





Interoffice Memorandum

November 5, 2020

TO: Mayor Jerry L. Demings
-AND-
Board of County Commissioners

THRU: Carla Bell Johnson, Acting Assistant County Administrator 

CONTACT: Terry Olson, Administrator 
Arts and Cultural Affairs Office

SUBJECT: November 17, 2020 – Consent Agenda Item
Approval and execution of I-4 Artwork Agreement between
Orange County, Florida and the City of Orlando.

In July 2019, SGL Constructors, on behalf of the I-4 Ultimate Art Endowment Committee, awarded Orange County, Florida a grant in the amount of \$225,000 to fund a creative and artistically rich art installation that will either capture the distinct character or culture of our community or visually enhance its public spaces.

A call to artists was sent out in August 2019 with an application due date of November 2019. Three finalists were selected by a panel consisting of the project manager, arts professionals, and community members. Final presentations were given in February 2020 and Studio JEFRE LLC was selected. After months of working with the Department of Transportation to ensure placement of the sculpture is sufficient, a final notice went out to all artist applicants in July 2020 notifying them that Studio JEFRE LLC had been awarded this project.

The location chosen for the artwork is the intersection of Grand National Drive and Caravan Court, Orlando, Florida 32819. The City of Orlando owns and maintains this property as Right-of-Way for Caravan Court. The Artwork Agreement will give Orange County permission to install, construct, and maintain the artwork in the Right-of-Way.

ACTION REQUESTED: Approval and execution of Artwork Agreement by and between Orange County, Florida and the City of Orlando for artwork to be delivered by June 2021.

TO/Is

c. Byron W. Brooks, AICP, County Administrator
Carla Bell Johnson, Acting Assistant County Administrator

APPROVED BY ORANGE
COUNTY BOARD OF COUNTY
COMMISSIONERS

THIS DOCUMENT PREPARED BY
AND RETURN TO:

Roy K. Payne, Esq.
Chief Assistant City Attorney
City of Orlando
400 S. Orange Avenue
Orlando, Florida 32802
(407) 246-3483

BCC Mtg. Date: November 17, 2020

ARTWORK AGREEMENT

THIS ARTWORK AGREEMENT, entered into this NOV 17 2020 day of _____, 2020, by and between the **CITY OF ORLANDO**, a municipality duly enacted under the laws of the State of Florida, whose address is 400 South Orange Avenue, Orlando, FL, 32802, "City", and **ORANGE COUNTY**, Florida, a charter county and political subdivision of the State of Florida, whose address is 201 South Rosalind Ave Orlando, Florida, 32801, "County."

Recitals

WHEREAS, County intends to purchase certain artwork, "Artwork," consisting of a sculpture by **STUDIO JEFRE, LLC**, "Artist," and attendant improvements, more particularly described in **Exhibit "A"**, attached hereto and made a part hereof by reference; and

WHEREAS, City owns and maintains certain property as Right-of-Way for Caravan Court, consisting of approximately 15,093 square feet as shown in **Exhibit "B"**, attached hereto and made a part hereof by reference, "Right-of-Way;" and

WHEREAS, County has requested the City's permission to install, construct and maintain the Artwork in the Right-of-Way; and

WHEREAS, City and County intend, by this Agreement, to confirm the County's responsibilities for the installation, construction and maintenance of Artwork in the Right-of-Way; and

WHEREAS, City and County acknowledge that installing and maintaining the Artwork in the Right-of-Way serves a public purpose and benefits the citizens of the City of Orlando and Orange County.

WITNESSETH

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Recitals**. The above recitals are true and correct and hereby incorporated into the substantive body of this Agreement.

2. Artwork.

- (i) County is responsible for obtaining any and all permits necessary for the exercise of its rights under this Agreement, including permits for maintenance of traffic (MOT) plans deemed necessary by City or County. County will, at its sole cost and expense, cause the Artwork to be installed, constructed, repaired, replaced, operated and maintained within the Right-of-Way, in the general location shown in **Exhibit "B,"** and consistent with all applicable laws, codes, rules, regulations, permits, and the terms of this Agreement. The Artwork will not operate as a sign, as defined under Chapters 64 and 66 of the Orlando City Code, and will not be modified in any way whatsoever, without the City's prior written consent. County acknowledges and agrees that the Artwork will not be located, installed, constructed, repaired or maintained in such a manner as to interfere with the functioning, operation and maintenance of Caravan Court or any City or other public infrastructure. Activities within the Right-of-Way under the terms of this Agreement will only occur on Saturday or Sunday between the hours of 7:00 a.m. and 6:00 p.m.
- (ii) County is solely responsible for the repair and restoration of any damage to the Artwork arising from vehicular crashes, vandalism, graffiti and other such acts and is solely responsible for keeping the Artwork, including all structural improvements and the site immediately in the vicinity of the Artwork, clean and free from dirt, garbage and debris. Repair, maintenance and restoration of the Artwork under this subsection will occur as soon as possible after notice to the County, but in any event, must be completed within thirty (30) days after said notice. County will inspect the Artwork periodically to ensure compliance with the terms of this Paragraph.
- (iii) County is solely responsible for the installation and maintenance of lighting and utilities related to the Artwork, including the monthly service costs of utilities serving the Artwork and attendant lighting.

3. Notice to City and City Inspection. The County will notify the City's Transportation Engineer, Chris Cairns, by email at Chris.Cairns@CityofOrlando.Net, and by phone at (407) 246-2281), at least two business days before beginning any work/activity within the Right-of-Way under this Agreement and within one (1) business day after completion of such work/activity. City shall have the right to inspect the Artwork at any time. If the City determines, in its reasonable discretion, that the Artwork was not properly installed, constructed, repaired or replaced or that the Artwork is not being properly maintained or if any City property is damaged during work/activity within the Right-of-Way, City may notify County in writing of said determination and of the appropriate remedial activities the County must undertake. County shall have ten (10) days to make said remedial activities, after which the City may do so and invoice the County for the costs. City's inspection activities under this Paragraph do not operate to impose any obligation on the City whatsoever with respect to the Artwork.

4. Insurance. County will ensure that any contractors retained by the County to conduct work in the Right-of-Way shall possess and maintain, at all times during the term of said work, (i) a general liability insurance policy in the amount of at least Three-Million Dollars (\$3,000,000.00), and (ii) an automobile liability insurance policy in the amount of One-Million Dollars (\$1,000,000.00), to protect the City from liability, claims, damages, losses or expenses arising from or out of in any way connected with this Agreement. The policies shall contain a contractual liability endorsement in favor of the City and shall name City, its officers, agents, elected and appointed officials and employees as additional insureds. Said insurance shall also be primary, and not contributory, as to any insurance coverage maintained by the County or the City and shall provide that City receives thirty (30) days' notice prior to cancellation or amendment. Nothing in this Agreement operates as a waiver of the City's grant of sovereign immunity or the limits of liability established under Florida law and nothing in this Agreement operates to allow a claim otherwise barred by sovereign immunity or other operation of law. This provision shall survive termination of this Agreement.

5. Indemnification. Each party agrees to defend, indemnify, and hold harmless the other party, its officials, and employees from all claims, actions, losses, suits, judgments, fines, liabilities, costs, and expenses (including attorney fees) attributable to its negligent acts or omissions, or those of its officials and employees acting within the scope of their employment, or arising out of or resulting from the indemnifying party's negligent performance under this agreement. Nothing contained herein shall constitute a waiver of either party's sovereign immunity or the provisions of Section 768.28, Florida Statutes. The foregoing shall not constitute an agreement by either party to assume any liability for the acts, omissions, and/or negligence of the other party.

6. No Waiver/No Vesting. **Except as otherwise provided in this Agreement, the placement of the Artwork in the Right-of-Way remains subject to the City's review and approval.** This Agreement does not constitute a waiver of the City's regulatory authority and the installation, construction, maintenance, repair, replacement and operation of the Artwork remains subject to all applicable laws, rules, codes and regulations. This Agreement does not operate to vest any interest or right whatsoever.

7. Release. County, its employees, agents and assigns hereby release the City, their representatives, employees and elected officials from any and all damages, claims, or liability, with respect to the Artwork that may arise due to the City's operation and maintenance of Caravan Court or the Right-of-Way.

