THE COLLEGE OF NEW JERSEY

AGREEMENT
FOR
ARTS INCLUSION PROJECT
FOR THE
BROWER STUDENT CENTER RENOVATION AND ADDITION

EWING, NEW JERSEY

DRAFT
THIS AGREEMENT, made this ___ day of _____ 2016, by and between
ARTIST’s NAME. (hereafter referred to as "ARTIST"), an artist, at ARTIST’s ADDRESS and
The College of New Jersey, (hereafter referred to as the "COLLEGE") witnesses that:

WHEREAS, pursuant to the Public Buildings Arts Inclusion Act, N. J. S. A.
52:16A-29 et seq., the COLLEGE desires to obtain the services of an artist to create a unique
ARTWORK for the Brower Student Center Renovation and Addition that is currently under
construction on the COLLEGE campus in Ewing, NJ; and,

WHEREAS the ARTIST was selected by a selection process coordinated by the
New Jersey State Council on the Arts (hereafter referred to as “NJSCA”) and involved an art
selection committee convened by the COLLEGE; and,

WHEREAS, the ARTIST’s design of the ARTWORK was approved by the
COLLEGE, the ARTIST shall begin to fabricate and install the components of the ARTWORK
into the project under the terms of this Agreement.

NOW, THEREFORE, in consideration of the covenants contained herein, and pursuant to
all applicable federal, state and local laws and ordinances, the ARTIST and the COLLEGE agree
as follows:

ARTICLE ONE THE ARTIST

1. The ARTIST shall provide all design, project coordination, fabrication, installation and
project management services necessary for the performance of the work required by this
Agreement, unless otherwise noted, and as set forth in the ARTIST’s proposal, which is
incorporated by reference into this Agreement. The ARTIST shall commence such work only
upon receipt of notice to proceed from the COLLEGE in the form of a fully executed Agreement.

A. DESIGN OF THE ARTWORK

1. The ARTIST shall further develop the design of the ARTWORK as needed
upon execution of this Agreement. The ARTIST will coordinate the design of the ARTWORK in
accordance with the COLLEGE’s plans and timeline of the project. The ARTIST shall be
responsible for the following key artistic elements:

a) All accurately fabricated components of the ARTWORK in the exact
materials and dimensions as indicated in ATTACHMENT “E” of this
Agreement.

b) ARTWORK design, fabrication, assembly, transportation and
installation.

2. The ARTIST agrees to keep the COLLEGE fully informed on the progress of
the ARTWORK throughout the course of the project. This includes, but is not limited to,
attendance at project meetings, the preparation of reports and regular communication as needed
by telephone with representatives of the COLLEGE. The COLLEGE may, at reasonable times
and on reasonable notice, set up a mutually convenient time to review the ARTWORK while the
design, fabrication or installation is in progress.
3. The ARTIST agrees to comply with the provisions set forth in the publication entitled "Procedures for Artists in the Performance of Arts Inclusion Contracts" prepared by the NJSCA, and which is incorporated by reference into this Agreement.

4. The ARTIST agrees to seek and obtain approval from the COLLEGE for any change in design parameters such as the size and scale, textures and colors, and siting of the ARTWORK prior to commencement of fabrication or installation.

5. The ARTIST agrees to comply with the Schedule of Contract Deliverables, which is attached to this Agreement as Attachment “A”.

6. The ARTIST agrees to comply with the Progress Schedule, which is attached to this Agreement as Attachment “B”.

7. Throughout the course of the project, the ARTIST agrees to coordinate the design of the ARTWORK with the work of the COLLEGE. Such coordination includes but is not limited to attending meetings or providing installation logistics to the COLLEGE, as well as the other project coordination matters that are related to the ARTWORK. In no instance will any changes or revisions to the design be made without the express approval of the COLLEGE.

8. The ARTIST shall verify all measurements for the ARTWORK, during the course of the design, and all design plans and specifications shall reflect the verified field measurements. Any errors in the designs, drawings, specifications or other documents prepared by the ARTIST, shall be corrected and/or revised, without additional compensation.

9. The ARTIST shall provide a detailed installation plan of the ARTWORK to the COLLEGE for its review and for record purposes. To that end, the ARTIST will coordinate the installation of the ARTWORK in accordance with the Progress Schedule.

B. ENGINEERING OF THE ARTWORK

1. The ARTIST agrees to retain the services of an independent engineer, licensed in the State of New Jersey, to provide a complete engineering analysis of the ARTWORK, as designed and to ensure that the ARTWORK will be engineered for safe and accurate installation within the project. The ARTIST’s estimate of the weight of the ARTWORK shall be verified and communicated to the COLLEGE. All plans prepared by the engineer must be signed and sealed by the engineer and shall be submitted by the ARTIST to the COLLEGE for review and record purposes.

2. In the event the ARTWORK cannot be installed as designed but the COLLEGE determines that it will go forward with the project, the ARTIST shall modify and/or redesign the ARTWORK and the parties agree to renegotiate the project Agreement, as necessary.

