

**AGREEMENT FOR PURCHASE AND INSTALLTION OF ARTWORK
FOR FLORIDA HOSPITAL SUNRAIL STATION**

THIS AGREEMENT is made and entered into this _____ day of _____, 2016 (Effective Date) by and between Martha Lent, an individual (hereinafter "ARTIST"), whose address is 1791 Adams Street, Longwood, Florida 32750, and the City of Orlando, Florida, a municipal corporation organized and existing under the laws of the State of Florida ("City").

WHEREAS, City wishes to purchase artwork (the "Artwork") to be placed on the eastern wall of the McRae Street parking garage at 424 E Rollins Street, Orlando, Florida, within the Florida Hospital campus, and adjacent to the Florida Hospital SunRail Station (the "Site"); and

WHEREAS, an Artist Selection Panel, managed by the City with representatives of Florida Hospital, selected the ARTIST in a call for artists process to produce said Artwork; and

WHEREAS, ARTIST is willing to be responsible for providing such artwork; and

WHEREAS, the Artwork will be purchased and maintained by City, but will be located on property owned by Florida Hospital.

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions hereinafter set forth, the parties agree as follows:

The above recitals are true and correct, and form a material part of this Agreement.

1. ***Term of Agreement.*** The term of this Agreement shall commence on upon execution by Artist and City and continue until all services are completed in compliance with Section 2.
2. ***Services to Be Provided.*** ARTIST shall provide services as described in this section.
 - (A) ARTIST shall provide design, manufacture, transportation, off-road loading, and installation of the Artwork to the Site in Orlando, Florida, and shall pay all freight charges, carry all insurance, make all claims (if needed), and retain ownership of the Artwork until delivery and acceptance of the Artwork by the City. The Artwork shall be delivered to the Site no later than one year from the date of execution of this agreement.
 - (B) ARTIST shall provide explanation to the City of how Artwork will be displayed.
 - (C) ARTIST shall provide one public lecture describing the Artwork at a mutually agreed time and place.
 - (D) ARTIST shall attend an unveiling of the Artwork and participate in publicity and media promotions at a mutually agreed time and place.
 - (E) ARTIST shall provide a maintenance and preservation plan including a description of all materials and products utilized in the Artwork and the required routine care and upkeep involved.

- (F) ARTIST shall attend a public presentation or ribbon-cutting of the art at a mutually agreed upon time within one month of the installation.

3. ***City's Obligations.***

- (A) City shall provide and install a plaque on or near the Artwork containing a credit to ARTIST.
- (B) City shall not permit any use of ARTIST's name or misuse of the Artwork which would reflect discredit on ARTIST's reputation as an artist or which would violate the spirit of the Artwork, should such use or misuse be within the City's control.

4. ***Design.*** ARTIST has submitted a design concept/schematic (the "Design Proposal") with an accompanying budget (the "Budget"), pursuant to a competition organized for the procurement of an artist to design and fabricate an artwork suitable for the Site, which Design was selected and approved by City. Artist agrees to fabricate, deliver and install the artwork for that budgeted amount described in Clause 6 below.

5. ***Independent Contractor.*** In performing the services herein specified, ARTIST is acting as an Independent Contractor, and neither ARTIST nor any of ARTIST's staff shall be considered employees of the City.

6. ***Compensation.*** City shall pay the ARTIST a total of fifty thousand dollars (\$50,000.00) for creation of the artwork as outlined in her proposal, including services, materials, permitting, fabricating and installation. This amount shall represent the entire limit of compensation under this Agreement.

The payment shall be made in two (2) installments, with 75% of the compensation (\$37,500.00), provided within thirty (30) days of execution of this Agreement, and the remaining 25% of the compensation (\$12,500.00) within thirty (30) days of installation and acceptance of the Artwork by City's Public Art Director, or their designee. If the Artwork is not delivered by one year from the date of execution of this agreement (or some later date as agreed to by both parties in writing), then the ARTIST shall refund the initial payment to City, and this Agreement shall be deemed terminated.

7. ***Risk of Loss.*** ARTIST shall bear the risk of loss or damage to the Artwork, and shall take such measures as are reasonably necessary to protect the Artwork from loss or damage until installation and City's final acceptance of the Artwork by the City's Public Art Coordinator, or his designee, which shall not be unreasonably withheld.

8. ***ARTIST's Representations and Warranties.***

- (A) ***Warranties of Title.*** ARTIST represents and warrants that:
 - a) the Artwork is solely the result of the artistic effort of ARTIST;
 - b) except as otherwise disclosed in writing to City, the Artwork is unique and

original and does not infringe upon any copyright or the rights of any other person or entity to the best of the artist's knowledge;

- c) the Artwork (or duplicate thereof) has not been accepted for sale elsewhere;
- d) ARTIST has not sold, assigned, transferred, licensed, granted, encumbered or utilized the Artwork 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) all Artwork created or performed by ARTIST under this Agreement, whether created by ARTIST alone or in collaboration with others, shall be wholly original with ARTIST and shall not infringe upon or violate the rights of any third party;
- g) ARTIST has the full power to enter into and perform this Agreement and to make the grant of rights contained in this Agreement;
- h) These representations and warranties shall survive the assignment, termination or extinction of this Agreement.