8. Priority of Caravan Court. The Artwork shall not be installed and maintained in such a manner as to interfere, in any way, with the City's operation or maintenance of Caravan Court or any public or general utility and/or road improvements located within the Right-of-Way.

9. Removal. It is understood between the parties hereto that the City may notify the County to remove, relocate or adjust the Artwork at any time, as shown in **Exhibit "C"**. The County shall be given thirty (30) calendar days from said notice to remove, relocate or adjust the Artwork as directed, after which time the City may do so and invoice the County for the costs.

10. Notices. Any notices which may be permitted or required hereunder shall be in writing and shall be deemed to have been duly given as of the date and time the same are personally delivered, transmitted electronically or within three (3) days after depositing with the United States Postal Service, postage prepaid by registered or certified mail, return receipt requested, or within one (1) day after depositing with Federal Express or other overnight delivery service from which a receipt may be obtained, and addressed as follows:

- City:** **Attn:** Transportation Engineer
City of Orlando, Florida
400 South Orange Avenue
Orlando, Florida 32802
Telephone (407) 246-2281
Fax: (407) 246-2266

- County:** **Attn:** Terry Olson
Orange County Arts & Cultural Affairs
Orange County Government
450 E. South Street, Suite 345
Orlando, FL 32801
Telephone: (407) 836-5540

- With copy to:** **Attn:** Orange County Administrator
P.O. Box 1393
Orlando, Florida 32802

or to such other address as either party hereto shall from time to time designate to the other party by notice in writing as herein provided.

11. Modification. This Agreement may not be amended, modified, altered, or changed in any respect whatsoever, except by a further Agreement in writing duly executed by the Parties and recorded in the Public Records of Orange County, Florida.

12. Successors and Assigns. The terms and conditions of this Agreement shall constitute covenants running with the land, and all rights and privileges granted herein shall be appurtenant to the lands herein described, and, except as hereinafter set forth, shall run with said lands forever and be binding upon and inure to the benefit of and be enforceable by the heirs, legal representatives, successors and assigns of the Parties hereto and shall continue in perpetuity, unless otherwise modified in writing by the Parties hereto. All obligations of the Parties hereunder shall be binding upon their

respective successors-in-title and assigns. County shall not assign its interest in this Agreement without the prior written consent of the City.

13. Entire Agreement. This Agreement constitutes the entire agreement between the Parties hereto with respect to the transactions contemplated herein, and it supersedes all prior understandings or agreements between the Parties.

14. Attorneys' Fees. In the event of any dispute regarding this Agreement, each party is responsible for the payment of its attorneys' fees, expert's fees and costs.

15. Relationship Between the Parties. Nothing contained in this Agreement, nor the relationship between the parties which may arise as a result of the provisions of this Agreement, are intended to, or shall be construed as, creating a partnership, joint venture, or other such relationship as between the Parties.

16. Section Headings. The section headings as used herein are for convenience of reference only and shall not be deemed to vary the content of this Agreement or the covenants, agreements, representations and warranties herein set forth, or limit the provisions or scope of any section herein.

17. Severability. This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Agreement or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

18. Counterpart Execution. This Agreement may be executed in counterparts, each of which shall constitute an original, but all taken together shall constitute one and the same instrument.

19. Termination. Either party may terminate this Agreement at any time and for any reason, upon thirty (30) days written notice to the non-terminating party. The City's Public Works Director is hereby authorized to terminate this Agreement on behalf of the City. In the event of termination by either party or under the terms of the Agreement, the County shall remove any and all Artwork within thirty (30) days of the date of mailing of the written notice, unless the City agrees in writing to the abandonment and acceptance of the Artwork so installed. If the County fails to remove said Artwork within the above-described timeframe, the City may remove improvements and invoice the County for the costs which County will pay within thirty (30) days of County's receipt of the invoice.

20. Governing Law. This Agreement shall be governed by and construed under the laws of the State of Florida.

21. License. This Agreement constitutes a License and does not rise to the level of a real property interest in the area in which the Artwork is located.

22. Term. Unless earlier terminated, this Agreement shall remain in effect for the period of ten (10) years commencing on the date this Agreement is executed by all parties, "Initial Term". The Initial term may be extended for ten (10) additional three- year (3) terms upon written notice from County to the City at least sixty days prior to expiration of the Initial Term or the applicable extended term.