3. In the event the ARTWORK cannot be installed as designed and the COLLEGE determines that it will not go forward with the project, the COLLEGE will terminate this Agreement for convenience. If this agreement is terminated for convenience, the COLLEGE agrees to pay the ARTIST for all work and services performed up to and including the date of termination, which shall include payment for all labor, material, equipment, subcontract and overhead costs, including profit, provided the ARTIST furnishes the COLLEGE with a complete, detailed and itemized cost breakdown, in sufficient detail to permit a thorough analysis of the
claimed costs. In the event the contract is terminated, ownership of all elements that comprise the project shall become the property of the COLLEGE. The COLLEGE will not complete the project or use the elements for a second project without the consent of the ARTIST.

C. PROJECT COORDINATION

1. The ARTIST shall coordinate all elements of the project, whether it relates to the design, fabrication, installation, or project management of the ARTWORK with all subcontractors engaged by the ARTIST and the COLLEGE, unless otherwise noted.

2. The Contracting Officer of the COLLEGE (hereafter referred to as "Officer"), or his/her authorized representative, shall be the final arbiter of any dispute between the ARTIST and the COLLEGE. The ARTIST agrees that the Officer, or his/her authorized representative, shall be the final interpreter of the requirements of this Agreement and that if the Officer or his/her representative make any determination in which the ARTIST is not in agreement, the ARTIST may request a hearing of the issue(s). The Officer, or his/her authorized representative, shall issue a decision after hearing the facts. If the ARTIST disagrees with the Officer’s determination, the ARTIST may pursue any and all appropriate remedies (s)he may have, at law, including the right pursuant to the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq., to seek redress in the courts. The ARTIST, however, shall continue the work of the project as directed by the Officer despite any difference of opinion and/or claims it may have before the Officer or the court.

D. FABRICATION OF THE ARTWORK

1. The ARTIST is responsible for the complete and accurate fabrication of the art elements that comprise the ARTWORK as listed in ATTACHMENT “E”. All art elements shall be fabricated in accordance with the design documents prepared by the ARTIST. Any errors in the fabrication of the ARTWORK shall be the responsibility of the ARTIST and the ARTIST shall correct any errors, without any additional cost to the COLLEGE.

2. The ARTIST agrees to coordinate the installation of the ARTWORK with the COLLEGE. Such coordination shall include but is not limited to keeping the COLLEGE fully informed of the timing of the installation, provide the COLLEGE with the physical dimensions of the elements to be installed, their scheduled delivery date(s) and any other information the ARTIST needs to complete the work of his contract.

E. INSTALLATION OF THE ARTWORK

1. The ARTIST shall be responsible for the accurate on-site installation of the ARTWORK set forth in Article One, paragraph I.A., above. All such installation shall be performed in accordance with good architectural and engineering practice, in a safe and efficient manner. The ARTIST shall arrange his work and shall place and dispose of the materials being used so as not to interfere with the operation of the others working within the limits of the project. The ARTIST agrees to join his work with that of the other contractor(s) in an acceptable manner and shall perform it in proper sequence to that of the others.
2. Prior to the commencement of any work at the site, the ARTIST agrees to meet with representatives of the COLLEGE to coordinate scheduling and installation requirements. In no event will work on site commence without the written approval of the COLLEGE.

3. Subcontractors employed by the ARTIST for installation of the elements of the ARTWORK may be classified with the COLLEGE prior to the commencement of the construction work. In all cases, subcontractors must be approved prior to entering onto the site.

4. The ARTIST is not responsible for damage to work performed on the project that may be caused by or on account of the work of the other contractor(s). The ARTIST is responsible for any damage done or caused by the ARTIST’S work or that of the ARTIST’S subcontractors within or adjacent to the site of the project. The ARTIST agrees to repair or make good any such damage in a manner satisfactory to and at no cost to the COLLEGE.

5. The ARTIST must provide the COLLEGE with plans for the intended installation of the art elements comprising the ARTWORK prior to installation.

6. The ARTIST shall provide the COLLEGE with a maintenance plan to enable proper action as necessary for the care and conservation of the ARTWORK.

F. PROJECT MANAGEMENT SERVICES

1. The ARTIST shall provide all project management services necessary to properly supervise the fabrication and installation of the ARTWORK at the project site. Any problems encountered by the ARTIST during the course of the fabrication and/or installation of the ARTWORK must be immediately communicated to the COLLEGE. In addition, if any problem encountered at the site will result in any delay of the installation of the ARTWORK or completion of project, the ARTIST shall immediately notify the COLLEGE. Failure to do so may result in damages, which may be deemed the responsibility of the ARTIST.

2. The ARTIST shall provide complete construction management services for the ARTWORK that shall include, but not be limited to the following:
   a) Schedule all work to be performed on the ARTWORK by both on-site and off-site suppliers, fabricators and workers;
   b) Provide all necessary information and supervision for layout and proper installation of the ARTWORK.

