

## VISUAL ARTIST CONTRACT

THE PARTIES TO THIS CONTRACT, Fairfax County ("Fairfax County" or "the County") AND [REDACTED] ("Artist") MUTUALLY AGREE THAT:

1. SCOPE OF SERVICES: Fairfax County engages Artist to provide the following goods and/or services:

The Artist will create, fabricate and install an original sculpture in an exterior courtyard for the Lorton Police Station & Animal Shelter located in Lorton, VA 22079 (the Premises). The Sculpture design will be conceived by the Artist, and the Artist will create and install the Sculpture, subject to Fairfax County's approval and issuance of a Purchase Order.

2. COMPENSATION: The Artist will receive a total fee of \$ [REDACTED] for the sculpture and associated costs including design, fabrication, and maintenance.

3. INVOICES / PAYMENTS: Payments to the Artist will be made through a Purchase Order issued under this Contract and in accordance with this Contract's terms. As the Artist is not a bonafide County employee, the parties agree that no deductions for withholding taxes, workman's compensation, insurance, or other fringe benefits will be made and will be the sole responsibility of the Artist.

The Artist will render invoices as per specific instructions embodied in the Purchase Order. Purchase Order number (PO number) shall be shown on all invoices, packages and/or correspondence. The Artist agrees to address inquiries concerning the payment of invoices to: Department of Public Works and Environmental Services,, 703-324-[REDACTED].

4. PRICES / PROMPT PAYMENT: Any purchase order issued under this Contract is acceptable only at prices stated in the order. In the absence of other contractual terms, payment shall be due 30 NET days after receipt of the properly completed invoice, or acceptance of materials or services, whichever is later. If a discount for prompt payment is allowed, the discount period will begin on the date of receipt of a properly completed invoice, or acceptance of materials or services, whichever is later. No tax will be included, except as provided in this order.

5. ARTIST'S REPRESENTATIONS AND WARRANTIES:

5.1 Warranties of Title. The Artist represents and warrants that:

- 5.1.1 The Work and its design are and will remain solely the result of the Artist's creative effort and original work.
- 5.1.2 Except as otherwise disclosed in writing to the County, the Work and its design are and will remain unique and original, and do not and will not infringe on any copyright, trademark, or patent, or the personhood rights of any person.
- 5.1.3 The Work and its design have not been and will not be sold, assigned, transferred, licensed, granted, encumbered, or utilized in any way that may affect or impair the rights and conveyances granted in this Contract.
- 5.1.4 The Artist has the full power and all rights necessary to enter into and perform this Contract and to make the conveyances and grants of rights contained in this Contract.
- 5.1.5 All services performed under this Contract will be performed in accordance with all applicable laws, regulations, ordinances, etc. and with all necessary care, skill, and diligence.
- 5.1.6 These representations and warranties will survive the termination or other extinction of this Contract.

5.2 Warranties of Quality and Condition. The Artist represents and warrants that:

- 5.2.1 All work will be performed in accordance with professional standards and the Work will be free from defective or inferior materials and workmanship (including any defects consisting of "inherent vice," or qualities that cause or accelerate deterioration of the Work) for one year after the date of completion, as stated on the Certificate of Completion issued by the County to the Artist upon the County's final acceptance of the installed Work under Paragraph 1.
- 5.2.2 The Work and the materials used to install the Work are not currently known to be harmful to public health and safety.
- 5.2.3 Reasonable maintenance of the Work will not require procedures beyond those described in the Maintenance Manual provided by the Artist under Paragraph 11.

5.3 Warranties of Acceptable Standards of Work Installation, Maintenance, and Display. The Artist represents and warrants that:

- 5.3.1 The Work will only experience minimal, easily repairable damage from, and will not fall below an acceptable standard of public display, as determined by the County in its sole discretion, because of reasonably foreseeable exposure of the Work to weather, environmental conditions, typical accumulation of dirt, dust, and other contaminants, or general wear and tear resulting from the Work's installation and location.
- 5.3.2 The Work will not experience irreparable deterioration that exceeds an acceptable standard of public display, as determined by the County in its sole discretion, including but not limited to deterioration caused by mold, rust, fracturing, staining, chipping, tearing, abrading, or peeling of the Work.

6. MANUFACTURER'S WARRANTIES. To the extent the Work incorporates products covered by a manufacturer's warranty, Artist will provide copies of such warranties to the County before issuance of the Certificate of Completion.