IN WITNESS WHEREOF, the parties hereto have caused this Artwork Agreement to be executed as of the date set forth above.

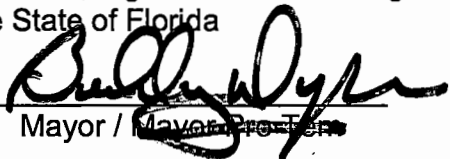
ATTEST:

By:


Stephanie Herdocia, City Clerk

CITY OF ORLANDO, FLORIDA, a municipal corporation, organized and existing under the laws of the State of Florida

By:



Mayor / ~~Mayor Pro Tem~~

Date:

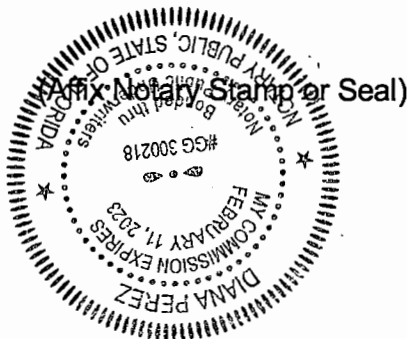
9.23.20

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 5 day of OCTOBER, 2020, by Mayor or ~~Mayor Pro Tem~~ and Stephanie Herdocia, City Clerk, of the City of Orlando, Florida, a municipal corporation, organized and existing under the laws of the State of Florida, on behalf of the City. He/She is personally known to me or has produced _____ as identification.


Notary Public Signature

My Commission Expires: FEBRUARY 11, 2023



City Council Meeting: 10-5-2020
Item: I-2 Documentary: 201005I02

ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

By: *Jerry L. Demings*
for Jerry L. Demings
Orange County Mayor

Date: NOV 17 2020

ATTEST: Phil Diamond, CPA, County Comptroller
As Clerk to the Board of County Commissioners

By: *Katie Smith*
Deputy Clerk

Printed Name: **Katie Smith**

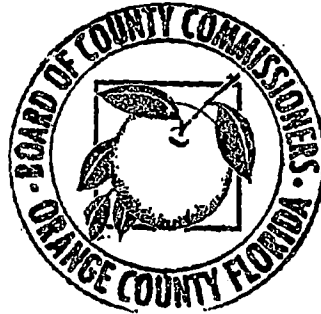
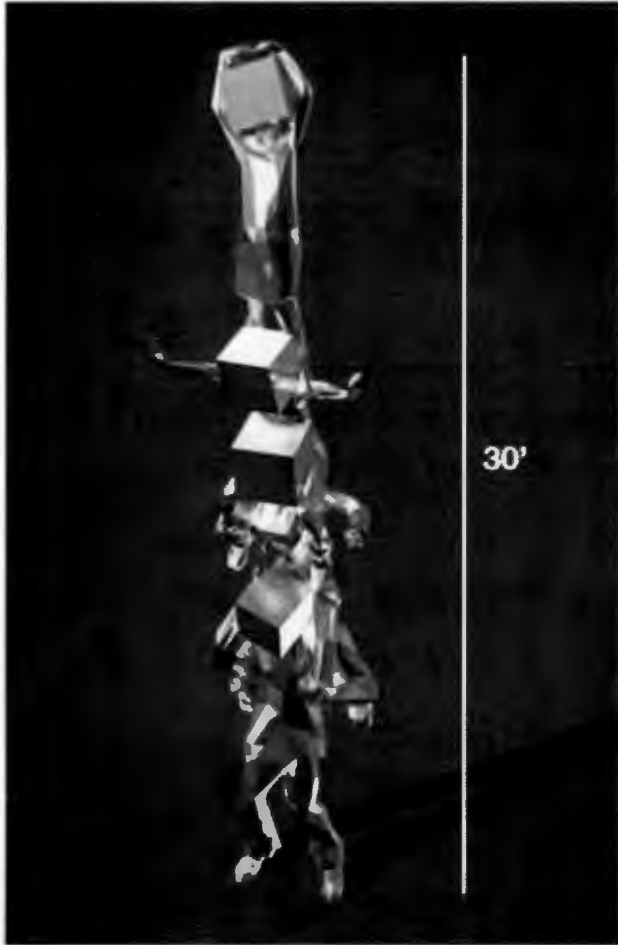