II. ARCHIVAL DOCUMENTATION

A. As part of this Agreement, the ARTIST agrees to supply to the COLLEGE and the NJSCA professional quality photo documentation of the ARTWORK, in accordance with paragraph 3.3.1 of the Procedures for Artists in the Performance of Arts Inclusion Projects. These materials shall not be offered for sale at any time.

B. The ARTIST shall submit all archival documentation to the COLLEGE and the NJSCA no later than 30 days after completion of the installation of the ARTWORK.
III. MAINTENANCE OF THE ARTWORK

A. Upon completion and installation of the ARTWORK, the ARTIST agrees to provide an orientation and training session with the COLLEGE’s maintenance personnel while the ARTIST is on site so that the ARTWORK can be properly maintained in the future. The COLLEGE will ensure that the appropriate maintenance representatives meet with the ARTIST while the ARTIST is on site in the final days of installation of the ARTWORK. As a part of the project close-out phase, the ARTIST shall submit all maintenance manuals, warranties, installation instructions, and the like, to the COLLEGE. The ARTIST will explain the complete maintenance plan for the ARTWORK in writing including a suggested maintenance schedule for the ARTWORK. The ARTIST will provide the maintenance plan to the COLLEGE prior to the acceptance and final payment of the ARTWORK by the COLLEGE.

B. The ARTIST further agrees to provide the COLLEGE with any technical assistance that may be required as a result of inherent defects in the ARTWORK that may require repair or correction. Such technical assistance shall be for a period of one-year following installation of the ARTWORK.

IV. INVOICES

A. Invoices shall be prepared by the ARTIST and submitted to the COLLEGE for payment as the ARTIST completes each of the milestones set forth on the Payment Schedule, which has been set forth in Article Two, paragraph I. A., below. Invoices shall be submitted by the ARTIST when aspects of the ARTWORK are completed in accordance with the payment schedule. All invoices shall contain the contract name and number, and evidence of progress in accordance with the payment schedule.

V. COPYRIGHT

A. The ARTIST agrees to register the completed ARTWORK for copyright protection upon acceptance by the COLLEGE or within a reasonable time, thereafter. The ARTIST retains all rights under the Copyright Act, 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 paragraph. The ARTIST shall be responsible for the payment of the copyright application fee and obtaining the appropriate form from the United States Copyright Office. The copyright notice shall appear on the project plaque. It is agreed and understood that the ARTWORK under this Agreement is defined as “a work of the visual arts” for the purposes of the Copyright Law.

B. The ARTIST grants to the COLLEGE and the NJSCA and its assignees, an irrevocable non-exclusive license to make two-dimensional photographic film, tape, digital format and other two-dimensional reproductions of the ARTWORK for non-commercial purposes provided that these rights are exercised in a tasteful and professional manner. For the purposes of this Agreement, the following are deemed to be reproduction for non-commercial purposes; reproductions in exhibition catalogues, books, slides and photographs in COLLEGE and NJSCA publications and web sites, art magazines, art books, and art and news sections of newspapers; in general books and magazines not primarily devoted to art but of an educational, historical or critical nature; slides and film strips not intended for a mass audience. Since the ARTWORK is located in a public space, its incidental appearance or use in photographs, video, films or events
using said space shall not be considered commercial use. In the use of photographic 2D media, the COLLEGE and the NJSCA shall use their best efforts to give priority to existing media submitted and approved by the ARTIST as defined in Paragraph 3.3.1 of the Procedures for Artists in the Performance of Arts Inclusion Projects.

C. The COLLEGE and the NJSCA shall credit the ARTIST for the ARTWORK when publishing two-dimensional reproductions of the ARTWORK or authorizing the publication of two-dimensional reproductions of the ARTWORK, except when the ARTWORK appears incidentally. Credit shall be as follows: NAME OF ARTIST 2017.

D. With the exception of the above-listed parties, the ARTIST reserves all copyrights in the ARTWORK, the preliminary design and any incidental works made in the creation of the ARTWORK.

E. The ARTIST agrees to sign and comply with the Publicity Agreement included in the NJSCA publication “Procedures for Artists in the Performance of Arts Inclusion Contracts.”

F. The ARTIST agrees that the ARTWORK prepared pursuant to this Agreement is a unique work and that copies or editions of the ARTWORK will not be created or installed at any other location, no matter where located. As such, the COLLEGE agrees to notify the ARTIST, prior to the production of any commercially marketable items that depict the ARTWORK and are intended for sale to the general public.

G. In the event that the COLLEGE wishes to reproduce images of the ARTWORK for commercial purposes, it shall seek permission from the ARTIST. Upon the COLLEGE’s request, the ARTIST agrees in good faith to negotiate a licensing agreement to permit the COLLEGE to reproduce, distribute and sell an image of the ARTWORK as a marketable item. The agreement shall provide for the ARTIST’s prior written approval of the item and reproduction of the image of the ARTWORK, and the COLLEGE shall pay to the ARTIST a royalty of twenty percent (20%) of the gross sale price.