7. ARTISTS' WAIVER OF RIGHTS UNDER THE VISUAL ARTISTS RIGHTS ACT (VARA): To the extent the Work and its design are protected by the Visual Artists Rights Act of 1990 (VARA), 17 U.S.C. § 106A, Artist hereby waives any and all rights under the VARA in and to the Work and its design, except that this waiver does not extend to the rights of attribution conferred by 17.U.S.C. §106A(a)(1) to the limited extent the County agrees, in writing, to provide attribution to the Artist for the Work.

8. TAXES: Fairfax County is exempt from and will not pay Federal Excise Tax, Transportation Tax, or the Commonwealth of Virginia Sales and Use Tax. Federal Excise Tax Exemption Number is 54-74-012K. The Commonwealth of Virginia Sales and Use Tax Certificate may be obtained by calling 703-324-3206.

9. CONTRACTUAL DISPUTES: Contractual disputes must be resolved as set forth in Article 5 of the Fairfax County Purchasing Resolution.

10. LIABILITY AND INSURANCE PROVISIONS:

10.1 Liability for Damage to Personal Property and Person: All personal property of the Artist (including Artist's employees, business invitees, Licensors, customers, clients, etc.), agents, family members, guests or trespassers, in and on said premises, is and remains at the sole risk of the Artist, and County is not be liable to them for any damage to, or loss of such personal property arising from any act of any other persons nor from the leaking of the roof, or from the bursting, leaking or overflowing of water, sewer or steam pipes, or from heating or plumbing fixtures, or from electrical wires or fixtures, or from air-conditioning failure. The County is not liable for any personal injury to the Artist (including Artist's employees, business invitees, Licensors, customers, clients), arising from the use, occupancy and condition of the premises.

10.2 Hazardous Condition: Artist will not do anything or permit anything to be done or any hazardous condition to exist ("Increased Risk") which shall invalidate or cause the cancellation of the insurance policies carried by Artist. If Artist does or permits any Increased Risk which causes an increase in the cost of insurance policies then Artist shall promptly pay (or, if County (being under no obligation to do so) initially pays such amounts, reimburse County) for additional premiums attributable to any act, omission or operation of Artist causing the increase in the premiums. Payment of additional premiums will not excuse Artist from terminating or removing the Increased Risk unless County agrees in writing. Absent agreement, Artist shall promptly terminate or remove the Increased Risk.

10.3 Damages to Premises: If the premises, in whole or part, or any equipment located at the facility during the term of this Agreement is damaged by the act, default or negligence of Artist, or of Artist's agents, employees, patrons, guests or any person admitted to the facility by Artist, Artist will pay to the County upon demand, such sums as will be necessary to restore the facility or equipment contained in or on the facility to their present condition.

10.4 Insurance Requirements: The Artist shall, During the License Term provide the following:

- 10.4.1 Workers' Compensation and Employer's Liability insurance with statutory limits and not less than \$1,000,000 Employer's Liability for to protect the Artist from any liability or damages for any injuries (including death and disability) to any and all of its employees, including any and all liability or damage which may arise by virtue of any statute or law in force within the Commonwealth of Virginia. This provision shall be waived if the Artist is not required to procure workers' compensation under Virginia law and they execute a document, in writing and under penalty of perjury, that they are exempt from their States statutory requirements to provide Worker' Compensation coverage in addition to waiving their rights under the Labor Code.
- 10.4.2 The Artist agrees to maintain Commercial General Liability insurance in the amount not less than \$1,000,000 per occurrence/ \$2,000,000 aggregate, to protect the Artist, Artist's sub-Licensors, and the interest of the County, its officers, and employees against any and all injuries to third parties, including bodily injury and personal injury, wherever located, resulting from any action or operation under the Contract or in connection with the contracted work. If the Artist provides any services to minor that would include supervisor or childcare outside the presence of their legal parent or guardian, the General Liability policy shall include an endorsement for Sexual/Physical Abuse and Molestation Coverage with limits at least equal to the minimum requirements of the said policy
- 10.4.3 The Artist agrees to maintain owned, non-owned, and hired Automobile Liability insurance, in the amount not less than \$1,000,000 per occurrence/aggregate, including property damage, covering all owned, non-owned, borrowed, leased, or rented vehicles operated by the Artist. In addition, all mobile equipment used by the Artist in connection with the contracted work, will

be insured under either a standard Automobile Liability policy, or a Commercial General Liability policy. The Garage Keeper's Liability coverage shall also be maintained where appropriate.

