

**JACKSONVILLE AVIATION AUTHORITY
AGREEMENT FOR COMMISSION OF PUBLIC ART**

THIS AGREEMENT dated as of this _____ day of _____, 20__, by and between **Jacksonville Aviation Authority, a body politic and corporate** created and existing under the laws of the State of Florida (the "Authority"), whose address is Jacksonville International Airport, P.O. Box 18018, Jacksonville, Florida 32229 (the "Commission") and _____, (the "Artist"), whose address is _____.

R E C I T A L S:

A. The Authority directed the Jacksonville International Airport Arts Commission, Inc., a Florida not-for-profit corporation (the "Commission"), to recommend the commission of an artwork for installation in a certain area of the Jacksonville International Airport (the "Airport") grounds known as the _____ (the "Site").

B. The Commission publicized a request for proposal to artists and recommended that the Authority select the Artist's proposal from among several submissions the Commission received. The Artist's final proposal is attached hereto as **Exhibit 1** (the "Proposal").

C. At a meeting of the Board of Directors of the Authority held on _____, the Authority duly approved the allocation of funds for the design, execution, fabrication, purchase and installation of the artwork described in the Proposal (the "Artwork") for the Site. The Artwork is to be substantially similar to the approved Proposal. The amount of this commission for the Artwork is not to exceed \$ _____.

D. Both the Authority and the Artist wish to undertake the obligations expressed herein.

NOW, THEREFORE, for and in consideration of the mutual terms and conditions hereinafter set forth, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

ARTICLE 1. SCOPE OF SERVICES

1.1 General

1.1.1 The Artist shall perform or provide all services and furnish all supplies, materials, labor and equipment necessary for the design, execution, fabrication, transportation and installation of the Artwork at the Site in accordance with the schedule attached hereto as **Exhibit 2** (the "Schedule"). Services shall be performed in a professional manner and in strict compliance with all terms and conditions in this Agreement.

1.1.2 To insure that the Artwork shall not interfere with the intended use of the Site, pedestrian and other traffic flow, and parking and safety devices and procedures at the Site, the Artist's Proposal shall be reviewed and approved by the Authority and, where appropriate, the project architect to insure compliance with these objectives.

1.1.3 The Proposal shall include a description of all materials and products utilized in the Artwork and the required care and upkeep involved. The Artwork must be durable, taking into consideration that the Site is an unsecured public space that may be exposed to elements such as weather, temperature variation, and considerable movement of people and equipment. The Artist must insure that all maintenance requirements will be reasonable in terms of time and expense.

1.1.4 The Artist shall provide a certificate of review and approval from an engineer registered and licensed by the State of Florida stating that the materials and construction methods used to frame,

display and construct the Artwork are durable, structurally sound and appropriate to the environmental conditions in which the Artwork will be displayed. (And if required by the Authority, provide a letter of approval of materials and methods from a certified conservator.)

1.1.5 The Artist shall secure any and all required licenses, permits and similar legal authorizations at the Artist's expense as may be necessary for the installation and maintenance of the Artwork at the Site.

1.1.6 The Authority and Commission shall have the right to review the Artwork at reasonable times during the fabrication thereof. The Artist shall submit to the Authority and Commission progress reports in accordance with the Schedule.

1.1.7 The Artist shall notify the Authority and the Commission in writing when fabrication of the Artwork is completed and is ready for delivery to the Site. The Artist shall arrange for the transportation and installation of the Artwork. The Artist shall use best efforts to coordinate such installation with representatives of the Authority to minimize disruption of the usage of the Site. The Artist shall provide or cause to be provided barricades necessary to protect the Artwork and the adjacent Authority property during the installation of the Artwork. If the Artist does not install the Artwork himself or herself, Artist shall supervise and approve the installation.

1.1.8 The Artist shall present to the Authority and the Commission, in advance of any proposed changes, for further review and approval, a written proposal of any changes:

- (a) in the scope, design, color, size, material or texture or location on the Site of the Artwork not permitted by or not in substantial conformity with the Proposal;
- (b) that affect the installation, scheduling, site preparation or maintenance of or for the Artwork; and
- (c) in the concept of the Artwork as represented in the Proposal.

1.1.9 The Artist shall provide to the Authority and the Commission the following photographic documentation of the completed and installed Artwork within fifteen (15) business days following installation:

- (a) a set of five digital images, 300 dpi, JPEG files, of the Artwork, provided to the Authority on two CDs, taken from a minimum of three different viewpoints

Photographs shall be labeled with the name of the Artwork, the date upon which the photograph was taken, and the viewpoint from which the photograph was taken.