VI. PLAQUE AND DEDICATION

A. The COLLEGE may elect to publicly dedicate the ARTWORK. The ARTIST agrees to attend any such dedication, upon written notice from the COLLEGE, unless excused by the COLLEGE.

B. Upon completion of the work, the ARTIST shall prepare a plaque, in accordance with paragraph 3.3.2 of the Procedures for Artists in the Performance of the Arts Inclusion Contracts. The plaque shall contain the title of the ARTWORK, the name of the ARTIST and recognition of the COLLEGE. The design and content of the plaque shall be subject to approval, in writing, by the COLLEGE and the NJSCA.

ARTICLE TWO THE COLLEGE

I. The COLLEGE agrees to remunerate the ARTIST upon properly drawn invoices for completion of the milestones set forth on the Payment Schedule. As total payment for the completed ARTWORK, including, but not limited to, all design, project coordination, fabrication,
installation, project management, maintenance, fees, materials, supplies, shipping and other costs, transportation and travel, and all services incidental to the work required pursuant to this Agreement, the COLLEGE will pay the ARTIST the sum of $120,000. Such sum will be paid out in accordance with the Payment Schedule, below.

A. PAYMENT SCHEDULE AND LIQUIDATED DAMAGES

1. This is a fixed price agreement. The parties have agreed that the complete contract amount for this project totals $120,000 (referenced in ATTACHMENT “D” of this Agreement). This amount represents all costs, whether identified as a specific item or not, necessary to provide the completed art elements as described in this Agreement and in the ARTIST’s proposal and cost proposal. As such, this cost includes any and all items required pursuant to this Agreement that are necessary to complete the work of the project.

2. As payment for the artwork, the COLLEGE agrees to pay the ARTIST as follows:

   a) $5,000 upon signing and acceptance of this Agreement.

   b) $25,000 upon compliance with, and furnishing of all items set forth in Chapter 1, Design Development Phase, which is set forth the publication Procedures for Artists in the Performance of Arts Inclusion Contracts; and upon the ARTIST’s completion and submission of all final design documents for the ARTWORK (of finished drawings and shop drawings), and the ARTIST’s submission of proof of liability insurance.

   c) $39,000 upon 50% completion of the fabrication of the ARTWORK

   d) $26,000 upon 100% completion of the fabrication of the ARTWORK

   e) $20,000 upon 100% installation and acceptance of the ARTWORK by the COLLEGE

   f) $5,000 upon 100% submission of preliminary digital photo documentation via e-mail to the NJSCA, a filled-out copyright application VA, orientation and maintenance training document, submission of maintenance and warranty information, and final contract acceptance by the COLLEGE. The ARTIST agrees that (s)he shall submit complete photo archival documentation to the COLLEGE and the NJSCA within six months of the close-out of this Agreement. The photo-documentation shall consist of a minimum of color prints of various views of the ARTWORK printed on archival paper along with a disc containing the images along with other views, such as detail shots, in JPG format, file size up to 2 MB, DPI set to 72, image size 1240 x 1240 pixels. In addition, the ARTIST shall submit a copy of a filled-out Copyright Form VA. The Form VA shall be submitted along with final photos within six months to the US Copyright Office.

   The above photo documentation submission must be in accordance with the Procedures Manual (ATTACHMENT “G”).
3. Upon completion of these items, the ARTIST shall submit a final invoice to the COLLEGE for payment.

4. The COLLEGE agrees that it will make every attempt to pay the ARTIST within 30 days of receipt of a properly completed invoice.

5. The ARTIST shall complete all or any portion of the ARTWORK called for under this Agreement, in all parts and requirements, within the time or times for completion stated in this Agreement. In the event the installation is not properly completed by the agreed-upon date, except for causes beyond the ARTIST’s control including, but not limited to fire, theft, strikes, lock-outs, material shortages, illness and acts of God, liquidated damages may be assessed by the COLLEGE against the ARTIST for the amount of two (2) percent of the remaining contract balance for every 30 days of delay encountered until installation is properly completed or until the Agreement is terminated. The ARTIST may request that the COLLEGE, no later than 10 days before the installation date agreed to by the parties, grant an extension of time of the installation date. The COLLEGE in its sole discretion may accept or reject the ARTIST’s request for an extension of time. Such request must be in writing and any extension granted by the COLLEGE, must also be in writing.

6. In the event, a delay is caused by the COLLEGE and the ARTIST has completed all milestones on schedule, the ARTIST agrees to delay the installation and store the ARTWORK until the site is ready. If the site is not ready after the 90-day period beyond the agreed upon installation date, the COLLEGE shall incur the expense of storing the ARTWORK (now estimated at $____/month), if any.