- 10.4.4 "Special Peril" Property Insurance on buildings and personal property in an amount not less than the full insurable replacement value of such buildings and personal property, with a maximum deductible is \$10,000. Property insurance will include Business Interruption coverage for not less than the equivalent of twelve (12) months of rental.
- 10.4.5 Liability insurance may be arranged by policies for the full limits required, or by a combination of underlying Liability policies for lesser limits with the remaining limits provided by an Excess or Umbrella Liability policy.
- 10.4.6 Any deductibles and/or self-insured retentions greater than \$50,000 must be disclosed to and approved by the County's Risk manager prior to the commencement of services. Use of large deductibles and/or self-insured retentions will require proof of financial ability as determined by the County
- 10.4.7 The Artist agrees to provide insurance issued by companies admitted within the Commonwealth of Virginia, with the Best's Key Rating of at least A:VII.
- 10.4.8 Compliance by the Artist and all sub-Artists with the foregoing requirements as to carrying insurance shall not relieve the Artist and all sub-Artists of their liability provisions of the contract.
- 10.4.9 If the Artist fails to maintain the required insurance the County may, but does not have to, maintain the insurance at Artist's expense plus an additional 15% administrative charge payable to the County. The policy shall expressly provide that it is not subject to invalidation of the County's interest by reason of any act or omission on the part of Artist.

#### 10.5 PROOF OF INSURANCE COVERAGE:

- 10.5.1 The Artist will provide an original, signed Certificate of Insurance citing the contract number and such endorsements as prescribed herein.
- 10.5.2 The Artist will secure and maintain all insurance certificates of its sub-Artists, which shall be made available to the County on demand.
- 10.5.3 The Artist will provide on demand certified copies of all insurance policies related to the contract within ten business days of demand by the County. These certified copies will be sent to the County from the Artist's insurance agent or representative.
- 10.5.4 No change, cancellation, or non-renewal shall be made in any insurance coverage without a 60-day written notice to the County. The Artist shall furnish a new certificate prior to any change or cancellation date. The failure of the Artist to deliver a new and valid certificate will result in suspension of all payments until the new certificate is furnished.
- 10.5.5 The County, its officers, employees and volunteers, shall be named as an "additional insured" on the General Liability and automobile policies and it shall be stated on the Insurance Certificate with the provision that this coverage "is primary to all other coverage the County may possess."

#### 10.6 INDEMNIFICATION:

- 10.6.1 General Indemnification. The Artist agrees to indemnify and hold harmless the County Board of Supervisors, Fairfax County, Virginia, its officers, employees, volunteers and agents, from any and all claims for bodily injuries and personal injuries, death or property damage, including cost or investigation, all expenses of litigation, including reasonable attorney fees and the cost of appeals arising out of any errors, omissions, claims or suits including reasonable attorney fees, and the cost of appeals arising out of any claims or suits, because of the Licensor, including sub-

Licensors, their agents, servants, employees, volunteers, business invitees, customers, guests or trespassers arising from the use, occupancy and condition of the premises.

- 10.6.2 **Intellectual Property Indemnification.** In addition to the General Indemnification, Artist will indemnify the County for and defend the County against third-party claims for infringement of any valid United States patent, trademark or copyright by the Artist's products, software, services, or deliverables. Artist must indemnify the County for any loss, damage, expense or liability, including costs and reasonable attorney's fees that may result by reason of any such claim.
- 10.6.3 In the event of a claim covered by Paragraph 10.6.2, and in addition to all other obligations of Artist thereunder, Artist must at its expense and within a reasonable time: (a) obtain a right for the County to continue using such products and software, or allow Artist to continue performing the Services; (b) modify such products, software, services or deliverables to make them non-infringing; or (c) replace such products or software with a non-infringing equivalent. If, in the Artist's reasonable opinion, none of the foregoing options is feasible Artist must immediately notify the County and accept the return of the products, software, services, or deliverables, along with any other components rendered unusable as a result of the infringement or claimed infringement, and refund to the County the price paid to Artist for such components as well as any pre-paid fees for the allegedly infringing services, including license, subscription fees, or both. Nothing in herein, however, relieves the Artist of liability to the County for damages sustained by the County by virtue of any breach of contract related to a third-party infringement claim.
- 10.6.4 **Right to Participate in Defense.** The County may, at its sole expense, participate in the defense or resolution of a Claim. Artist will have primary control of the defense and resolution of the Claim, except when such defense or resolution requires the County to (i) admit liability or wrongdoing; or (ii) to pay money. In either of these cases Artist must obtain the County's prior written consent before raising such defense or entering into such resolution.
- 10.6.5 **No Indemnification by the County. The parties agree that under applicable law the County cannot indemnify or defend the Artist. To the extent any promise or term contained in this Contract, including any exhibits, attachments, or other documents incorporated by reference therein, includes an indemnification or obligation to defend by the County, that promise or term is stricken from this Contract and of no effect.**
- 10.6.6 **WAIVER OF SUBROGATION:** All insurance policies shall contain a waiver of subrogation on behalf of the County as noted hereunder to waive the insurer's rights of recovery to include the Employers Liability portion of the Workers Compensation/Employers Liability coverage.
11. **MAINTENANCE, REPAIR, RESTORATION:** If the Work is damaged or deteriorates for any reason within five years of installation, the County will advise the Artist of the need for repair and/or restoration and the Artist will accomplish said repairs or restoration within an agreed upon timeframe in each instance. Separately, and within three months of the Work's installation, Artist will provide a written Maintenance Manual, containing maintenance and preservation instructions for the Work by others. However, provision of the Maintenance Manual in no way limits or eliminates the Artists' obligation to maintain the Work per all terms of this Contract.

## 12. OWNERSHIP AND INTELLECTUAL PROPERTY RIGHTS:

- 12.1. Title: Artist agrees that title and ownership to the Work and its design, including any and all Copyrights in the Work and its design, will automatically and irrevocably convey in fee simple to the County upon the County's written final acceptance payment for the Work pursuant to Section 2.
- 12.2. County Retention of Final Work Rendering: The Artist further agrees that the final rendering of the Work prepared and submitted by the Artist under this Contract will be retained by the County for possible exhibition, in the County's sole discretion. To that end, Artist hereby grants a permanent, irrevocable license to the County to display the final rendering and to make copies and incorporate the final rendering into derivative works for purposes of display as an exhibition, through any means now known or later invented, including but not limited to broadcast, digital display, and exhibition on the internet.
13. NON-DISCRIMINATION: During the performance of this Contract, the Artist agrees as follows:
- 13.1 The Artist will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Artist. The Artist agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- 13.2 The Artist, in all solicitations or advertisements for employees placed by or on behalf of the Artist, will state that the Artist is an equal opportunity employer.
- 13.3 Notices, advertisements, and solicitations placed in accordance with federal law, rule, or regulation will be deemed sufficient for the purpose of meeting the requirements of this provision.
- 13.4 The Artist will include the provisions of paragraphs 13.1, 13.2, and 13.3 in every subcontract or purchase order of over \$10,000 so that the provisions will be binding upon each sub-artist or vendor.
14. IMMIGRATION REFORM AND CONTROL ACT: Artist certifies that he/she/they does not, and shall not during the performance of this Contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986.
15. VENUE: Venue for any claim under this Contract or arising out of a purchase order hereunder is exclusively in the state courts of Fairfax County, Virginia or the United States District Court for the Eastern District of Virginia, Alexandria Division.
16. CHOICE OF LAW: This contract and any amendments or purchase order hereunder will be governed for all purposes by and construed in accordance with the laws of the Commonwealth of Virginia.
17. CHANGES IN THIS CONTRACT OR PURCHASE ORDERS: No changes or substitutions may be made in any of the provisions of this Contract, or any purchase order issued under this Contract, without prior approval of the Fairfax County Purchasing Agent or the County contact person on a purchase order, as applicable. If approved, a written change order will be issued for a purchase order, and any changes to this Contract must be made in writing, signed by both parties.
18. COUNTY OBLIGATIONS SUBJECT TO APPROPRIATION: All of the County's obligations under this Contract are subject to annual appropriations by the Fairfax County Board of Supervisors. In the event

funds are not appropriated, the County shall furnish Artist with prompt written notice of non-appropriation and the Contract shall terminate on the last day for which appropriations were received.

19. DRUG-FREE WORKPLACE: During the performance of this Contract, Artist agrees to provide a drug-free workplace for the Artist's employees in accordance with Article 2, Section 4, B. 6 of the Fairfax County Purchasing Resolution.

20. ELECTRONIC SIGNATURES: Artist agrees that this Contract and all other associated documents may be executed using electronic signatures and delivered by electronic means. When electronic signatures are used, Artist agrees that the signatures are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

21. CONTRACT EXTENSION: The parties agree that the maintenance period of this Contract may be extended by written instrument signed by the parties, if fully executed prior to the end of the five-year maintenance period hereunder. If extended, the maintenance period will be extended for an additional five-year term under all of the same provisions and requirements herein.

**THIS AREA IS INTENTIONALLY BLANK. SIGNATURES ON NEXT PAGE.**

ACCEPTED BY:

---

**ARTIST**

---

Date

---

Lee Ann Pender  
Director/County Purchasing Agent

---

Date

SAMPLE