The Artist shall also furnish the Authority and the Commission with a full written narrative description of the Artwork.

1.1.10 Upon installation of the Artwork, the Artist shall provide to the Authority and the Commission final written instructions for appropriate maintenance and preservation of the completed Artwork as well as handling instructions in the event the Artwork should have to be moved. Instructions shall include specific information on all materials, products, material suppliers, product suppliers and techniques utilized; a specific description of the required routine care and upkeep; and a schedule for annual maintenance.

1.1.11 The budget for the Artwork, including an itemization of all goods, services and materials, is attached hereto as **Exhibit 3**.

1.1.12 The Artist shall be available with reasonable advance notice for meetings, ceremonies and the like, as necessary.

1.2 Design Compliance

1.2.1 Within 21 days after the execution of this Agreement, the Authority shall notify the Artist if it requires any revisions to the Proposal in order to comply with any applicable laws, ordinances and/or regulations or for other reasons including, but not limited to, insuring the physical integrity of the Artwork or its installation at the Site. If agreed upon by the parties, such revisions will become a part of the Proposal.

1.2.2 Once the Authority has approved the Proposal, the Authority will schedule a presentation of the Proposal to the Authority's Design Review Committee. If the Design Review Committee requires any revisions to the Proposal, the Authority will submit those in writing to the Artist. The Artist will have 21 days to comply with such revisions. If agreed upon by both parties, such revisions will become a part of the Proposal.

1.3 Final Acceptance

1.3.1 The Artist shall advise the Authority and the Commission in writing when all services required pursuant to Section 1.1 herein have been completed in substantial conformity with the Proposal. In addition, the Artist shall present documentation to the Authority to show that the Artwork has been completed and installed, including but not limited to the following:

- (a) a written certification from the Artist of the completion and installation of the Artwork;
- (b) a written bill of sale conveying title of the Artwork to the Authority in the form attached hereto as **Exhibit 4**;
- (c) written instructions for care, maintenance, preservation and handling pursuant to Section 1.1.10 herein;
- (d) a sworn statement of no liens, claims or other encumbrances pursuant to Section 3.1 herein;
- (e) photographic documentation of the completed and installed Artwork pursuant to Section 1.1.9 herein; and
- (f) a certificate of review and approval from an engineer pursuant to Section 1.1.4. herein.

1.3.2 The Authority shall notify the Artist in writing of its final acceptance of the Artwork ("Final Acceptance"). Final Acceptance shall be effective as of the first to occur of (1) the date of the Authority's notification of final acceptance or (2) thirty (30) days after the Artist has sent the written notice to the Authority required under Section 1.3.1 herein, unless the Authority, upon receipt of such notice and prior to the expiration of the 30-day period, gives the Artist written notice specifying and describing the services which have not been completed.

1.3.3 After final acceptance of the Artwork, the Artist shall be available at such times as may be mutually agreed upon by the Authority and the Artist to attend any public meetings and community outreach functions, as well as inauguration or presentation ceremonies relating to the dedication of the Artwork. During such public presentations by the Artist, the Artist shall acknowledge the Authority's role in funding the Artwork. The Authority shall be solely responsible for coordinating public information materials and activities related to public presentations.

1.4 Payment

1.4.1. Compensation Amount. The Authority shall pay the Artist the total sum of \$_____, which sum shall constitute full compensation for all services and materials furnished prior to the date of this Agreement and all services and materials to be furnished by the Artist under this Agreement, including Artist's fee, and any insurance, fabrication, transportation, installation and travel expenses related to the project.

1.4.2 Method of Payment. The total compensation 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. Each installment shall be paid upon receipt of the certifications and documentation described below.

(a) The Authority shall pay the Artist _____ THOUSAND DOLLARS (\$____,000.00) upon the execution of this Agreement by all parties hereto.

(b) The Authority shall pay the Artist _____ THOUSAND DOLLARS (\$____,000.00) upon completion of installation of the Artwork and the delivery by the Artist of the documentation described in Section 1.3 herein.

(c) The Authority shall pay the Artist _____ THOUSAND DOLLARS (\$____,000.00) within thirty (30) business days (changed from 3 business days – impossible with the airport’s system of bill paying) after Final Acceptance.

ARTICLE II. GENERAL CONDITIONS

2.1 Method and Time of Performance. All services by Artist and Artist’s subcontractors shall be performed and completed in accordance with the Proposal submitted by the Artist. The Artist agrees that the Artist will complete the Artwork and its installation in accordance with the Schedule. The Authority shall grant a reasonable extension of time to the Artist if conditions beyond the Artist’s control render timely performance of the Artist’s services impossible or unduly burdensome. Failure to fulfill contractual 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.

2.2 Ownership of Documents and Models. One set of presentation materials, including any studies, drawings, designs, maquettes and/or models, prepared and submitted to the Commission and/or the Authority under the request for proposal or this Agreement, shall be retained by the Authority for possible exhibition and to hold for permanent safekeeping.

2.3 Title. Title to the Artwork shall be owned and held by the Authority upon Final Acceptance by the Authority and payment in full to the Artist. The Artist will furnish a bill of sale pursuant to Section 1.3 of this Agreement.

2.4 Assignment or Transfer. The Artist shall not assign or transfer any interest in this Agreement; provided, however, that the Artist’s claims for money due from or to become due from the Authority under this Agreement may be assigned to a financial institution upon written notice from the Artist to the Authority.

2.5 Subcontracting by Artist. The Artist may subcontract portions of the services to be provided hereunder at the Artist’s expense; provided, however, that any subcontracted work shall be carried out under the personal supervision of the Artist and the Artist shall not assign, transfer or subcontract the creative and artistic portions of the work to another party without prior written approval of the Authority.

2.6 Risk of Loss. The Artist understands and agrees that the Artist shall bear the risk of loss or damage by fire, theft, vandalism or any other cause during the period from date of the execution of this Agreement to the date of Final Acceptance. The Artist shall take such measures as are reasonably necessary to protect the Artwork from loss or damage. The Artist further agrees that should the Artwork be lost, stolen, damaged or destroyed in any way, the Artist shall, at the Authority’s option, repair or reproduce the Artwork at the Artist’s own expense or return all payments received from the Authority within sixty (60) days. Notwithstanding the foregoing, the Authority shall bear the risk of loss or damage to the Artwork prior to Final Acceptance only if, during such time, the partially or wholly completed Artwork is in the custody, control or supervision of the Authority or its agents for the purposes of transporting, storing, installing or performing other services to the Artwork.

2.7 Indemnity. The Artist agrees to indemnify and hold harmless the Authority, the Commission, and their respective officers, agents, members and employees, whether they be current or former (the “Covered Persons”), from and against any and all liabilities, obligations, losses, damages, judgments, costs, expenses, demands and claims (including legal fees and costs of investigation) (collectively, “Losses”) arising from, in connection with or caused by: (a) any personal injury or property damage caused, directly or indirectly, by any act or omission of Artist or any of the Artist’s officers, agents or employees; or (b) any infringement of patent, copyright, trademark, trade secret or other proprietary right caused by the Artist. Notwithstanding the foregoing, Artist shall have no obligation under this Section 2.7 with respect to any Losses that are caused solely by the active negligence or willful misconduct of the Covered Persons and is not contributed to by any act or omission (including any failure to perform any duty imposed by law) by Artist. Artist acknowledges and agrees that the Artist’s obligation to indemnify and defend in this Section 2.7: (a) is an immediate obligation, independent of the Artist’s other obligations hereunder; (b) applies to any Losses which actually or potentially fall within the scope of this Section 2.7, regardless of whether the applicable allegations are or may be groundless, false or fraudulent; and (c) shall survive the termination of this Agreement.

2.8 Insurance.

2.8.1 General.

(a) The Artist shall procure and maintain for the duration of this Agreement, at the Artist’s expense, insurance in the kinds and amounts as provided in Section 2.8.2 below with insurance 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. The required insurance shall cover the Artist’s employees, agents, contractors and subcontractors. The Authority, its officials, employees, agents and contractors shall be named as additional insureds. The coverage shall contain no special limitations on the scope of protection afforded to the Authority, its officials, employees, agents and contractors.

(b) The duration of the general liability insurance described in Section 2.8.2 below shall extend for one (1) year after the termination of this Agreement.