B. MODIFICATION OF ARTWORK BY THE COLLEGE

1. To the extent possible, the COLLEGE agrees that it will not intentionally alter, modify or change the ARTWORK in any way, unless it is necessary to remove it for the preservation, safety, repair or renovation of the premises in which the ARTWORK is installed. Such determination shall be made at the sole discretion of the COLLEGE. The COLLEGE will make a reasonable effort to consult with the ARTIST to determine if the ARTWORK can be moved and installed at a different site.

2. In all other instances, the COLLEGE will seek approval of the ARTIST prior to any alteration, modification or change in the ARTWORK, provided the ARTIST can be located within a reasonable period of time. The COLLEGE shall notify the ARTIST of any proposed alteration of the site of the ARTWORK that would affect the intended character and appearance of the ARTWORK or the ability to view the ARTWORK. The COLLEGE shall consult with the ARTIST in the planning and execution of any such alteration and shall make a reasonable effort to maintain the integrity of the site. Such right of approval shall be personal to the ARTIST as primary, or his/her designated representative as secondary. In the event that the ARTIST is not available, the right of approval and all notices of enforcement of rights of the ARTIST would extend to the designated representative whose identity shall be affixed to ATTACHMENT “F” of this Agreement. The COLLEGE shall be required only to seek the approval of the ARTIST and/or the designated representative. The COLLEGE shall not be required to seek the approval of any other heirs, representatives, successors or assignees of the ARTIST in order to modify the ARTWORK.
3. The ARTIST agrees to waive any and all rights (s)he may have and further agrees not to institute suit against the COLLEGE, for any alterations, modifications, damage, destruction or changes which may occur to the ARTWORK, in the event the premises are no longer under the ownership, supervision and/or control of the COLLEGE.

4. The COLLEGE agrees to provide the ARTIST with any information or data it may have which may assist the ARTIST in performing work on the project. Upon execution of this Agreement, the COLLEGE will provide the ARTIST with a full review and discussion of the current status and background information relevant to the project. In particular, the COLLEGE shall make available to the ARTIST all necessary background and orientation materials, notice of scheduled presentations and meetings relating to matters affecting the ARTIST’s participation on the project and any schedules for installation of the work. The COLLEGE agrees to invite the ARTIST to any relevant meetings and afford the ARTIST full participation at all such presentations and meetings.

5. The COLLEGE agrees to keep the ARTIST fully informed of any information obtained which may affect the work and/or scheduling of the project.

6. The COLLEGE agrees that it will review and accept all submittals by the ARTIST in a timely fashion, to the extent possible. If, for whatever reason, there are circumstances that will delay the COLLEGE’s review and acceptance of submittals of work provided by the ARTIST, the COLLEGE will acknowledge such delay and adjust the ARTIST’s schedule accordingly. If, however, the ARTIST fails to provide complete and accurate submittals or work for review by the COLLEGE, the COLLEGE will promptly return such submittals or work to the ARTIST for correction/revision.

7. The ARTIST shall access the site by seeking the permission of the COLLEGE during both the design and construction phases of the project.

8. The COLLEGE agrees to advise the ARTIST of any design or construction changes or decisions that are not part of the art project but are in the vicinity of the ARTWORK.

9. In the event work by the COLLEGE on or near the location of the ARTWORK is stopped or delayed, for any reason whatsoever, the ARTIST agrees not to bring any claim(s) for damages against the COLLEGE.

ARTICLE THREE   BOTH PARTIES AGREE:

I.

A. The obligations of the ARTIST under this Agreement shall not be binding upon the heirs of the ARTIST. The transfer or assignment of this obligation shall be made to the named representative or assigns of the ARTIST. The ARTIST shall identify such representative or assigns in ATTACHMENT “F” of this Agreement.
B. The ARTIST shall not receive additional remuneration beyond the contract amount for any of the services provided pursuant to this Agreement.

C. The COLLEGE may, at any time, by written order to the ARTIST require the ARTIST to stop all, or any part of the work called for under this Agreement for a period of up to 90 days after the Order is delivered to the ARTIST. The Order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the Order, the ARTIST shall immediately comply with the terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Order during the period of work stoppage. No later than 90 days after a stop-work order is delivered to the ARTIST, the COLLEGE shall either cancel the stop-work order or terminate the work covered by the Order. If a stop-work order issued under this clause is canceled, the ARTIST shall resume work. The ARTIST agrees to submit a project completion schedule to the COLLEGE. The COLLEGE will not complete the project or use the elements for a second project without the consent of the ARTIST.

D. Notwithstanding the provision in Article One, paragraph I.B., and the provisions of this paragraph, the COLLEGE may terminate this Agreement by giving written notice to the ARTIST of such termination and the ARTIST shall be paid for all reasonable costs of work properly completed on the date of termination, including all reasonable costs of materials and equipment purchased and/or rented to date, and any unavoidable expenses due to leased space and subcontracts for fabrication and installation of the ARTWORK. As such, the ARTIST must present proof of all costs incurred up to the date of the termination of this Agreement. In the event this Agreement is terminated, ownership of all elements that comprise the project becomes the property of the COLLEGE. In such instance, the COLLEGE agrees that they will not install any element and represent it as the ARTWORK or the work of the ARTIST.

