

AGREEMENT FOR COMMISSION OF PUBLIC ART WORK

THIS AGREEMENT, dated February 12, 2019, is made between The Texas A&M University System, an agency of the State of Texas, hereinafter called "TAMUS," and Stoller Studio, Inc. hereinafter called the "Artist," whose permanent address is 198 Lucero Way, Portola Valley, CA 94028, phone number 650-854-4162.

WHEREAS, funds have been allocated and otherwise made available by the University for the commission of artwork created by the Artist and the total budget for this Work is \$ 150,000.00 and;

WHEREAS, the Artist was selected by TAMUS through procedures duly adopted by Texas A&M University ("University") to create, install and document a three-dimensional work of art (the "Work") in a public space located at Texas A&M University, hereto (the "Site"), and;

WHEREAS, both parties wish the integrity and clarity of the Artist's ideas and statements in the Work to be maintained, and;

WHEREAS, the Artist has indicated a desire to create for TAMUS an original artwork in a professional manner;

NOW THEREFORE, the parties mutually agree as follows:

1. DESCRIPTION OF ARTWORK. The Artist will create, install and document the following work of art hereinafter referred to as the "Work."

TITLE: Title To Be Determined

APPROXIMATE DIMENSIONS: Wall Dimensions: H11 ft W: 32 ft D: .5 ft - sculpture will be sized to fit this space pending approval of TAMUS

MEDIUM: hand-finished stainless steel

DESCRIPTION OF ARTWORK: abstract metal lace patterns

2. PERMANENT LOCATION. The permanent location for the Work shall be the 3rd floor lobby of the Student Services Building, located on the campus of Texas A&M University.

The University reserves the right to move the Work to another Site at any time, if the University in its sole discretion deems such relocation appropriate. (As stipulated in Paragraph 19 hereof).

3. CHANGES IN DESIGN. The Artist shall create the Work in accordance with a concept approved by TAMUS. This concept shall include the following: model/maquette or digital version of the concept showing some indication of color and/or other drawings or documents as are required to present a meaningful representation of the proposed work. Recognizing that the change in scale from model/maquette to full scale may require adjustments, the Artist has the right to make minor changes in the Work that are structurally and aesthetically necessary. Any change in scope, design, or material that significantly alters the original and approved concept and design of the artwork or affects installation, scheduling, site preparation, or maintenance for the Work shall require the prior review and approval of the University.

4. SITE PREPARATION. The University shall provide a ladder or personnel lift for installation as needed. Artist shall work with Architect/Engineer to provide the best lighting solution for the artwork.

5. PRICE AND PAYMENT SCHEDULE. As payment for the services of the Artist and for the completed Work, the University will pay the Artist a total of one hundred fifty thousand and 00/100 dollars (\$ 150,000.00), which shall constitute full compensation to the Artist for all costs incurred in the creation of the Work, including, but not

limited to fees, materials, labor of the Artist and the Artist's assistants, studio and operating costs applicable to this project, travel costs for the Artist to visit and research the site, transportation of the Work to the permanent location, and any costs incurred by the Artist for installation of the Work at the permanent location.

The money shall be paid as follows:

- | | | |
|-------------|---------------|---|
| <u>25</u> % | (\$37,500.00) | Upon approval of TAMUS of the Artist and signing of this Agreement. |
| <u>25</u> % | (\$37,500.00) | Upon receipt of technical and engineering plans of final design concept for university review and approval. |
| <u>25</u> % | (\$37,500.00) | Upon completion of half the required construction or creation of the Work |
| <u>25</u> % | (\$37,500.00) | Upon the installation and receipt of all documentation (as referred to in Section 10) for the Artist and official acceptance of the Work by TAMUS. (After September 16, 2019, Artist will make every reasonable effort to have the work installed no later than January 13, 2020) |

The Artist shall submit the billing or invoice to TAMUS when the halfway point has been reached. Documentation may be requested in order to substantiate progress with the Work. If TAMUS disagrees with the Artist's estimation of the stage of completion of the Work, TAMUS must notify the Artist within fourteen working days of receipt of billing or be foreclosed from raising objection to the Artist's estimation. TAMUS shall have the sole discretion for determining when the Work has reached a given stage of completion.

6. INSTALLATION AND TIME SCHEDULE. The Artist will make every reasonable effort to have the work installed no later than the date of January 13, 2020. In the event that the permanent location is not sufficiently prepared to permit installation, or an extension of the installation date for the Work is deemed to be required by TAMUS, it will be within the discretion of TAMUS to provide storage space for the Work at no expense to or liability on the part of the Artist or to reimburse the Artist for storage costs incurred for the period between the time provided in the schedule for commencement of installation and the date upon which the site is sufficiently complete to reasonably permit installation of the Work. It will be at the discretion of TAMUS to reimburse any travel costs incurred by the Artist for installation of the Work when the site is sufficiently complete.