(c) The Artist and the Artist’s subcontractors’ insurance coverage shall be the primary insurance as respects the Authority, its officials, employees, agents and contractors. Any insurance or self-insurance maintained by the Authority, its officials, employees, agents and contractors shall be in excess of the Artist’s or the Artist’s subcontractors’ insurance and shall not contribute with the Artist’s or the Artist’s subcontractors’ insurance. The coverage shall state that the Artist’s or the Artist’s subcontractors’ insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer’s liability.

(d) Prior to undertaking any Artwork under this Agreement, the Artist, at no expense to the Authority, shall furnish to the Authority a certificate of insurance with original endorsements affecting coverage for each of the insurance policies required herein. The certificates and endorsements for each insurance policy are to be signed by a person authorized by the insurer to bind coverage on its behalf. The certificates must be current and the Artist must submit replacement or renewal certificates of insurance for all policies expiring during the term of this Agreement. Each certificate shall clearly indicate that the Artist has obtained insurance in the type, amount and classification as specified in Section 2.8.2 and that no material changes, cancellation, suspension or reduction in limits of insurance shall be effective except after 30 days prior written notice to the Authority. Each certificate shall indicate that the subcontractors are additional insureds or the Artist shall furnish separate certificates for each subcontractor. All coverages for subcontractors shall be subject to all the requirements stated in this Agreement, including, but not limited to, naming the parties as additional insureds.

(e) Any deductibles or self-insured retentions must be declared to, and approved by, the Authority. At the option of the Authority, the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Authority, its officials, employees, agents and contractors.

(f) Despite any changes to or cancellation of insurance, the Artist remains responsible for maintaining the required insurance coverage for the duration of the Agreement or as otherwise required herein.

(g) Failure of the Artist to comply with any of the terms of this Section 2.8 shall be considered a material breach of this Agreement and cause for its immediate termination.

(h) Should the Artist not be able to secure acceptable insurance coverage, the Agency may place coverage at cost to the Artist on behalf of the Artist on a project basis.]

2.8.2 Insurance Policy Coverages.

(a) Commercial general liability insurance policy, written on an occurrence form, including all of the usual coverages known as:

- i. Premises/operations liability
- ii. Products/completed operations
- iii. Personal/advertising injury
- iv. Contractual liability
- v. Broad-form property damage
- vi. Independent contractor's liability

Said policy must contain coverage in amounts no less than \$1,000,000 per occurrence for bodily injury, personal injury and property damage.

(b) Automobile liability insurance policy, including coverage for owned, non-owned, leased or hired vehicles in amounts not less than \$250,000 per person and \$500,000 per occurrence for bodily injury, and \$500,000 per occurrence for property damage.

(c) Transportation/cartage insurance all-risk. Coverage must include loading, transportation and unloading of the Artwork. If the Artwork is to be loaded, transported or unloaded by a person or entity other than the Artist, the insurance coverage must cover that person or entity. The minimum limit shall be the total amount of compensation paid to the Artist through the date of loading.

(d) All-risk installation insurance that covers physical damage to or destruction of the Artwork. If the Artwork is to be installed by a person or entity other than the Artist, the insurance coverage must cover that person or entity. The minimum limit shall be the total amount of compensation paid to the Artist through the date of the beginning of installation of the Artwork.

(e) Workers' compensation and employers' liability insurance providing coverage for the Artist, his subcontractors and his employees as required by Chapter 440 of the Florida Statutes.

(g) Except as otherwise expressly provided in this Agreement, the Artist shall remain responsible for maintaining the required insurance coverage for the duration of the Agreement. Compliance with the foregoing requirements shall not relieve the Artist of the Artist's liability and obligations under this Agreement. The certificate of

insurance shall continue to remain in force for at least thirty (30) days after the Artist's completion of the Artwork and its installation.

2.9 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.

ARTICLE 3. WARRANTIES

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

- (a) the Artwork is solely the artistic effort of the Artist;
- (b) except as otherwise disclosed in writing to the Authority, the Artwork is original and unique, an edition of one, and does not infringe upon any copyright or the rights of any person;
- (c) the Artwork, or a duplicate thereof, has not been accepted for sale elsewhere;
- (d) the Artist has not sold, assigned, transferred, licensed, granted, encumbered or utilized the Artwork or any element thereof or any copyright related thereto which may affect or impair the rights granted pursuant to this Agreement;
- (e) the Artwork is free and clear of any liens from any source whatsoever;
- (f) the Artist shall deliver the Artwork to the Authority free and clear of any liens, claims or other encumbrances of any type arising from the acts of the Artist or the Artist's subcontractors and shall furnish a signed and sworn statement to this effect;
- (g) all artwork created or performed by the Artist under this Agreement, whether created by the Artist alone or in collaboration with others, shall be wholly original with the Artist and shall not infringe upon or violate the rights of any third party;
- (h) all services performed hereunder shall be performed in accordance with all applicable laws, regulations, and ordinances, and with all necessary care, skill and diligence; and
- (i) these representations and warranties shall survive the termination or other extinction of this Agreement.