E. Notwithstanding the provisions in Article One, paragraph I.B., above, the COLLEGE may extend the term of this Agreement by providing written notice to the ARTIST, provided the COLLEGE gives the ARTIST a preliminary written notice of this intent to extend at least 30 days prior to the expiration of the Agreement. The preliminary notice shall not commit the COLLEGE to an extension. In the event the COLLEGE exercises this option, the extension of the contract shall include this option provision.

F. Ownership of all materials, designs, drawings, calculations, and the like, related to the ARTWORK and prepared by the ARTIST for the COLLEGE shall remain with the COLLEGE. All such documents shall be submitted to the COLLEGE, with the original model, original drawings and designs to be delivered by the ARTIST to the Arts Inclusion Archives of the NJSCA at the conclusion of the project.

G. If appropriate, the COLLEGE may require the ARTIST to submit graphic, visual or written statements or a combination thereof, including any special requirements for the installation of the ARTWORK. Under no circumstances, however, shall the ARTIST make any changes to the design from the accepted Design Development Plans, without the prior written approval of the COLLEGE.

H. The ARTIST shall schedule planning and coordination activities with the general contractor and shall provide prompt notification of such activities to the COLLEGE.

I. The ARTIST’s status shall be that of an independent contractor and not as an agent or employee of the COLLEGE.
J. The ARTIST agrees that in the performance of this Agreement, to obey, abide and comply with all applicable Federal, State and local laws and regulations.

K. This Agreement shall be governed and construed and the rights and obligations of the parties hereto shall be determined in accordance with the laws of the State of New Jersey.

L. The risk of loss to the ARTWORK shall remain on the ARTIST for all elements he is to install until those elements are delivered, installed and finally accepted, in writing, by the COLLEGE. The risk of loss to the ARTWORK, for those elements to be installed by others, shall remain on the ARTIST until those elements are delivered, installed and finally accepted by the COLLEGE, in writing. The ARTIST shall ensure that all risk insurance on the ARTWORK, which shall protect the ARTIST’s and the COLLEGE’s interest, is carried by the ARTIST, the ARTIST’s fabricators and all subcontractors during the period of fabrication and installation.

The ARTIST shall carry Comprehensive General Liability insurance in the amount of $1,000,000, combined single limit for each occurrence. Such insurance shall name the COLLEGE and the NJSCA as an additional insured. Certificates of insurance coverage shall be submitted to the COLLEGE and the Certificate must include the provision that coverage shall not be cancelled without thirty (30) days written notice to the COLLEGE.

M. Where approval is required by the ARTIST for the use of subcontractors, or any other person whose services are to be provided by the ARTIST, the ARTIST shall not remove such person without the COLLEGE’s prior approval. Approval shall not be given until the ARTIST makes available a replacement, meeting all the conditions herein. The COLLEGE reserves the right to require the replacement of the ARTIST’s employees or subcontractors or any other person whose services are provided by the ARTIST, if any such person proves unsatisfactory.

N. The provisions of N.J.S.A. 10:2-1 through 10:2-4, dealing with discrimination in employment on public works contracts, and the rules and regulations promulgated thereto, are hereby made a part of this contract and are binding upon the parties.

O. There shall be no discrimination against any employee engaged in the work required to produce the services covered by this Agreement, or against any applicants for such employment because of race, creed, color, national origin, ancestry, sex, marital status, or physical handicap. This provision shall include, but not be limited to the following: employment, upgrading, demotions, transfer, recruitment or recruitment advertising, lay-off or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The ARTIST shall insert a similar provision in all subcontracts.

P. The New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq., is hereby made a part of this contract. The ARTIST’s signature on this Agreement is his/her guarantee that neither the ARTIST nor any subcontractors employed to perform the work covered by this Agreement are listed or are recorded in the Office of the Commissioner of the Department of Labor as one who has failed to pay prevailing wages in accordance with the provisions of this Act.

Q. The ARTIST agrees to comply with the requirements of N.J.S.A. 10:5-31 et seq., the Law Against Discrimination, and all rules and regulations promulgated thereunder.

R. The ARTIST is required to comply with the requirements of N.J.A.C. 17:27, which are expressly included within the terms of the agreement as Attachment “C” annexed hereto and made part hereof.
S. The ARTIST does hereby warrant and represent that this Agreement has not been solicited or secured, directly or indirectly, in a manner contrary to the laws of the State of New Jersey or of the United States and that said laws have not been violated as they relate to the procurement or the performance of this Agreement by any conduct, including the paying or giving of any fee, commission, compensation, gift, gratuity or consideration of any kind, directly or indirectly, to any State of New Jersey, COLLEGE, or NJSCA employee, officer or official.

The ARTIST hereby warrants and represents that no person has been employed to solicit or secure this contract in violation of any other laws and further represents that all applicable laws and regulations shall be complied with in the performance of this contract.