In the event that, through the fault of the Artist as determined by TAMUS, the Work is not installed by the agreed date, the amount of 10% of the balance due shall be deducted every 30 working days until the installation is completed as liquidated damages. The Parties acknowledge that the actual damages sustained by the University for late completion of the Work will be uncertain and difficult to ascertain, that calculating the University's actual damages would be impractical, unduly burdensome, and cause unnecessary delay, and that the amount of liquidated damages set forth above is a reasonable estimate. The Artist may request an extension of the delivery date from the University no later than 10 working days prior to the installation date. If the extension is granted, a new installation date shall be agreed upon in writing and such change shall not affect any other provisions or sections of this Agreement.

7. OFFICIAL ACCEPTANCE. Official Acceptance of the Work will occur when (1) the Artist has complied with Paragraph 10; and (2) the Artist notifies TAMUS that the Work has been installed according to the terms of this Agreement; and (3) TAMUS issues a letter of acceptance to the Artist. Accordingly, the Artist hereby agrees to forward final documentation materials (as defined in Paragraph 10 hereof) and request a letter of acceptance from TAMUS. TAMUS will take official ownership by sending a letter of acceptance for the Work to the Artist. Final payment to the Artist will be made within 30 days after the original installation date if the delay is caused by TAMUS or an occurrence that is beyond the control of the Artist.

8. INSPECTION AND REVIEW. TAMUS reserves the right to review the Work while in the process of execution and, at reasonable times, to require and receive progress reports from the Artist.

9. ARTIST AS INDEPENDENT CONTRACTOR. The Artist agrees to perform all work under this Agreement as an independent contractor and not as an agent or employee of the State. Any and all employees of the Artist engaged

in the performance of any work or services required by the Artist under this Agreement shall be considered employees of the Artist only. The Artist shall furnish all supervision, labor, supplies, materials, insurance, and other incidentals needed to complete this Agreement. Arrangements and costs of transportation of the Work to the site are the responsibility of the Artist.

10. DOCUMENTATION AND RECORDS. Upon installation of the Work, and before final payment shall be made, the Artist shall furnish TAMUS with a completed Documentation Worksheet form including: a) a written technical description of the Work, and b) maintenance instructions for the Work.

11. PUBLIC NOTICE. TAMUS shall, at its expense, prepare and install at the Site, pursuant to the written instructions and subsequent approval of the Artist, and the Office of the University Architect, a plaque identifying the Artist, the title of the Work, and the year of completion, and shall reasonably maintain such notice in good repair against the ravages of time, vandalism and the elements.

12. WARRANTIES. The Artist warrants that the Work is the original product of the Artist's own creative efforts. The Artist also warrants that the Work is unique and that the Work or a duplicate thereof has not been accepted for sale elsewhere, unless, as stipulated to the University at the time this contract is signed, the Work is known by TAMUS as one of a limited edition of Works.

The Artist warrants that the execution and fabrication of the Work will be performed in a good and workmanlike manner and that the Work, as fabricated and installed, will be free of defects in material and workmanship, including any defects consisting of "inherent vice" or qualities which cause or accelerate deterioration of the Work. The Artist shall guarantee and maintain the Work from faults of material and workmanship for a period of one year after the acceptance date.

The Artist warrants that reasonable maintenance of the Work will not require procedures substantially in excess of those described in the maintenance instructions submitted in the concept/design proposal for the Work previously approved.

13. ASSIGNMENT OF WORK. The work and service required of the Artist under this Agreement are personal and shall not be assigned, sublet, or transferred. This shall not prohibit the Artist from employing or subcontracting qualified personnel who shall work directly under the Artist's supervision.

14. INDEMNITY AND LIABILITY. The Artist does release and agree to indemnify, save and hold harmless the State, TAMUS, and their officers, members, agents, and employees from any and all causes of action, suits at law or equity, or demands or claims, or from any liability of any nature arising out of the construction and creation of the Work and from any obligations made by the Artist for the Artist's agents and/or employees.

All risks for damages from theft, vandalism, and Acts of God, relating to the Work are the responsibility of the Artist during any and all operations, including but not limited to, creation, transit and storage by the Artist which take place on other than the permanent location or the TAMUS storage site. The Artist may provide a policy of insurance covering all risks and hazards against any damage to or loss of the Work while it is being made, transported, or stored by the Artist, at the Artist's sole expense.