3.2 Warranties of Quality and Condition.

3.2.1 The Artist represents and warrants that the execution and fabrication of the Artwork will be performed in accordance with professional "workmanlike" standards.

3.2.2 The Artist represents and warrants that the Artwork, as fabricated, will be free from defective or inferior materials and workmanship (including any defects consisting of "inherent vice" (e.g. peeling paint, defective patina, materials not suitable for environment) or qualities that cause or accelerate deterioration of the Artwork.

3.2.3 The Artist represents and warrants that the Artwork and the materials used are not currently known to be harmful to public health and safety.

3.2.4 The Artist represents and warrants that reasonable maintenance of the Artwork will not require procedures substantially in excess of those described in the maintenance and preservation recommendations to be submitted by the Artist to the Authority hereunder.

3.2.5 If within two (2) years after Final Acceptance, the Authority observes a breach of warranty described in this Section 3.2 that is curable by the Artist, the Artist shall, at no cost to the Authority, cure the breach reasonably, promptly, satisfactorily and consistent with professional conservation standards (including, for example, cure by means of repair or refabrication of the Artwork). The Authority shall give notice to the Artist of such breach with reasonable promptness.

3.2.6 If, within two (2) years after Final Acceptance, the Authority observes a breach of warranty described in this Section 3.2 that is not curable by the Artist, the Artist is responsible for

reimbursing the Authority for damages, expenses and losses incurred by the Authority as a result of the breach. However, if the Artist disclosed the risk of this breach in the Proposal and the Authority accepted that it may occur, it shall not be deemed a breach for purposes of this Section 3.2.

3.2.7 If, after two (2) years, the Authority observes any breach of warranty described in this Section 3.2 that is curable by the Artist, the Authority shall contact the Artist to make or supervise repairs or restorations at a reasonable fee during the Artist's lifetime. The Artist shall have the right of first refusal to make or supervise repairs or restorations. Should the Artist be unavailable or unwilling to accept reasonable compensation under the industry standard, the Authority may employ the services of a qualified restorative conservator and maintenance expert.

3.2.8 Artist represents and warrants that:

(a) General routine cleaning and repair of the Artwork and any associated working parts and/or equipment will maintain the Artwork within an acceptable standard of public display.

(b) Foreseeable exposure to the elements and general wear and tear will cause the Artwork to experience only minor repairable damages and will not cause the Artwork to fall below an acceptable standard of public display.

(c) With general routine cleaning and repair, and within the context of foreseeable exposure to the elements and general wear and tear, the Artwork will not experience irreparable conditions that do not fall within an acceptable standard of public display, including mold, rust, fracturing, staining, chipping, abrading and peeling.

(d) To the extent that the Artwork incorporates products covered by a manufacturer's warranty, Artist shall provide copies of such warranties to the Authority.

3.2.9 The foregoing warranties are conditional and shall be voided by the failure of the Authority to maintain the Artwork in accordance with the Artist's specifications. If the Authority fails to maintain the Artwork in good condition, the Artist, in addition to other rights or remedies the Artist may have in equity or at law, shall have the right to disown the Artwork as the Artist's creation and request that all credits be removed from the Artwork and reproductions thereof until the Artwork's condition is satisfactorily repaired.