T. If incorporated in a state other than New Jersey, the ARTIST shall promptly file with the Secretary of State an application for a Certificate of Authority to do business in the State of New Jersey and shall comply with the provisions of the Laws of the State of New Jersey in that regard. If the ARTIST is a corporation, it shall submit a stockholder disclosure statement to the COLLEGE pursuant to N.J.S.A. 52:25-24.2.

U. The COLLEGE shall not be deemed to have waived or varied any Agreement, covenant, requirement, obligation, duty, right or their provisions of any kind whatsoever, unless such waiver or variation is in writing, signed by the COLLEGE.

V. The ARTIST hereby covenants and agrees to take, use, provide and make all proper, necessary and sufficient precautions, safeguards and protections against the occurrence or happening of any accident, injuries, damages or hurt to any person or property during the progress of the work. The ARTIST shall be responsible for any and all fines, penalties, and losses incurred for or by reason of the violation of any city or borough ordinance, regulation or the Laws of the State, or the United States, while said work is in progress.

The ARTIST shall defend, indemnify, protect and save harmless the State of New Jersey, the COLLEGE, and the NJSCA and its agents, servants, and employees from and against any and all suits, claims, losses, demands, or damages or whatever kind or nature arising out of or claimed to arise out of, any negligent act, error, or omission of the ARTIST, its agents, servants, and employees in the performance of the work covered by this Agreement.

Subject to any applicable law governing tort immunity the COLLEGE shall defend, indemnify, protect and save harmless the ARTIST from and against any and all suits, claims, losses, demands or damages or whatever kind or nature arising out of or claimed to arise out of, any negligent act, error, or omission of the State of New Jersey, the COLLEGE or the NJSCA, its agents, servants, and employees in the performance of the work covered by this agreement.

W. All official documents and any legal notice intended to be given hereunder shall be sent certified mail, return receipt requested, to the parties at the addresses below:

Artist Name:________________________________________
Artist Firm________________________________________
Street Address: ______________________________________
City, State, Zip: ________________________________

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X. Pursuant to P.L. 1995, c. 159, effective January 1, 1996, (N.J.S.A. 54:49-19 et seq.), and not withstanding any provision of the law to the contrary, whenever any taxpayer, partnership or S corporation under contract to provide goods or services or construction projects to the State of New Jersey or its agencies or instrumentalities, including the legislative and judicial branches of state government, is entitled to payment for those goods or services at the same time a taxpayer, partner or shareholder of that entity is indebted for any State tax, the Director of the Division of Taxation shall seek to set off so much of that payment as shall be necessary to satisfy the indebtedness. The amount of the set-off shall not allow for the deduction of any expense or other deductions which might be attributable to the taxpayer, partner, or shareholder subject to set-off under this Act.

The Director of the Division of Taxation shall give notice of the set-off to the taxpayer, partner or shareholder and provide an opportunity for a hearing within 30 days of such notice under the procedures for protests established under N.J.S.A. 54:49-18. No request for conference, protest, or subsequent appeal to the Tax Court from any protest shall stay the collection of the indebtedness. Interest that may be payable pursuant to N.J.S.A. 52:32-32 et seq.) to the taxpayer shall be stayed.

Y. This constitutes the entire Agreement between the parties. All changes to this Agreement shall be in writing, and executed by both the COLLEGE and the ARTIST.
IN WITNESS WHEREOF, the COLLEGE and the ARTIST have executed this Agreement on the day and year written above.

__________________________
Artist

___________________________________
Lloyd Ricketts
Contracting Officer
The College of New Jersey

_____________________________________
Curt Heuring
Vice President for Facilities Management, Construction & Campus Safety
The College of New Jersey

___________________________________
Lynda Rothermel
Campus Architect & Director of Planning
The College of New Jersey
**ATTACHMENT A**

**SCHEDULE OF CONTRACT DELIVERABLES**

The following is a listing of contract deliverables that are required at the completion of each phase of this project. The detailed requirements of each deliverable item are specified in the New Jersey State Council on the Arts publication entitled "Procedures for Artists," a copy of which is attached hereto as part of this attachment.

**Design Development Phase**

<table>
<thead>
<tr>
<th>Ref.</th>
<th>Deliverable</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.1.0</td>
<td>Art Design and Installation Plan</td>
</tr>
<tr>
<td>1.2.0</td>
<td>Cost Analysis</td>
</tr>
<tr>
<td>1.3.0</td>
<td>Time Schedule</td>
</tr>
<tr>
<td>1.4.0</td>
<td>Comprehensive Site Plan/Elevations, Details</td>
</tr>
<tr>
<td>1.6.0</td>
<td>Site Utility Plan/Lighting Requirements</td>
</tr>
<tr>
<td>1.7.0</td>
<td>Site Inspection</td>
</tr>
</tbody>
</table>