15. COMPLIANCE WITH THE LAWS AND NONDISCRIMINATION. The Artist shall comply with all applicable State and local laws, rules and regulations. In connection with the performance of this Agreement, the Artist agrees not to discriminate against any employee because of age, race, religion, color, handicap, sex or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or of other forms of compensation; and selection for training, including apprenticeship.

The Artist further agrees to take affirmative action to ensure equal employment opportunities. The Artist agrees to post in a conspicuous place, available for employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions for the nondiscrimination clause.

16. COPYRIGHT. The Artist expressly reserves every right available to the Artist in common law or under the

Federal Copyright Act and all other rights in and to the work except ownership and possession and any such rights as those limited by this contract. The University reserves the right to photographically, mechanically reproduce the Work or make a derivative work (reproductions such as 3-D models, smaller pictures, etc.) for purposes strictly within the normal functions of the University including, but not limited to, publications, catalogues, annual reports, bulletins, alumni magazines and fund-raising literature or 3-D view of the facility with the Work. Any reproductions of the Work, or any catalogues or publications referencing the Work by the University shall contain a credit to the Artist as follows: (Artist's name) Roger White Stoller, (date of completion of work) (c) 2019. The Artist agrees to give credit in the following form: "In the Collection of Texas A&M University," in any public showing of any reproduction of the Work.

17. MAINTENANCE. The Agency recognizes that maintenance of the Work on a regular basis is essential to the integrity of the Work. The Agency agrees to reasonably assure that the Work is properly maintained and protected taking into account the recommendations of the Artist provided in accordance with Section 10 of this contract, and shall reasonably protect and maintain the Work against the ravages of time, vandalism and the elements.

18. REPAIRS. During the Artist's lifetime, the Artist shall have the right to approve all repairs and restorations, provided, however, the Artist shall not unreasonably withhold approval for any repair or restoration. To the extent practical, the Artist, during the Artist's lifetime, shall be given the opportunity to make or personally supervise significant repairs and restoration and shall be paid a reasonable fee for any such services, provided that the University and the Artist shall agree in advance and in writing upon the Artist's fee for such services. All repairs and restorations shall be made in accordance with recognized principles of conservation. In the event Agreement cannot be reached between the parties, then the University, in its sole discretion, may proceed in good faith with any repairs or restoration it deems to be required.

19. RELOCATION. The Work shall be placed in the location designated in Section 2 of this Agreement. The University agrees that they will attempt to notify the Artist if, for non-emergency reasons, the Work has to be removed and permanently relocated to a site not specified in Section 2.

20. WAIVER AND TERMINATION OF RIGHTS. The Artist agrees to notify TAMUS of any changes in the Artist's address within 90 days of that change. Failure to do so shall be deemed a waiver of those Artist's rights expressed in sections 19 and 21 of this Agreement. Upon the death of the Artist, all of the Artist's rights expressed in Section 17 revert to the University.

21. TERMINATION OF THIS CONTRACT. In the event that either party willfully or negligently fails to fulfill in a timely manner any of the stipulations of this Agreement, or otherwise violates such stipulations or commits an event of default hereunder, then 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 and specify the grounds therefor. The defaulting party shall have ten (10) days after the receipt of the notice to cure the default. If the default is not cured, then this Agreement shall terminate.

In the event that this Agreement is terminated by the Artist, the Artist shall refund to TAMUS all monies paid by TAMUS to the Artist for the performance of work under this Agreement. The artist may then retain the Work, together with any models, plans or drawings and all materials and supplies purchased for the Work, for the Artist's own use without restrictions.

In the event this Agreement is terminated by TAMUS without fault on the part of the artist, the Artist shall be entitled to a final payment or settlement as set forth in either of the following, at the option of the Artist:

A. The Artist shall be paid an amount equal to the percentage of the Work done at the time the Agreement is terminated. If payments previously made to the Artist exceed the total amount due as computed above, then the Artist shall refund to the University that amount of the total previous payments which exceeds the amount determined by applying the above formula. The Artist shall deliver to TAMUS the Work in whatever form it exists at the time of termination which shall then become the property of TAMUS for use without restriction, except that it shall not be represented to be the completed Work of the Artist; or

B. The Artist may refund to TAMUS all monies paid by TAMUS prior to the time of termination and shall then retain

the Work, together with any models, plans, or drawings and all materials and supplies purchased for the Work, for the Artist's own use without restrictions.

