default. Prior to exercising any rights on account of a default, the non-defaulting party shall notify the defaulting party in writing, stating specifically the provisions which is alleged to give rise to the default. The defaulting party shall be entitled to thirty (30) days to cure the default. In the event the default is not timely cured, this Agreement may be terminated immediately by written notice and the non-defaulting party may exercise all other rights or remedies it may have at law or in equity on account of the default. The failure of either party to exercise this right shall not be construed as a waiver to such a right.

3.23. Unilateral Cancellation. This Agreement may be unilaterally canceled by UNIVERSITY for refusal by ARTIST to allow public access to all documents, papers, letters, or other materials subject to the provisions of Chapter 119, Florida Statutes, and made or received by ARTIST in conjunction with this Agreement.

3.24. Lobby. ARTIST is prohibited from using funds provided under this Agreement for the purpose of lobbying the Legislature or any official, officer, commission, board, authority, council, committee or department of the executive branch or the judicial branch of state government.

3.25. Government Regulations. To the extent applicable, ARTIST agrees that he/she will comply with:

- A. Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d et seq., which prohibits discrimination on the basis of race, color, or national origin in programs and activities receiving or benefiting from federal financial assistance.
- B. Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which prohibits discrimination on the basis of handicap in programs and activities receiving or benefiting from federal financial assistance.
- C. Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681 et seq., which prohibits discrimination on the basis of sex in education programs and activities receiving or benefiting from federal financial assistance.
- D. The Age Discrimination Act of 1975, as amended, 42 U.S.C. 6173 et seq., which prohibits discrimination on the basis of age in programs or activities receiving or benefiting from federal financial assistance.
- E. The Omnibus Budget Reconciliation Act of 1981, P.L. 97-35 which prohibits discrimination on the basis of sex and religion in programs and activities receiving or benefiting from federal financial assistance.
- F. Executive Order 11246 of September 24, 1965 as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor, which prohibits discrimination in government employment on the-basis of race, creed, color or national origin.

- G. The Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 219 et seq. covering rehabilitation measures for Vietnam Veterans.
- H. Section 413.036 of the Florida Statutes, which provides for the procurement of services from a qualified nonprofit agency for the blind or for the severely handicapped.
- I. Chapter 760, Florida Statutes, which prohibits discrimination on the basis of race, color religion, sex, national origin, age, handicap, or marital status.
- J. All regulations, guidelines and standards as are now or may be lawfully adopted under the above statutes.

3.26. Venue. This Agreement, and any disputes hereunder, be construed in accordance with the laws of the State of Florida and enforced in the courts of the State of Florida. ARTIST and UNIVERSITY hereby agree that the venue shall be in Alachua County, Florida.

3.27. Entirety of Agreement. This writing embodies the entire Agreement and understanding between the parties hereto, and there are no other agreements and understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby. No alteration, change, or modification of the terms of the Agreement shall be valid unless made in writing and signed by both parties hereto.

3.28 Severability. If any provision of this Agreement is contrary to, prohibited by, or deemed invalid by applicable laws or regulation of any jurisdiction in which it is sought to be enforced, then such provision shall be deemed inapplicable and omitted, but such omission shall not invalidate the remaining provisions of this Agreement.

3.29. Captions. The captions are inserted only as a matter of convenience and for reference, and in no way define, limit, nor describe the scope of this Agreement, nor the intent or content of any provision contained herein.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have affixed their signatures, effective as of the last execution date below.

“ARTIST”: {insert artists's name}

NAME:

DATE:

“UNIVERSITY”

THE UNIVERSITY OF FLORIDA BOARD OF TRUSTEES

BY:

Ed Poppell, Vice President for Business Affairs
University of Florida

DATE:

APPROVED AS TO FORM AND LEGALITY:

APPROVED:

BY:

M. Kristina Raattama
Associate General Counsel,
University of Florida

DATE:

BY:

Carol J. Walker, Assistant Vice President
Facilities Planning & Construction
University of Florida

DATE: