

AGREEMENT FOR THE COMMISSION OF PUBLIC ARTWORK - SUSPENSION INSTALLATION

THIS AGREEMENT FOR THE COMMISSION OF PUBLIC ARTWORK – SUSPENSION INSTALLATION (“Agreement”) is entered into by and between the **CITY OF OCALA**, a Florida municipal corporation (“City”), and **KISTLER STUDIO, LLC**, a foreign limited liability company duly organized in the state of Ohio and authorized to do business in the State of Florida (EIN: 84-1826385) (“Artist”).

WHEREAS, City is a municipality which regularly utilizes its public spaces to provide exhibit space to artists for the benefit, use, and enjoyment of its citizens and visitors; and

WHEREAS, the City desires to retain the services of a professional artist to create a work of art (the “Artwork” or the “Project”) which will be publicly displayed at the Mary Sue Rich Community Center (the “Site”) and;

WHEREAS, Artist is a professional artist who is qualified and willing to complete the project in accordance with the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the matters set forth above (which are incorporated herein by reference), the exchange of the mutual promises set forth herein, and other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. **RECITALS:** City and Artist hereby represent and warrant that the Recitals set forth above are true and correct.
2. **CONTRACT DOCUMENTS.** The Contract Documents comprising the entire understanding between City and Artist shall only include this Agreement and those documents listed in this section as Exhibits to this Agreement. Each of these documents are incorporated herein by reference for all purposes. If there is a conflict between the terms of this Agreement and the Contract Documents, then the terms of this Agreement shall control, amend, and supersede any conflicting terms contained in the remaining Contract Documents.

A. **Exhibits to Agreement:** The Exhibits to this Agreement are as follows:

Exhibit A: Scope of Work (A-1); and

Exhibit B: Artist’s Design Concept (B-1)

If there is a conflict between the individual Exhibits regarding the scope of work to be performed, then any identified inconsistency shall be resolved by giving precedence in the following order: (1) Exhibit A, then (2) Exhibit B.

3. **SCOPE OF SERVICES.** Artist shall provide materials, labor, travel and equipment necessary for the design, completion, and installation of the public artwork at the Site as set forth in the attached **Exhibit A – Scope of Work** and **Exhibit B – Design Concept**. Artist shall be responsible for all costs associated with securing any and all required licenses, permits, and similar legal authorizations as may be necessary for the design, completion, and installation of the Artwork at the Site.

- A. **Licensed Use.** Artist shall retain all copyrights and other intellectual property rights to the Artwork. Artist expressly grants to City:
- the right to display the Artwork in its public spaces or locations selected by City; and
 - an irrevocable right to photograph or film images of the Artwork and use such photographs and film for reproduction in publications now known or later developed by City or for educational, publicity or promotional purposes, provided that such use shall not be for commercial purposes. This grant shall survive the termination of this Agreement.
- B. **Artistic Credit.** City may display with the Artwork information identifying Artist as the creator of the Artwork ("Artistic Credit"). Artist shall be responsible for providing City with accurate Artistic Credit information at the time that the Artwork is transferred to City.
- C. **City's Right to Refuse Artwork.** Artist acknowledges and agrees that City has the right to refuse to exhibit any piece of the Artwork in the City's sole discretion at any time and for any reason including, without limitation, available space, relevance, and content.
4. **COMPENSATION.** As full and complete compensation to Artist for the timely and satisfactory completion of all services provided pursuant to this Agreement, City shall pay, and Artist shall accept, the total sum of SIXTY THOUSAND AND NO/100 DOLLARS (\$60,000) (the "Artwork Fee") payable as follows:
- Within TWENTY-ONE (21) days of the full execution of this Agreement, City shall pay a lump sum equal to THIRTY THOUSAND AND NO/100 DOLLARS (\$30,000) to KISTLER STUDIOS, LLC as a deposit towards the Artwork Fee set forth above. This deposit may be fully refundable to City pursuant to the terms set forth in Paragraph 6 below.
 - Within THIRTY (30) days of project completion by Artist and final inspection and acceptance of the Project by City, City shall remit payment for the remaining balance of the Artwork Fee in the amount of, THIRTY-THOUSAND AND NO/100 DOLLARS (\$30,000) to Artist.
 - Invoice Submission.** All invoices submitted by Artist shall include the City Contract Number, an assigned Invoice Number, and an Invoice Date. Artist shall submit the original invoice through the responsible City Project Manager at: City of Ocala Recreation & Parks Department, Attention: Leslie Nottingham, 828 NE 8th Avenue, Ocala, FL 34470, lnottingham@ocalafl.org.
 - Payment of Invoices by City.** The City Project Manager must review and approve all invoices prior to payment. City Project Manager's approval shall not be unreasonably withheld, conditioned, or delayed.
 - Withholding of Payment.** City reserves the right to withhold, in whole or in part, payment for any and all work that: (i) has not been completed by Artist; (ii) is inadequate or defective and has not been remedied or resolved in a manner satisfactory to the City Project Manager; or (iii)

which fails to comply with any term, condition, or other requirement under this Agreement. Any payment withheld shall be released and remitted to Artist within **THIRTY (30)** calendar days of the Artist's remedy or resolution of the inadequacy or defect.

F. **Excess Funds.** If due to mistake, or any other reason, Artist receives payment under this Agreement in excess of what is provided for by the Agreement, Artist shall promptly notify City upon discovery of the receipt of the overpayment. Any overpayment shall be refunded to City within **THIRTY (30)** days of Artist's receipt of the overpayment or must also include interest calculated from the date of the overpayment at the interest rate for judgments at the highest rate as allowed by law.

G. **Tax Exemption.** City is exempt from all federal excise and state sales taxes (State of Florida Consumer's Certification of Exemption 85-8012621655C-9). The City's Employer Identification Number is 59-60000392. Artist shall not be exempted from paying sales tax to its suppliers for materials to fulfill contractual obligations with the City, nor will Artist be authorized to use City's Tax Exemption Number for securing materials listed herein.

5. **TIME FOR PERFORMANCE.** Time is of the essence with respect to the performance of all duties, obligations, and responsibilities set forth in this Agreement.

A. Artist shall commence work immediately once all the following have occurred:

- i. City has remitted payment for the Deposit as set forth in Paragraph 4(A) above; and
- ii. City has issued a Notice to Proceed for the Project.

B. The Project must be completed in a manner satisfactory to the City Project Manager within **NINETY (90) DAYS** of the start date indicated on the City's Notice to Proceed.

C. The Time for Performance under this Agreement may only be adjusted by Change Order, in the sole and absolute discretion of City. Any request for an extension in the Time for Performance must be submitted in writing delivered to the City Project Manager, along with all supporting data, within **SEVEN (7)** calendar days of the occurrence of the event giving rise to the adjustment unless the City allows an additional period of time to ascertain more accurate data. All requests for adjustments in the Time for Performance shall be determined by City.

6. **NON-PERFORMANCE.** If Artist is unable to provide the Artwork service due to illness or accident to the Artist, Force Majeure event, or any other reason beyond the control of the Artist, then deposit amount paid to Artist shall be fully refundable to City. In the event of non-performance due to illness or accident, or other event, Artist must notify the City immediately of their inability to perform and request termination of the Agreement.

7. **FORCE MAJEURE.** Neither party shall be responsible for damages or delays caused by Force Majeure or other events beyond the reasonable control of the party and which could not reasonably have been anticipated or prevented.

For purposes of this Agreement, Force Majeure includes, but is not limited to, war, terrorism, riots, epidemics, fire, acts of nature, strikes, lockouts, court orders, and acts, orders, laws, or regulations of the government of the United States or the several states, prohibiting or impeding any party from performing its respective obligations under the contract.

If Force Majeure occurs, the parties shall mutually agree on the terms and conditions upon which services may continue. Should Artist be delayed in the commencement, performance, or completion of the Work due to any of the conditions under this section, Artist shall be entitled to an extension of time only, provided however, that in no event shall Artist be entitled to any increased costs, additional compensation, or damages of any type resulting from Force Majeure delays.

8. **INSPECTION AND ACCEPTANCE OF THE SERVICES.** All services, work, and materials provided by Artist under this Agreement shall be provided under the direction and to the satisfaction of the City Project Manager.

The Project Manager shall decide all questions regarding the quality, acceptability, or workmanship performed, the rate of progress of the work, and the acceptable fulfillment of the Agreement, in his or her sole discretion, based upon both the requirements set forth by City and the information provided by Artist. The authority vested in the Project Manager pursuant to this paragraph shall be confined to the direction or specification of what is to be performed under this Agreement and shall not extend to the actual execution of the work.

Neither the Project Manager's review of Artist's work nor recommendations made by Project Manager pursuant to this Agreement will impose on Project Manager any responsibility to supervise, direct, or control Artist's work in progress or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident Artist's furnishing and performing the work.

9. **TERMINATION AND DEFAULT.** Either party, upon determination that the other party has failed or refused to perform or is otherwise in breach of any obligation or provision under this Agreement or the Contract Documents, may give written notice of default to the defaulting party in the manner specified for the giving of notices herein. Termination of this Agreement by either party for any reason shall have no effect upon the rights or duties accruing to the parties prior to termination.

- A. **Termination by City for Cause.** City shall have the right to terminate this Agreement immediately, in whole or in part, upon the failure of Artist to carry out any obligation, term, or condition of this Agreement. City's election to terminate the Agreement for default shall be communicated by providing Artist written notice of termination in the manner specified for the giving of notices herein. Any notice of termination given to Artist by City shall be effective

immediately, unless otherwise provided therein, upon the occurrence of any one or more of the following events:

- (1) Artist fails to timely and properly perform any of the services set forth in the specifications of the Agreement;
- (2) Artist provides material that does not meet the specifications of the Agreement;
- (3) Artist fails to complete the work required within the time stipulated in the Agreement; or
- (4) Artist fails to make progress in the performance of the Agreement and/or gives City reason to believe that Artist cannot or will not perform to the requirements of the Agreement.

B. **Artist's Opportunity to Cure Default.** City may, in its sole discretion, provide Artist with an opportunity to cure the violations set forth in City's notice of default to Artist. Artist shall commence to cure the violations immediately and shall diligently and continuously prosecute such cure to completion within a reasonable time as determined by City. If the violations are not corrected within the time determined to be reasonable by City or to the reasonable satisfaction of City, City may, without further notice, declare Artist to be in breach of this Agreement and pursue all remedies available at law or equity, to include termination of this Agreement without further notice.

C. **City's Remedies Upon Artist Default.** In the event that Artist fails to cure any default under this Agreement within the time period specified in this section, City may pursue any remedies available at law or equity, including, without limitation, the following:

- (1) City shall be entitled to terminate this Agreement without further notice;
- (2) City shall be entitled to hire another Artist to complete the required work in accordance with the needs of City;
- (3) City shall be entitled to recover from Artist all damages, costs, and attorney's fees arising from Artist's default prior to termination; and

City shall be entitled to recovery from Artist any actual excess costs by: (i) deduction from any unpaid balances owed to Artist; (ii) placing a claim against the Performance Bond; or (iii) any other remedy as provided by law.

D. **Termination for Non-Funding.** In the event that budgeted funds to finance this Agreement are reduced, terminated, or otherwise become unavailable, City may terminate this Agreement upon written notice to Artist without penalty or expense to City. City shall be the final authority as to the availability of budgeted funds. Artist will be paid for all expenses and work performed up to the date of termination.

E. **Termination for Convenience.** City reserves the right to terminate this Agreement in whole or in part at any time for the convenience of City without penalty or recourse. The Project Manager shall provide written notice of the termination. Upon receipt of the notice, Artist shall immediately discontinue all work as directed in the notice, notify all subcontractors of the

effective date of the termination, and minimize all further costs to City including, but not limited to, the placing of any and all orders for materials, facilities, or supplies, in connection with its performance under this Agreement. Artist shall be entitled to receive compensation solely for: (1) the actual cost of the work completed in conformity with this Agreement; and/or (2) such other costs incurred by Artist as permitted under this Agreement and approved by City.

10. ARTIST'S WARRANTIES AND REPRESENTATIONS. Artist warrants and represents as follows:

- A. Artist has read and is fully familiar with all the terms and conditions of this Agreement, the Contract Documents, and other related data and acknowledges that they are sufficient in scope and detail to indicate and convey understanding of all terms and conditions of the work to be performed by Artist under this Agreement.
- B. Artist has disclosed, in writing, all known conflicts, errors, inconsistencies, discrepancies, or omissions discovered by Artist in the Contract Documents, and that the City's written resolution of same is acceptable to Artist.
- C. The Artist is familiar with all Federal, state, and local laws and regulations that may affect cost, progress, and performance of the work and shall be responsible for all costs associated with same.
- D. Artist has full authority and power to enter into and perform under this Agreement and to make the grant of any rights and licenses contained in this Agreement.
- E. Except as has been otherwise disclosed in writing to City, the Artwork to be created shall be developed solely from the artistic efforts of the Artist and, whether created by the Artist alone or in collaboration with others, shall neither infringe upon any copyright nor violate the rights of any third party.
- F. Artist has not assigned, transferred, licensed, granted, encumbered or utilized the Artwork, or any copyright related thereto, which may affect or impair the rights granted to City pursuant to this Agreement.
- G. All work will be performed in accordance with professional standards and free from defective or inferior materials and workmanship for a period of at least **THREE (3) YEARS** from the date of final acceptance by City.
- H. Artist understands that a "public entity crime" as defined in section 287.133(1)(g), Florida Statutes, is "a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or with the United States..." Artist further understands that any person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime (1) may not submit a bid, proposal, or reply on a contract: (a) to provide any goods or services to a public entity; (b) for the construction or repair of a public building or public work; or (c) for leases of real property to a public entity; (2) may not be awarded or

perform work as a Vendor, supplier, subcontractor, or consultant under a contract with any public entity; and (3) may not transact business with any public entity in excess of the threshold amount provided in section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

11. **ARTIST RESPONSIBILITIES.** Except as otherwise specifically provided for in this Agreement, the following provisions are the responsibility of the Artist:
 - A. Artist shall competently and efficiently supervise, inspect, and direct all work to be performed under this Agreement, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the work in accordance with the Contract Documents.
 - B. Artist shall be solely responsible for the means, methods, techniques, sequences, procedures, and safety precautions or programs incident thereto.
 - C. Artist shall be responsible to see that the finished work complies accurately with this Agreement and the intent thereof.
 - D. Artist shall continue its performance under this Agreement during the pendency of any dispute or disagreement arising out of or relating to this Agreement, except as Artist and City may otherwise agree in writing.
12. **PERFORMANCE EVALUATION.** At the end of the Agreement, the City may evaluate the Artist's performance. This evaluation will become public record.
13. **NOTICE REGARDING FAILURE TO FULFILL AGREEMENT.** Artists who enter into an Agreement with the City of Ocala and fail to complete the contract term, for any reason, will be subject to future bidding suspension for one (1) year, and up to a possible three (3) year bid debarment for serious contract failures.
14. **E-VERIFY.** In accordance with Executive Order 11-116, Artist shall utilize the U.S. Agency of Homeland Security's E-Verify system, <https://e-verify.uscis.gov/emp>, to verify the employment eligibility of all employees hired during the term of this Agreement. Artist shall also require all subcontractors performing work under this Agreement to utilize the E-Verify system for any employees they may hire during the term of this Agreement.
15. **COMMERCIAL GENERAL LIABILITY INSURANCE.** Vendor shall procure and maintain, for the life of this Agreement, commercial general liability insurance with minimum coverage limits not less than:
 16. One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate limit for bodily injury, property damage, and personal and advertising injury; and
 17. One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate limit for products and completed operations.
18. Coverage for contractual liability is also required.

19. City, a political subdivision of the State of Florida, and its officials, employees, and volunteers shall be covered as an additional insured with a CG 20 26 04 13 Additional Insured – Designated Person or Organization Endorsement or similar endorsement providing equal or broader Additional Insured Coverage regarding liability arising out of activities performed by or on behalf of Artist. The coverage shall contain no special limitation on the scope of protection afforded to City, its officials, employees, or volunteers.
20. **WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY.** Artist shall procure and maintain, for the life of this Agreement, Workers' Compensation insurance and employer's liability insurance in amounts required by applicable statutes. Artist shall ensure any and all subcontractors have coverage as required by applicable statutes. City requires policies under this section to be endorsed to waive the insurer's right to subrogate against City and its officials, employees, volunteers by including a Waiver of Our Right to Recover from Others Endorsement (WC 00 03 13). Exceptions and exemptions may be allowed by City's HR/Risk Director, so long as they are in accordance with Florida Statute.
21. **MISCELLANEOUS INSURANCE PROVISIONS.**
 - A. Insurance Requirements. These insurance requirements shall not relieve or limit the liability of Vendor. City does not in any way represent that these types or amounts of insurance are sufficient or adequate to protect Vendor's interests or liabilities but are merely minimums. No insurance is provided by the City under this contract to cover Vendor. **No work shall be commenced under this contract until the required Certificate(s) of Insurance have been provided.** Work shall not continue after expiration (or cancellation) of the Certificates of Insurance and shall not resume until new Certificate(s) of Insurance have been provided. Insurance written on a "Claims Made" form is not acceptable without consultation with City of Ocala Risk Management.
 - B. Deductibles. Vendor is responsible for the amount of any deductible or self-insured retention. Vendor's deductibles/self-insured retentions shall be disclosed to the City and may be disapproved by City.
 - C. Certificates of Insurance. Vendor shall provide a Certificate of insurance, issued by an agency authorized to do business in the State of Florida and with an A.M. Best rating* of at least an A, showing the "City of Ocala" as an Additional Insured. Shown on the certificate at the certificate holder should be: **City of Ocala, Contracting Department, Third Floor, 110 SE Watula Avenue, Ocala, FL 34471.** Renewal certificates must also be forwarded to the Contracting Department prior to the policy expiration. **TEN (10)** days written notice must be provided to the City in the event of cancellation.

*Non-rated insurers must be pre-approved by the City Risk Manager.

- D. Failure to Maintain Coverage. In the event Vendor fails to disclose each applicable deductible/self-insured retention or obtain or maintain in full force and effect any insurance coverage required to be obtained by Vendor under this Agreement, Vendor shall be considered to be in default of this Agreement.
- E. Severability of Interests. Vendor shall arrange for its liability insurance to include General Liability, Business Automobile Liability, and Excess/Umbrella Insurance, or to be endorsed to include a severability of interests/cross liability provision so that the "City of Ocala" (where named as an additional insured) will be treated as if a separate policy were in existence, but without increasing the policy limits.

22. **SAFETY/ENVIRONMENTAL.** Artist shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the work. Artist shall make special effort to detect hazardous conditions and shall take prompt action where necessary to avoid accident, injury, or property damage. EPA, DEP, OSHA, and all other applicable safety laws and ordinances shall be followed as well as American National Standards Institute Safety Standards. All hazardous spills, accidents, injuries or claims or potential claims shall be reported promptly to the City Risk Management Department. Artist shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:

- A. All employees on the work and other persons that may be affected thereby;
- B. All work, materials and equipment to be incorporated therein, whether in storage on or off the site; and
- C. Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities.

All, injury, or loss to any property caused, directly or indirectly, in whole or in part, by Artist, any subcontractor, or anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, shall be remedied by Artist. Artist's duties and responsibilities for the safety and protection of the work shall continue until such time as the work is completed and accepted by City.

23. **SUBCONTRACTORS.** Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by City or its representatives to any subcontractor of Artist or any other persons or organizations having a direct contract with Artist, nor shall it create any obligation on the part of City or its representatives to pay or seek payment of any monies to any subcontractor of Artist or any other persons or organizations having a direct contract with Artist, except as may otherwise be required by law. City shall not be responsible for the acts or omissions of any vendor, subcontractor, or of any of their agents or employees.

24. **INDEPENDENT CONTRACTOR STATUS.** Artist acknowledges and agrees that under this Agreement, Artist and any agent or employee of Artist shall be deemed at all times to be an independent contractor and shall be wholly responsible for the manner in which it performs the services and work required under this Agreement. Neither Artist nor its agents or employees shall represent or hold themselves out to be employees of City at any time. Neither Artist nor its agents or employees shall have employee status with City. Nothing in this Agreement shall constitute or be construed to create any intent on the part of either party to create an agency relationship, partnership, employer-employee relationship, joint venture relationship, or any other relationship which would allow City to exercise control or discretion over the manner or methods employed by Artist in its performance of its obligations under this Agreement.
25. **ACCESS TO FACILITIES.** City shall provide Artist with access to all City facilities as is reasonably necessary for Artist to perform its obligations under this Agreement.
26. **ASSIGNMENT.** Neither party may assign its rights or obligations under this Agreement to any third party without the prior express approval of the other party, which shall not be unreasonably withheld.
27. **NON-EXCLUSIVITY.** It is expressly understood and agreed by the parties that this is not an exclusive agreement. Nothing in this Agreement shall be construed as creating any exclusive arrangement with Artist or as prohibit City from either acquiring similar, equal, or like goods and/or services or from executing additional contracts with other entities or sources.
28. **RIGHT OF CITY TO TAKE OVER CONTRACT.** Should the work to be performed by Artist under this Agreement be abandoned, or should Artist become insolvent, or if Artist shall assign or sublet the work to be performed hereunder without the written consent of City, the City Project Manager shall have the power and right to hire and acquire additional men and equipment, supply additional material, and perform such work as deemed necessary for the completion of this Agreement. Under these circumstances, all expenses and costs actually incurred by City to accomplish such completion shall be credited to City along with amounts attributable to any other elements of damage and certified by the Project Manager. The Project Manager's certification as to the amount of such liability shall be final and conclusive.
29. **PUBLIC RECORDS.** The Artist shall comply with all applicable provisions of the Florida Public Records Act, Chapter 119, Florida Statutes. Specifically, the Artist shall:
- A. Keep and maintain public records required by the public agency to perform the service.
 - B. Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.

- C. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the Agreement if the artist does not transfer the records to the public agency.
- D. Upon completion of the Agreement, transfer, at no cost, to the public agency all public records in possession of the artist or keep and maintain public records required by the public agency to perform the service. If the artist transfers all public records to the public agency upon completion of the Agreement, the artist shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the artist keeps and maintains public records upon completion of the Agreement, the artist shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

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 AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: CITY OF OCALA, OFFICE OF THE CITY CLERK; 352-629-8266; E-mail: clerk@ocalafl.org; City Hall, 110 SE Watula Avenue, Ocala, FL 34471.

- 30. **AUDIT.** Artist shall comply and cooperate immediately with any inspections, reviews, investigations, or audits relating to this Agreement as deemed necessary by the Florida Office of the Inspector General, the City's Internal or External auditors or by any other Florida official with proper authority.
- 31. **PUBLICITY.** Artist shall not use City's name, logo, seal or other likeness in any press release, marketing materials, or other public announcement without City's prior written approval.
- 32. **CONFLICT OF INTEREST.** Artist must have disclosed the name of any officer, director, or agent who may be employed by the City. Artist must disclose the name of any City employee who owns, directly or indirectly, any interest in Artist or any affiliated business entity. Any additional conflicts of interest that may occur during the contract term must be disclosed to the City of Ocala Procurement Department.
- 33. **NON-DISCRIMINATORY EMPLOYMENT PRACTICES.** During the performance of the Agreement, the Artist agrees to not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, marital status, familial status, sexual orientation or veteran status and will take affirmative action to ensure that

an employee or applicant is afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to: recruitment, employment, termination, rates of pay or other forms of compensation and selection for training or retraining, including apprenticeship and on-the-job training.

34. **WAIVER.** The failure or delay of any party at any time to require performance by another party of any provision of this Agreement, even if known, shall not affect the right of such party to require performance of that provision or to exercise any right, power or remedy hereunder. Any waiver by any party of any breach of any provision of this Agreement should not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right, power or remedy under this Agreement. No notice to or demand on any party in any circumstance shall, of itself, entitle such party to any other or further notice or demand in similar or other circumstances.
35. **SEVERABILITY OF ILLEGAL PROVISIONS.** Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under the applicable law. Should any portion of this Agreement be declared invalid for any reason, such declaration shall have no effect upon the remaining portions of this Agreement.
36. **INDEMNIFICATION.** Artist shall, at Artist's sole expense, indemnify City and its elected officials, employees and volunteers against, and hold City and its elected officials, employees and volunteers harmless from any and all damages, claims, losses, costs, and expenses, including reasonable attorneys' fees, which City may sustain or which may be asserted against City or its elected officials, employees, and volunteers arising out of the activities contemplated by this Agreement including, without limitation, any action, claim, suit, or liability based on a claim that work performed under this Agreement by Artist or Artist's agents or subcontractors constitutes an infringement of any patent, copyright, trademark, trade name, or other proprietary right of any kind. This Section shall survive the termination or other expiration of this Agreement. Artist shall advise City, in writing, within **TWENTY-FOUR (24) HOURS** of any known claim or demand made against the City or Artist relating to or arising out of Artist's activities under this Agreement.
37. **NO WAIVER OF SOVEREIGN IMMUNITY.** Nothing herein is intended to waive sovereign immunity by the City to which sovereign immunity may be applicable, or of any rights or limits of liability existing under Florida Statute § 768.28. This term shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until any proceeding brought under this Agreement is barred by any applicable statute of limitations.
38. **NOTICES.** All notices, certifications or communications required by this Agreement shall be given in writing and shall be deemed delivered when personally served, or when received if by facsimile transmission with a confirming copy mailed by registered or certified mail, postage prepaid, return

receipt requested. Notices can be concurrently delivered by email. All notices shall be addressed to the respective parties as follows:

If to Artist:

Kistler Studio, LLC
c/o Virginia Kistler
332 Carpenter Rd.
Gahanna, OH 43230
Phone: 614-805-5676
Email: virginia.kistler@gmail.com

If to City of Ocala:

Tiffany Kimball, Contracting Officer
110 SE Watula Avenue, 3rd Floor
Ocala, Florida 34471
Phone: 352-629-8366
Fax: 352-690-2025
Email: tkimball@ocalafl.org

Copy to:

Robert W. Batsel, Jr.
Gilligan, Gooding, Batsel, & Anderson, P.A.
1531 SE 36th Avenue
Ocala, Florida 34471
Phone: 352-867-7707
Fax: 352-867-0237
Email: rbatsel@ocalalaw.com

39. **ATTORNEYS' FEES.** If any civil action, arbitration or other legal proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provision of this Agreement, the successful or prevailing party shall be entitled to recover reasonable attorneys' fees, sales and use taxes, court costs and all expenses reasonably incurred even if not taxable as court costs (including, without limitation, all such fees, taxes, costs and expenses incident to arbitration, appellate, bankruptcy and post-judgment proceedings), incurred in that civil action, arbitration or legal proceeding, in addition to any other relief to which such party or parties may be entitled. Attorneys' fees shall include, without limitation, paralegal fees, investigative fees, administrative costs, sales and use taxes and all other charges reasonably billed by the attorney to the prevailing party.

40. **JURY WAIVER.** IN ANY CIVIL ACTION, COUNTERCLAIM, OR PROCEEDING, WHETHER AT LAW OR IN EQUITY, WHICH ARISES OUT OF, CONCERNS, OR RELATES

TO THIS AGREEMENT, ANY AND ALL TRANSACTIONS CONTEMPLATED HEREUNDER, THE PERFORMANCE HEREOF, OR THE RELATIONSHIP CREATED HEREBY, WHETHER SOUNDING IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, TRIAL SHALL BE TO A COURT OF COMPETENT JURISDICTION AND NOT TO A JURY. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY. NEITHER PARTY HAS MADE OR RELIED UPON ANY ORAL REPRESENTATIONS TO OR BY ANY OTHER PARTY REGARDING THE ENFORCEABILITY OF THIS PROVISION. EACH PARTY HAS READ AND UNDERSTANDS THE EFFECT OF THIS JURY WAIVER PROVISION.

41. **GOVERNING LAW.** This Agreement is and shall be deemed to be a contract entered and made pursuant to the laws of the State of Florida and shall in all respects be governed, construed, applied and enforced in accordance with the laws of the State of Florida.
42. **JURISDICTION AND VENUE.** The parties acknowledge that a majority of the negotiations, anticipated performance and execution of this Agreement occurred or shall occur in Marion County, Florida. Any civil action or legal proceeding arising out of or relating to this Agreement shall be brought only in the courts of record of the State of Florida in Marion County or the United States District Court, Middle District of Florida, Ocala Division. Each party consents to the exclusive jurisdiction of such court in any such civil action or legal proceeding and waives any objection to the laying of venue of any such civil action or legal proceeding in such court and/or the right to bring an action or proceeding in any other court. Service of any court paper may be effected on such party by mail, as provided in this Agreement, or in such other manner as may be provided under applicable laws, rules of procedures or local rules.
43. **REFERENCE TO PARTIES.** Each reference herein to the parties shall be deemed to include their successors, assigns, heirs, administrators, and legal representatives, all whom shall be bound by the provisions hereof.
44. **MUTUALITY OF NEGOTIATION.** Artist and City acknowledge that this Agreement is a result of negotiations between Artist and City, and the Agreement shall not be construed in favor of, or against, either party because of that party having been more involved in the drafting of the Agreement.
45. **SECTION HEADINGS.** The section headings herein are included for convenience only and shall not be deemed to be a part of this Agreement.
46. **RIGHTS OF THIRD PARTIES.** Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or because of this Agreement on any persons other than the parties hereto and their respective legal representatives, successors and permitted assigns.

Nothing in this Agreement is intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement, nor shall any provision give any third persons any right of subrogation or action over or against any party to this Agreement.

47. **AMENDMENT.** No amendment to this Agreement shall be effective except those agreed to in writing and signed by both parties to this Agreement.
48. **COUNTERPARTS.** This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument.
49. **ELECTRONIC SIGNATURE(S).** Artist, if and by offering an electronic signature in any form whatsoever, will accept and agree to be bound by said electronic signature to all terms and conditions of this Agreement. Further, a duplicate or copy of the Agreement that contains a duplicated or non-original signature will be treated the same as an original, signed copy of this original Agreement for all purposes.
50. **LEGAL AUTHORITY.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.
51. **ENTIRE AGREEMENT.** This Agreement and the attached Exhibits, if any, contain all agreements between the Parties. There are no other representations, warranties, promises, agreements or understandings, oral, written or implied, among the Parties, except to the extent reference is made thereto in this Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK. SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties have executed this Agreement on _____.

ATTEST:

CITY OF OCALA

Angel B. Jacobs
City Clerk

Ire Bethea Sr.
City Council President

Approved as to form and legality:

KISTLER STUDIO, LLC

Robert W. Batsel, Jr.
City Attorney

Virginia Kistler
Artist

Exhibit A – Scope of Work

Artist shall create a work of art for public display at MARY SUE RICH COMMUNITY CENTER ATRIUM (the "Site") as set forth in **Exhibit B – Artist's Design Concept** (the "Artwork" or "Project"). Upon completion, the SUSPENSION INSTALLATION is intended to create a long-lasting public art piece for the benefit and enjoyment of the citizens of Ocala.

Artist shall provide all materials, labor, and equipment necessary for the design and completion, of the Project. Artist shall be responsible for all costs associated with securing any and all required labor, licenses, permits, legal authorizations, travel, and supplies necessary for the design, completion, and installation of the Artwork at the Site unless otherwise specified herein.

The City shall provide a lift and additional staff as needed to install the piece inside the atrium.

All work shall be coordinated through the City Project Manager: **Leslie Nottingham, City of Ocala Recreation & Parks Department, E-Mail: lnottingham@ocalafl.org**. Artist must provide a valid telephone number and address to the City Project Manager. The phone must be answered during normal working hours, or voicemail must be available to leave a message.

Time for Performance:

Artist shall commence work immediately once: (a) the City has remitted payment for the Artwork Fee Deposit for such Phase; and (b) the City has issued a Notice to Proceed.

Project must be completed in a manner satisfactory to the City Project Manager within **NINETY (90) DAYS** of the start date indicated on the City's Notice to Proceed.

Suspension Installation

Project: A suspension installation piece to be installed in the atrium of the Mary Sue Rich Community Center.

Materials to be used:

- Stainless steel
- Varia (1/8" UV resistant resin sheeting)
- Materials as appropriate for the installation of the piece from the ceiling. The materials, hanging systems, points of attachment and length of materials for suspension must be approved by the architect and the City Project Manager prior to purchase and installation.