Exhibit "A"

EXHIBIT A



Title: Family Tree

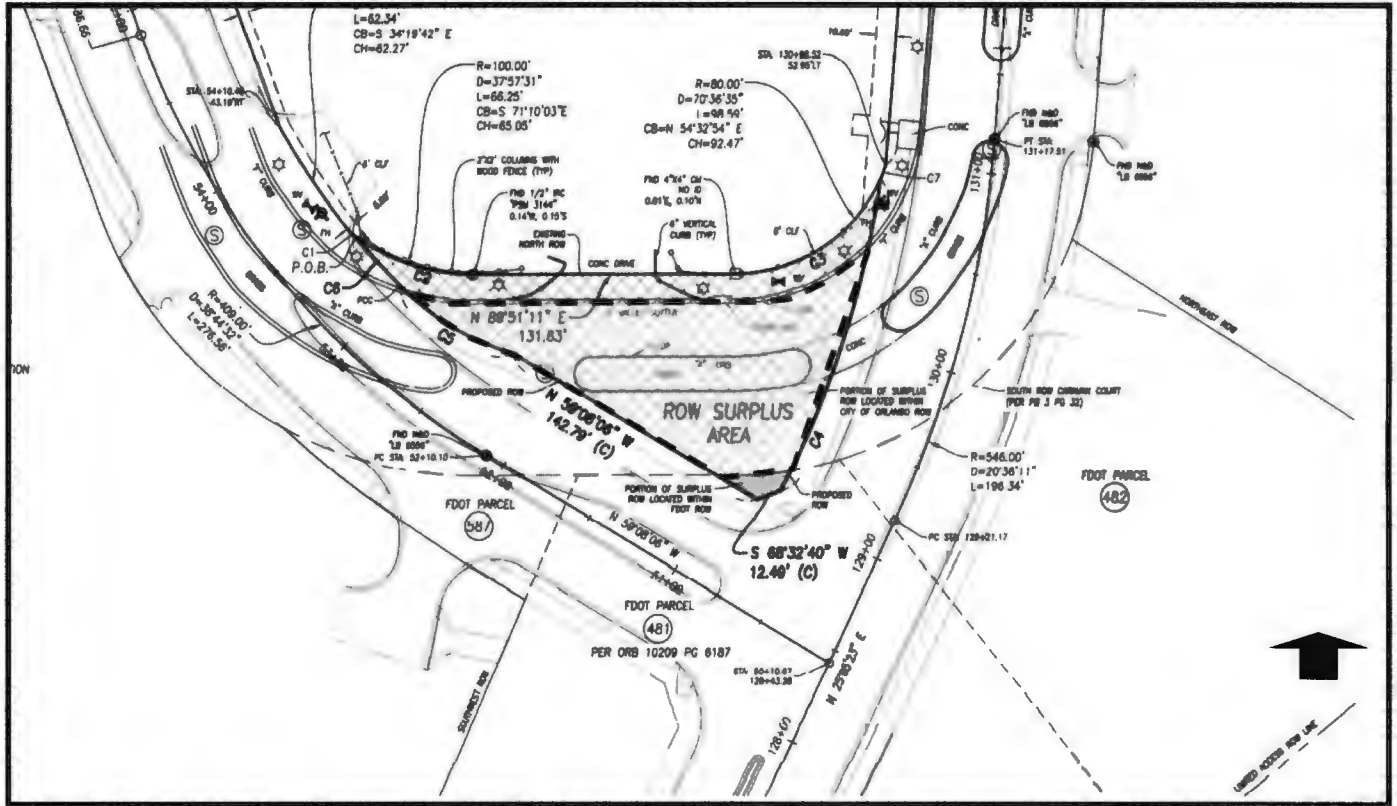
Artist: JEFRE

Medium: 3-D Sculpture in stainless steel

Dimensions: 10 ft. by 30 ft.

Exhibit "B"

EXHIBIT B



Portion of a Survey Dating from 2015

 Subject Area (+/-0.40 ac.)