ARTICLE 4. REPRODUCTION RIGHTS

4.1 The Artist retains all rights under the Copyright Act of 1976, 17 U.S.C. § 101 et seq., and all other rights in and to the Artwork except ownership and possession, except as such rights are limited by this Section and Section 5.2. In view of the intention that the Artwork in its final dimension shall be unique and original, the Artist shall not make any exact (should we strike the word exact?) duplicate two-dimensional or three-dimensional reproductions of the Artwork (or sections of the artwork?), nor shall the Artist grant permission to others to do so without the written permission of the Authority. (Should we add language saying something like ...if the artist makes reproductions for profit written permission needs to be attained from the Authority?) Nothing herein shall prevent the Artist from creating future artworks in the Artist's manner and style of artistic expression. The Artist hereby grants to the Authority and its assigns an irrevocable license, at no charge and for as long as the Authority and its assigns own the Artwork, to make two-dimensional reproductions of the Artwork and three-dimensional reproductions of the Artwork that do not exceed one-fourth (1/4) of the size of the original Artwork for non-commercial purposes, including but not limited to advertising, brochures, media publicity, and catalogues or other similar publications for the promotion of the Airport, the Authority, the Commission and/or its arts program. Any such reproductions by the Authority or its assigns shall contain a credit and a copyright notice as provided in Section 4.2. All other rights of reproduction and copyright are expressly reserved to the Artist. If the Authority wishes to make reproductions of the Artwork for commercial purposes, including but not limited to, tee shirts, post cards and posters, the parties shall execute a separate agreement to address the terms of the license granted by the Artist and the royalty the Artist shall receive.

4.2 All reproductions by the Authority or its assigns shall contain a credit to the Artist and a copyright notice substantially in the following form: Copyright © (Artist's name, date of publication).

4.3 The Artist shall use the Artist's best efforts to give a credit reading substantially, "an original artwork commissioned by and in the public art collection of the Jacksonville Aviation Authority" in any public showing or resume use of reproductions of the Artwork. (Should we put ...The Artist shall give a credit reading..... instead of best efforts? That way documentation goes both ways – ours and the artists.)

4.4 The Authority is not responsible for any third party infringement of Artist's copyright and not responsible for protecting the intellectual property rights of Artist.

4.5 The Artist shall, at the Artist's expense, cause to be registered with the United States Register of Copyrights, a copyright in the Artwork in the Artist's name.

ARTICLE 5. ARTIST'S RIGHTS

5.1 Artist's Plaque. The Authority shall cause to be prepared and installed at the Site, a plaque identifying the Artist, the title of the Artwork and the year of completion.

5.2 Alterations of or Damage to Artwork. Except as expressly provided in Section 5.3 below, the Authority agrees that it will not intentionally alter, modify, change, destroy or damage the Artwork without first obtaining the permission of the Artist. If any alteration or damage to the Artwork occurs, the Artist shall have the right to disclaim authorship of the Artwork. Upon written request, the Authority shall remove the identification plaque and all attributive references to the Artist at its own expense within thirty (30) days of receipt of the notice. No provision of this Agreement shall obligate the Authority to alter or remove any such attributive reference printed or published prior to the Authority's receipt of such notice.

5.3 Alterations of Site or Removal of Artwork; Deaccession

5.3.1 The Authority shall notify the Artist in writing should the Authority wish to remove or relocate the Artwork or alter the Site in such a way that might result in the Artwork being destroyed, distorted or modified. The Authority shall make a good faith effort to consult with the Artist in the planning and execution of any such removal, relocation or alteration. The Authority shall make a reasonable effort to maintain the integrity of the Artwork. The Artist shall not unreasonably withhold approval of removal or relocation of the Artwork or use of the Artwork in the altered Site.

5.3.2 The Artwork may be removed or relocated or destroyed by the Authority should the Artist and the Authority not reach mutual agreement on the removal or relocation of the Artwork after a period not to exceed ninety (90) days after written notice to the Artist. During the ninety-day period, the parties shall engage in good faith negotiations concerning the Artwork's removal or relocation.

5.3.3 In the event of changes in building codes or zoning laws or regulations that cause the Artwork to be in conflict with such codes, laws or regulations, the Authority may authorize the removal or relocation of the Artwork without the Artist's prior permission.

5.3.4 If the Authority reasonably determines that the Artwork presents imminent harm or hazard to the public, other than as a result of the Agency's failure to maintain the Artwork as required under this Agreement, the Authority may authorize the removal of the Artwork without the prior approval of the Artist.

5.3.5 If the Authority shall decide to deaccession the Artwork, said Artwork will be offered to the Artist for purchase before it is offered to any other individual or entity.

5.3.6 This Article 5 is intended to replace and substitute for the rights of the Artist under the Visual Artists' Rights Act of 1990, 17 U.S.C. § 101 et seq., including but not limited to § 106A and § 113 et seq., as amended, to the extent that any portion of this Agreement is in conflict with those rights. The parties acknowledge that this Agreement supersedes that law to the extent that this Agreement is in direct conflict therewith.