**Construction/Project Phase**

<table>
<thead>
<tr>
<th>Ref.</th>
<th>Deliverable</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.1.0</td>
<td>Schedule and Progress Reports</td>
</tr>
<tr>
<td>2.2.0</td>
<td>Meetings</td>
</tr>
<tr>
<td>2.3.0</td>
<td>Correspondence</td>
</tr>
<tr>
<td>2.4.0</td>
<td>Pre-construction/Project Meeting</td>
</tr>
<tr>
<td>2.5.0</td>
<td>Review and Approve Project Schedule</td>
</tr>
<tr>
<td>2.6.0</td>
<td>Coordinate with Project Management</td>
</tr>
<tr>
<td>2.7.0</td>
<td>Coordinate and Maintain Documentation</td>
</tr>
<tr>
<td>2.8.0</td>
<td>Certification of Insurance</td>
</tr>
<tr>
<td>2.9.0</td>
<td>Site Inspection/Field Observation Reports</td>
</tr>
</tbody>
</table>

**Project Close-Out Phase**

<table>
<thead>
<tr>
<th>Ref.</th>
<th>Deliverable</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.1.0</td>
<td>Responsibilities</td>
</tr>
<tr>
<td>3.2.0</td>
<td>Commencement</td>
</tr>
<tr>
<td>3.3.0</td>
<td>Project Close-Out Requirements</td>
</tr>
<tr>
<td>3.3.1</td>
<td>Complete Photo</td>
</tr>
<tr>
<td>3.3.2</td>
<td>Project Plaque</td>
</tr>
<tr>
<td>3.3.3</td>
<td>Submissions of Copyright Form VA</td>
</tr>
<tr>
<td>3.3.4</td>
<td>Maintenance Schedule</td>
</tr>
<tr>
<td>3.3.5</td>
<td>Publicity Agreement with New Jersey State Council on the Arts</td>
</tr>
<tr>
<td>3.3.6</td>
<td>Final Cost Analysis</td>
</tr>
<tr>
<td>3.3.7</td>
<td>Final Payment</td>
</tr>
</tbody>
</table>
ATTACHMENT B

PROGRESS SCHEDULE

On or about DATE The ARTIST shall provide the COLLEGE all items required in Chapter 1, Design Development Phase of the Procedures for Artists in the Performance of Arts Inclusion Contracts. This submittal includes all final plans, site plans developed in consultation with the COLLEGE, shop drawings, installation plans, and ARTWORK specifications for record purposes. The ARTIST shall submit insurance certificate(s) to the COLLEGE.

On or about DATE The ARTIST will deliver and begin installation the ARTWORK at the site. The ARTIST shall supervise installation of ARTWORK until such work is completed.

30 days after Completion of Agreement and final acceptance of project by the installation of the COLLEGE. The ARTIST shall submit all required closeout documents to the COLLEGE.
ATTACHMENT C

PROCUREMENT, PROFESSIONAL AND SERVICE CONTRACTS

During the course of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation. The contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, sex affectional or sexual orientation. Such action 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 other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the public agency compliance officer setting forth provisions of this discrimination clause.

The contractor or subcontractor, where applicable, will in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation.

The contractor or subcontractor, where applicable, will send to each labor union representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the public agency compliance officer advertising the labor union or workers’ representative of the contractor’s commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with the regulations promulgated by the Treasurer pursuant to P.L. 1975, c. 127, (the Law Against Discrimination, N.J.S.A. 10:5-31 et seq.), as amended and supplemented from time to time and the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq.

The contractor or subcontractor agrees to attempt in good faith to employ minority and female workers consistent with the applicable county employment goals described by N.J.A.C. 17:27-5.2, promulgated by the Treasurer pursuant to P.L. 1975, c.127 (N.J.S.A. 10:5-31 et seq.), as amended and supplemented from time to time or in accordance with a binding determination of the applicable county employment goals determined by the Affirmative Action Office pursuant to N.J.A.C. 17:27-5.2, promulgated by the Treasurer pursuant to P.L. 1975, c.127 (N.J.S.A. 10:5-31 et seq.), as amended and supplemented from time to time.

The contractor or subcontractor agrees to inform in writing appropriate recruitment agencies in the area, including employment agencies, placement bureaus, colleges, universities, labor unions, that it does not discriminate on the basis of age, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.
The contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation, and conform with the applicable employment goals, consistent with the statutes and court decisions of the State of New Jersey, and all applicable Federal law and applicable Federal court decisions.

The contractor and its subcontractors shall furnish such reports or other documents to the Affirmative Action Office as may be requested by the office from time to time in order to carry out the purpose of these regulations, and public agencies shall furnish such information as may be requested by the Affirmative Action Office for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code (N.J.A.C. 17:27).
ATTACHMENT D

PROJECT BUDGET: $120,000
ATTACHMENT E

PROJECT DESCRIPTION & DIMENSIONS
ATTACHMENT F

REPRESENTATIVE OR ASSIGNS OF ARTIST
ATTACHMENT G

PROCEDURES FOR ARTISTS
IN THE PERFORMANCE OF ARTS INCLUSION CONTRACTS