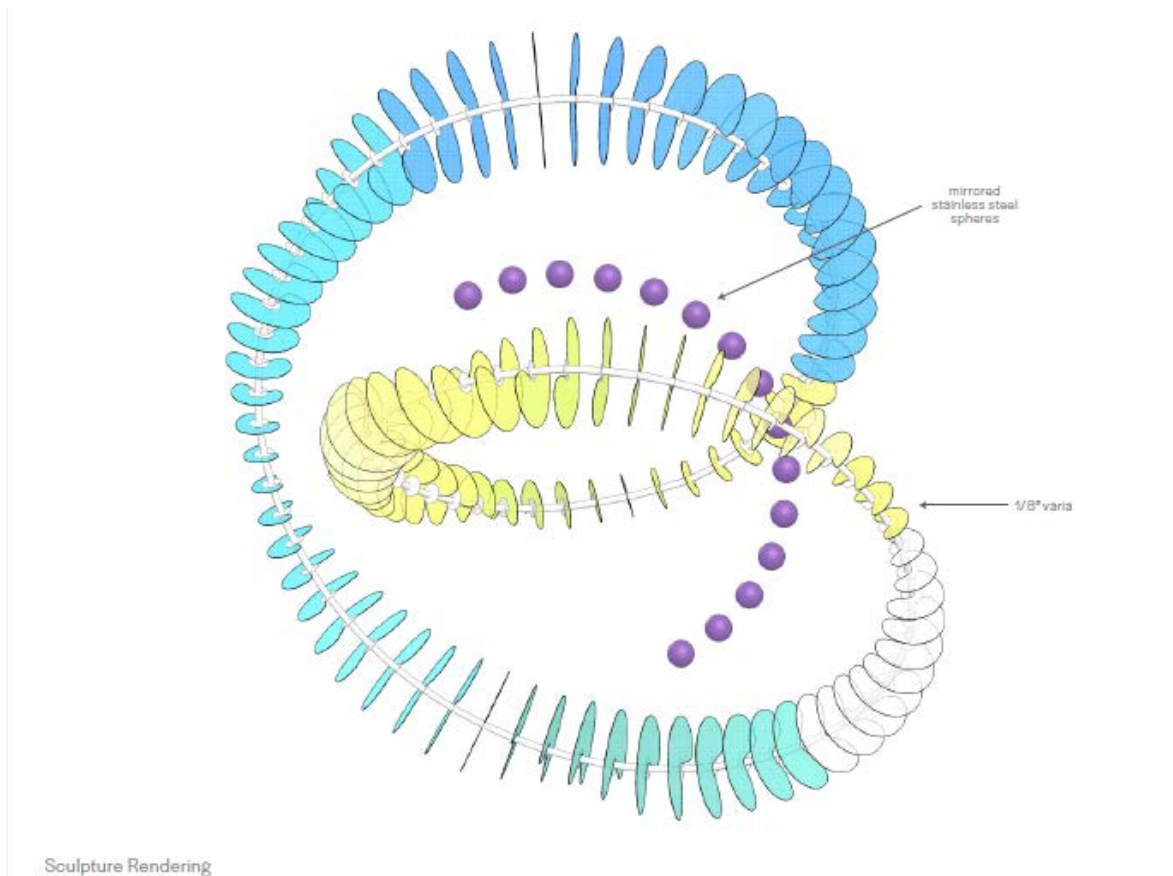
Exhibit B – Artist's Design Concept

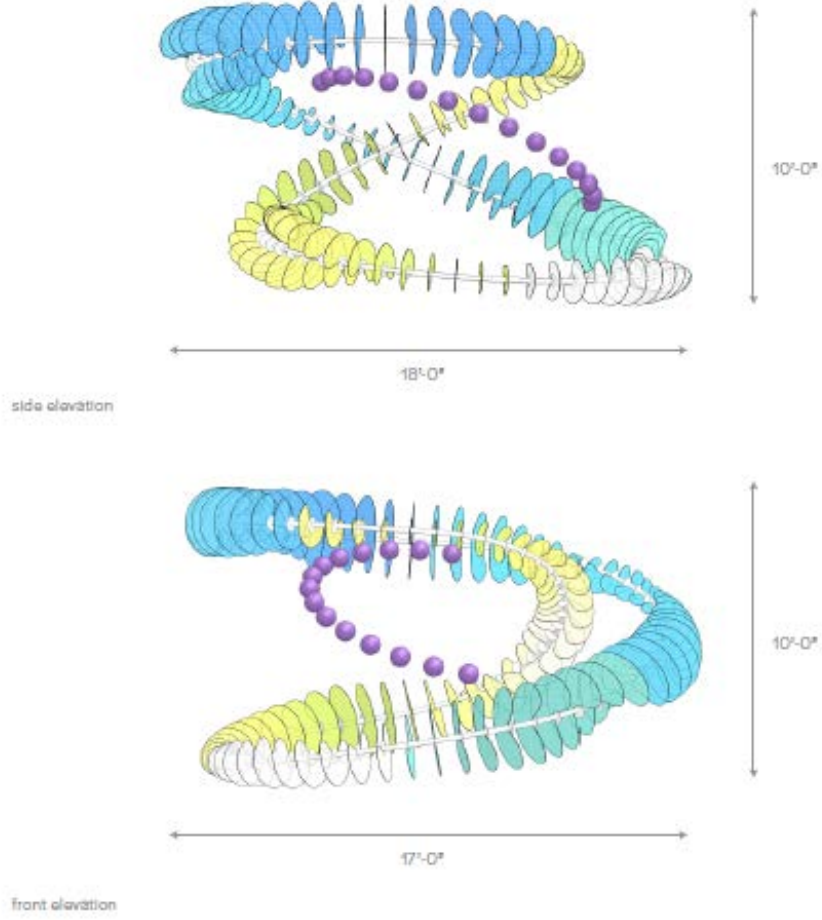
Design Concept:

The suspension installation piece will be suspended from the ceiling of the MSR Community Center Entry atrium using materials, hanging systems, point of attachment and length of materials for suspension as approved by the architect and the City Project Manager. The suspension installation piece will be constructed of mirrored stainless-steel spheres and Varia (1/8" UV resistant resin sheeting).

Design Image:

The images below are the approved artist concept for public art.





Dimensions

3Form - Varia (1/8" uv resistant resin sheeting)



Example of 3Form Varies