In the event this Agreement is terminated by TAMUS for fault on the part of the Artist, or because of the disability of the Artist; or is terminated automatically because of the death of the Artist; or in the event of any breach of its terms by the Artist, TAMUS may require either of the options that would have been available to the Artist in this section. Exercise of either of these options by TAMUS shall not prevent the University from pursuing a remedy otherwise available to it in law or equity.

22. DELINQUENT CHILD SUPPORT OBLIGATIONS. A child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive payments from state funds under an Agreement to provide property, materials, or services until all arrearages have been paid or the obligor is in compliance with a written repayment Agreement or court order as to any existing delinquency. The *Texas Family Code* requires the following statement be included in this Contract, which is certified by the signatory of the vendor hereto: "Under Section 231.006, *Texas Family Code*, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate."

23. PAYMENT OF DEBT OR DELINQUENCY TO THE STATE. Pursuant to Section 2252.903, *Texas Government Code*, Artist agrees that any payments owing to Artist under this Agreement may be applied directly toward certain debts or delinquencies that Artist owes the State of Texas or any agency of the State of Texas regardless of when they arise, until such debts or delinquencies are paid in full.

24. PROHIBITED BIDS AND AGREEMENTS. A state agency may not accept a bid or award a contract that includes proposed financial participation by a person who received compensation from the agency to participate in preparing the specifications or request for proposals on which the bid or contract is based. The *Texas Government Code* requires the following statement: "Under Section 2155.004, *Texas Government Code*, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate."

25. PUBLIC INFORMATION. (a) Artist acknowledges that A&M System is obligated to strictly comply with the Public Information Act, Chapter 552, Texas Government Code, in responding to any request for public information pertaining to this Agreement, as well as any other disclosure of information required by applicable Texas law. (b) Upon A&M System's written request, Artist will provide specified public information exchanged or created under this Agreement that is not otherwise excepted from disclosure under chapter 552, Texas Government Code, to A&M System in a non-proprietary format acceptable to A&M System. As used in this provision, "public information" has the meaning assigned Section 552.002, Texas Government Code, but only includes information to which A&M System has a right of access. (c) Artist acknowledges that A&M System may be required to post a copy of the fully executed Agreement on its Internet website in compliance with Section 2261.253(a)(1), Texas Government Code.

26. GOVERNING LAW AND VENUE. The substantive laws of the State of Texas (and not its conflicts of law principles), USA, govern all matters arising out of or relating to this Agreement and all of the transactions it contemplates, including but not limited to, matters of performance, non-performance, breach, remedies, procedures, rights, duties, and interpretation or construction. Pursuant to Section 85.18 (b), *Texas Education Code*, venue for a state court suit filed against The Texas A&M University System, any component of The Texas A&M University System, or any officer or employee of The Texas A&M University System is in the county in which the primary office of the chief executive officer of the system or component, as applicable, is located. At execution of this Agreement, such county is Brazos County, Texas. Venue for any suit brought against The Texas A&M University System in federal court must be in the Houston Division of the Southern District of Texas.

27. STATE AUDITOR'S OFFICE. Artist understands that acceptance of funds under this Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "Auditor"), to conduct an audit or investigation in connection with those funds pursuant to Section 51.9335(c), *Texas Education Code*. Artist agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation, providing all records requested. Artist will include this provision in all contracts with permitted

subcontractors.

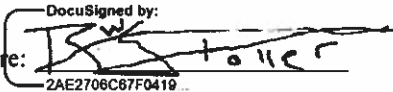
28. **FORCE MAJEURE.** Neither party is required to perform any term, condition, or covenant of this Agreement, if performance is prevented or delayed by a natural occurrence, a fire, an act of God, an act of terrorism, or other similar occurrence, the cause of which is not reasonably within the control of such party and which by due diligence it is unable to prevent or overcome.

29. **NON-WAIVER.** Artist expressly acknowledges that TAMUS is an agency of the State of Texas and nothing in this Agreement will be construed as a waiver or relinquishment by TAMUS of its right to claim such exemptions, privileges, and immunities as may be provided by law.

30. **MODIFICATION OF THIS CONTRACT.** No alterations, changes or modifications of the terms of this contract shall be valid unless made in writing and signed by all parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

ARTIST

DocuSigned by:
Signature: 
2AE2706C67F0419

Printed Name: Roger Stoller
Date: 2/12/2019 | 13:48:16 CST

**THE TEXAS A&M UNIVERSITY
SYSTEM**

Signature: 
Title: Deputy Chancellor and CFO

Printed Name: Billy Hamilton
Date: 2/18/19