ARTICLE 6. ARTIST AS INDEPENDENT CONTRACTOR

The Artist shall perform all work under this Agreement as an independent contractor and not as an agent or an employee of the Commission or the Authority. The Artist shall not be supervised by an employee or official of the Commission or the Authority nor shall the Artist exercise supervision over any employee or official of the Commission or the Authority. The Artist acknowledges and agrees that the Artist shall not hold himself or herself out as an authorized agent of the Authority with the power to bind the Authority in a manner. The Artist shall provide the Authority with the Artist's taxpayer identification number and any proof thereof as may be requested by the Authority.

ARTICLE 7. TERMINATION

7.1 Either party may terminate this Agreement without recourse by the other where performance is rendered impossible or impractical for reasons beyond such party's reasonable control, such as, but not limited to, acts of nature; war or warlike operations; governmental regulation or control, public emergency or strike or other labor disturbance. Notice of termination shall be given to the non-terminating party in writing not less than five (5) days prior to the effective date of termination.

7.2 The Authority may terminate this Agreement without cause upon five (5) days written notice to the Artist. The Authority shall pay the Artist for services performed and commitments made prior to the date of termination, consistent with the schedule of payments set forth in Section 1.4 herein. The Artist shall have the right to an equitable adjustment in the fee for services performed and expenses incurred beyond those for which the Artist has been compensated to date under Section 1.4 herein.

7.3 If either party to this Agreement shall willfully or negligently fail to fulfill in a timely and proper manner or otherwise violate, any of the covenants, agreements or stipulations material to this Agreement, the other party shall thereupon have the right to terminate this Agreement by giving written notice to the defaulting party of its intent to terminate specifying the grounds for termination. The defaulting party shall have fifteen (15) days after receipt of the notice to cure the default. If it is not cured, then this Agreement may be terminated by the non-defaulting party immediately upon the service of written notice.

7.4 In the event of default by the Authority, the Artist shall have the rights outlined in Section 7.2 herein.

7.5 In the event of default by the Artist (for cause other than death or incapacitation) and subsequent termination by the Authority, the Artist shall return to the Authority all funds provided by the Authority through the date of termination. The Artist shall provide an accounting. All finished and unfinished drawings, sketches, photographs, and other Artwork products prepared and submitted or prepared for submission by the Artist under this Agreement shall be retained by the Artist. Notwithstanding the previous sentence, the Artist shall not be relieved of liability to the Authority for damages sustained by the Authority by virtue of any breach of this Agreement by the Artist.

ARTICLE 8. COMPLIANCE

The Artist shall be required to comply with federal and state statutes, ordinances and regulations applicable to the performance of the Artist's services under this Agreement.

ARTICLE 9. ENTIRE AGREEMENT; CONSTRUCTION

This writing embodies the entire agreement and understanding between the parties hereto, and there are no other agreements or understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby. If any provision of this Agreement is contrary to, prohibited by, or deemed invalid by applicable laws or regulations of any jurisdiction in which it is ought to be enforced, then such provision shall be deemed inapplicable and omitted, but such omissions shall not invalidate the remaining provisions of this Agreement. The captions are inserted only as a matter of convenience and for reference, and in no way define, limit, or describe the scope of this Agreement, or the intent or content of any provision herein. The parties agree that they have had meaningful discussion and/or negotiation of the provisions, terms and conditions contained in this Agreement. Therefore, doubtful or ambiguous provisions, if any, contained in this Agreement shall not be construed against the party who physically prepared this Agreement. The rule commonly referred to as "Fortius Contra Preferentum" shall not be applied to this Agreement or any interpretation thereof.

ARTICLE 10. MODIFICATION

No alteration, change or modification of the terms of the Agreement shall be valid unless made in writing and signed by both parties hereto and approved by appropriate action of the Authority.

ARTICLE 11. WAIVER

No waiver of performance by either party shall be construed as or operate as a waiver of any subsequent default of any terms, covenants and conditions of this Agreement. The payment or acceptance of fees for any period after a default shall not be deemed a waiver of any right or acceptance of defective performances.

ARTICLE 12. GOVERNING LAW AND VENUE

This Agreement, regardless of where executed or performed, shall be governed by and construed in accordance with the laws of the State of Florida. Venue shall be deemed to be proper in Duval County, Florida.

ARTICLE 13. HEIRS AND ASSIGNS

This Agreement shall be binding upon and shall insure to the benefit of the Authority and the Artist and their respective heirs, personal representatives, successors and permitted assigns.