(B) *Warranties of Quality and Condition.*

- a) If, within one year of installation, City observes any breach of warranty that is curable by ARTIST, ARTIST shall, at the request of City, cure the breach promptly, satisfactorily and consistent with professional conservation standards, at no expense to City. City shall give notice to ARTIST of such breach with reasonable promptness.
- b) If, after one year of installation, City observes any breach of warranty that is curable by ARTIST, City shall contact ARTIST to make or supervise repairs or restorations at a reasonable fee during ARTIST's lifetime. ARTIST shall have the right of first refusal to make or supervise repairs or restorations. If ARTIST is unavailable or unwilling to accept reasonable compensation under the industry standard, City may seek the services of a qualified restorative conservator and maintenance expert.
- c) If, within one year of installation, City observes a breach of warranty that is not curable by ARTIST, ARTIST is responsible for reimbursing City for damages, expenses and loss incurred by City as a result of the breach. However, if ARTIST disclosed the risk of this breach in the Design Proposal and City accepted that it may occur, it shall not be deemed a breach.
- d) *Acceptable Standard of Display.* ARTIST represents and warrants that:
 - i. General routine cleaning and repair of the Artwork will keep the Artwork within an acceptable standard of public display.
 - ii. 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.
 - iii. *Manufacturer's Warranties.* To the extent the Artwork incorporates products covered by a manufacturer's warranty, ARTIST shall provide copies of such warranties to City.

9. ***General Insurance.***

- (A) The ARTIST will provide General Liability Coverage for all operations including, but not limited to, Contractual, Products and Completed Operations, and Personal Injury. The limits will not be less than \$300,000 Combined Single Limit (CSL) bodily injury and property damages, or its equivalent. Said coverage shall list the City and Florida Hospital as additional insureds, and the insurance coverage shall contain a provision which forbids any cancellation, changes or material alterations in the coverage without providing 30 days written notice to the City.
- (B) ARTIST acknowledges that until final acceptance of the Artwork by City, any injury to property or persons caused by the ARTIST's Artwork or any damage to, theft of, vandalism to, or acts of God affecting the ARTIST's Artwork are the sole responsibility of ARTIST, including, but not limited to, any loss occurring during the creation, storage, transportation or installation of the Artwork, regardless of where such loss occurs.

10. ***Ownership and Intellectual Property Rights.***

- (A) *Title.* Title to the Artwork shall pass to City upon City's written final acceptance and final (25%) payment for the Artwork. ARTIST shall provide City with a Transfer of Title in substantially the form attached hereto as Exhibit A.
- (B) *Ownership of Documents.* One set of presentation materials prepared and submitted under this Agreement shall be retained by the City for possible exhibition and to hold for permanent safekeeping.
- (C) *Reproduction Rights.* ARTIST grants to City and its assigns an irrevocable license to make two-dimensional and/or three-dimensional reproductions of the Artwork for non-commercial and/or charitable purposes, including, but not limited to, reproductions used in brochures, media publicity, and exhibition catalogues or other similar publications.

11. ***Indemnification.*** If there are any claims for damages attributable to the negligence, errors or omissions of ARTIST, its agents or employees while providing the services called for herein, it is understood and agreed that ARTIST agrees to indemnify and hold harmless the City and Florida Hospital from any and all losses, costs, liability, damages and expenses arising out of such claims or litigation asserted as a result hereof.

12. ***Termination.*** Either party may terminate this Agreement upon material breach by the other party of any material provision of this Agreement, provided such breach continues for fifteen (15) days after receipt by the breaching party of written notice of such breach from the non-breaching party.

13. **Entire Agreement Modification.** This Agreement contains the entire understanding of the parties with respect to the subject matter hereof and supersedes all prior agreements, oral or written, and all other communications between the parties relating to such subject matter. This Agreement may not be amended or modified except by mutual written agreement of the authorized parties to this Agreement.
14. **Governing Law and Venue.** This Agreement shall be construed in accordance with the laws of the United States of America and the State of Florida. The venue for any litigation involving this Agreement shall be Orange County, Florida.
15. **Notices.** All notices hereunder by either party to the other shall be in writing, delivered personally, by certified or registered mail, return receipt requested, or by overnight courier, and shall be deemed to have been duly given when delivered personally or when deposited in the United States mail, postage prepaid, addressed as follows:

As to City:

David J. Bass
Assistant City Attorney
City of Orlando
400 S. Orange Avenue, 3rd Floor
Orlando, Florida 32801
(407) 246-4373
david.bass@cityoforlando.net

As to ARTIST:

Martha Lent
1791 Adams Street
Longwood, Florida 32750
(407) 718-5245
marthalent@gmail.com

or to such other persons or places as either party may from time to time designate by written notice to the other.

16. **Assignment.** ARTIST shall not assign or transfer, in whole or in part, this Agreement or any of ARTIST's rights, duties or obligations under this Agreement without the prior written consent of City.

IN WITNESS WHEREOF, the parties have executed this agreement as of the day and year first written above.

Martha Lent

Sign: Martha Lent

WITNESSES:

Sign: Amber Carter

Print: Amber Carter

Sign: Melissa Clarke

Print: Melissa Clarke

City of Orlando, Florida

By: _____
Mayor/Pro Tem

ATTEST:

By: _____
Amy Iennaco, Interim City Clerk

Approved as to form and legality for the use
and reliance of the City of Orlando, Florida, only.

_____, 2016

Assistant City Attorney

EXHIBIT A

TRANSFER OF TITLE

STATE OF _____

CITY OF _____

TRANSFER OF TITLE

FOR VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, the undersigned ARTIST located at the address noted below does hereby sell, transfer and convey to the City of Orlando, its assigns and successors, all right, title and interest in the ownership of the Artwork commissioned by Agreement of _____ and as described therein.

Title: _____

Location: _____

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

Witness

Artist

Sworn to and subscribed
before me on this ____ day
of _____, 2016.

Address

NOTARY PUBLIC
My Commission Expires: _____
(NOTARY SEAL)