ARTICLE 14. THIRD PARTY BENEFICIARY

The Commission is an intended third party beneficiary of this Agreement.

ARTICLE 15. NOTICES

All notices, requests, demands and other communications which are required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given upon the delivery or receipt thereof, as the case may be, if delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, as follows:

- If to the Authority: Director of External Affairs
14201 Pecan Park Road
Jacksonville, Florida 32218
- If to the Commission: Program Coordinator, JIA Arts Commission
2400 Yankee Clipper Drive
Jacksonville, Florida 32218

If to the Artist, at the address previously written with copies to:

IN WITNESS WHEREOF, the Authority and the Artist have executed this Agreement as of the date first written above.

WITNESSED:

JACKSONVILLE AVIATION AUTHORITY,

Print Name

By: _____
Steven Grossman, JAA Executive Director, CEO

ARTIST:

Print Name:

Approved as to Form:

Office of General Counsel

DRAFT

Exhibit 4
Transfer of Title

STATE OF _____

COUNTY OF _____

TRANSFER OF TITLE

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, the undersigned Artist located at the address noted below does hereby sell, transfer and convey to the Jacksonville Aviation Authority (the "Authority"), located in Jacksonville, Florida, its successors and assigns, all right, title and interest in the ownership of the Artwork commissioned by that certain Jacksonville Aviation Authority Agreement for Commission of Public Art dated _____, 20__, between the undersigned Artist and the Authority and as described therein.

Artwork Title: _____

Artwork Location: _____

IN WITNESS WHEREOF, the undersigned Artist has executed this written transfer of title on this ____ day of _____, 20__.

WITNESS:

ARTIST:

Print Name: _____

Print Name: _____

Print Address:

Print Address:

TIN: _____

Sworn to and subscribed before me
this ____ day of _____, 20__.

Notary Public

Commission Number: _____

My Commission Expires: _____

(NOTARY SEAL)

Exhibit 3
Artwork Budget

SAMPLE BUDGET WORKSHEET

The following sample budget worksheet is intended to assist artists in planning and developing an estimated budget for public art projects. The following worksheet is intended as a guide only and is not necessarily inclusive of all costs which may be incurred when undertaking a public art project. Not all costs listed will pertain to every project. A contingency of ten percent (10%) of the project total is highly encouraged to cover unexpected costs. The artist's fee is generally 15%-20% of the total project budget for design and fabrication projects. This fee may vary based on the actual work undertaken by the artist and according to the experience and reputation of the artist. The fee is generally intended to cover the creative work of the artist in developing the project concept. The fee is separate from and does not cover the artist's labor if the artist is responsible for fabrication of the project. Eligible project costs may vary from program to program.

ARTIST FEE (suggested 15%-20% of total project budget)

FINAL DESIGN DEVELOPMENT

Includes final proposal, engineering and/or architectural documents, budget and schedule.

Hourly fee for design

Engineering

TRAVEL

Airfare

Car Rental

Per Diem

INSURANCE

(not all insurance is required for each project)

Artwork

Inland Marine

General Liability

Worker's Compensation

Automobile/Hired Vehicle

PROFESSIONAL CONSULTANT FEES

Architect

Structural Engineer

Electrical Engineer

Conservator

Other

(Consultants must be licensed in the State of Florida)

ADMINISTRATIVE EXPENSES

Shop Drawings and Contract Documents

Studio Costs

Correspondence

Phone/Fax

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Supplies

Copyright Registration

Project Documentation (in progress and completed)

MATERIALS AND SUPPLIES

(itemize all anticipated aspects and components with per unit and total cost estimates)

FABRICATION COSTS

(include and itemize all portions of subcontracted work and work to be completed by artist)

SITE PREPARATION

(do not include costs covered by the Agency or others)

TRANSPORTATION

Materials and finished work to the site

Storage

Other

INSTALLATION COSTS

Labor

Equipment (crane, scaffolding, or other)

Base or Mounting Devices and Components

Traffic Barricades/Control

Off-duty police

Landscaping

Site Restoration

Electrical modifications

ADDITIONAL LIGHTING

Design

Fixtures

Bulbs

Site Preparation

Installation

PERMITS AND TAXES

Sales Tax

Use Tax

Development Services Permit

OTHER COSTS

CONTINGENCY

(suggested 10% of project total)

TOTAL