



County of Santa Cruz ⁰⁵⁴⁹

PARKS, OPEN SPACE & CULTURAL SERVICES

979 17 th AVENUE, SANTA CRUZ, CA 95062

(631) 454-7900 FAX: (631) 454-7940 TDD: (631) 454-7976

BARRY C. SAMUEL, DIRECTOR

December 23, 1999

AGENDA: January 11, 2000

BOARD OF SUPERVISORS

County of Santa Cruz

701 Ocean Street

Santa Cruz, CA 95060

SUBJECT: Contract for the Bonny Doon Fire Station Public Art Component

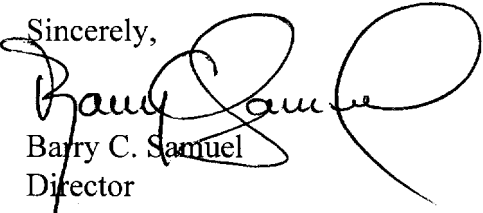
Dear Members of the Board:

On November 16, 1999, your Board approved the selection of Shanna Kuempel as the artist for the public art component for the Bonny Doon Fire Station. At that time you directed the Parks Department to develop a contract in the amount of \$4,200 for the creation of Ms. Kuempel's Map/Mural and return to your Board on or before February 14, 2000.

Attached please find the contract between the County and Shanna Kuempel.

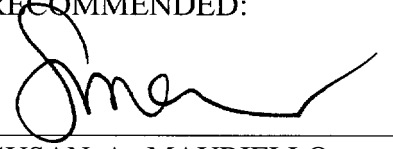
It is therefore recommended that your Board authorize the Director of County Parks to execute the public art contract for the Bonny Doon Fire Station public art component between the County of Santa Cruz and Shanna Kuempel.

Sincerely,



Barry C. Samuel
Director

RECOMMENDED:



SUSAN A. MAURIELLO
County Administrative Officer

attachments: Contract

cc: CAO, Auditor-Controller, County Counsel, POSCS, Shanna Kuempel

**INDEPENDENT CONTRACTOR (ARTIST) CONTRACT
BONNY DOON FIRE STATION**

0550

THIS CONTRACT is entered into this _____ day of _____, by and between the COUNTY OF SANTA CRUZ, hereinafter called COUNTY, and Shanna Kuempel hereinafter called ARTIST.

Whereas, the COUNTY established a Percent for Arts Program on April 2, 1991, requiring that up to 2% of the construction cost of a project be used to integrate public art into the project, enhancing the development of those public sites; and

Whereas, the ARTIST has been selected pursuant to procedures adopted by the COUNTY OF SANTA CRUZ.

Therefore, the parties agree as follows:

1. **DUTIES.** ARTIST agrees to:
Create and install a relief map of the Bonny Doon area in ceramic tile, approximate overall size of 48" x 72". On either side of the central map will be an image of a fire fighter facing the map.
2. **COMPENSATION.** In consideration for ARTIST accomplishing said result, COUNTY agrees to pay ARTIST \$4,200.00. Payment shall be made in 2 installments. \$2,000.00 upon signature of contract and \$2,200.00 upon installation of ceramic tile relief map for a total amount not-to-exceed \$4,200.00.

It is understood that total compensation for all services, deliverables and travel in this Contract, shall not exceed \$4,200.00.

All requests for payment shall be submitted to the County of Santa Cruz Department of Parks, Open Space, and Cultural Services (POSCS) attn: Barry Samuel, Director, and must be accompanied by a detailed invoice.

COUNTY agrees to exercise due diligence in the payment of invoices received from the ARTIST provided no claims have been made against the WORK. If a claim(s) has been filed against the WORK within 45 days of acceptance, final payment will be withheld until COUNTY can ascertain the basis and amount of said claim.

COUNTY will consider and determine the claim(s) and it will be the responsibility of the ARTIST to furnish information and details as may be required by the COUNTY to determine the facts or contentions involved in the claim(s). Failure to submit such information within 60 days of being notified by the COUNTY will be sufficient action for denying final payment. Furthermore, COUNTY may use the final payment to pay any outstanding claim(s).

3. **TERM.** The term of this Contract shall be six (6) weeks from the date of execution of this Contract or until the WORK described herein is completed, whichever occurs first. This Contract may be extended upon mutual consent by both parties. 0551
4. **RIGHT, TITLE AND INTEREST TO THE WORK.**
- A. All work produced under this CONTRACT shall be the property of the COUNTY. All documents including, but not limited to: reproducible copies of tracings, drawings, estimates, field notes, investigations, design analysis and studies which are prepared in the performance of the creation of the WORK are to be and remain the property of the COUNTY and are to be delivered to the Department of Parks, Open Space and Cultural Services, at 979 17th Avenue, Santa Cruz, California, 95062.
- B. Upon final payment to the ARTIST, all right, title and interest to the work shall become vested in the COUNTY. The ARTIST will retain all right, title and interest to any designs which are rejected by the COUNTY, as well as any incidental designs resulting from the work.
- C. The ARTIST hereby grants the COUNTY the exclusive right to display the work and to loan the work to other persons or institutions with authority to display and publicize. The ARTIST reserves all copyrights in the WORK, the preliminary design, and any incidental works made in the creation of the WORK. The ARTIST agrees to not unreasonably refuse the COUNTY permission to reproduce the WORK for non-commercial purposes. The COUNTY agrees to give the ARTIST credit in all reproductions of the WORK.
5. **ADDITIONAL SERVICES.** If authorized by COUNTY, the ARTIST will provide additional services or items (those provided beyond the basic WORK or services as described herein) which shall be paid by a negotiated fee for such item(s) or service(s).
6. **EARLY TERMINATION.** Either party hereto may terminate this Contract at anytime by giving 30 days written notice to the other party. In the event the ARTIST abandons the WORK, defaults on any terms of this Contract or otherwise causes it to be terminated without cause prior to final acceptance of the WORK, the ARTIST shall not be owed or paid any further compensation by the COUNTY, and shall remit to the COUNTY all sums of money previously paid under the terms of this Contract, with the exception of those sums of money previously paid for the fabrication of the WORK, if ARTIST turns over a completed WORK to the COUNTY for installation. In the event the COUNTY terminates this Contract without cause, the COUNTY shall only pay the ARTIST for work completed and materials purchased towards fabrication of the art up to the effective date of the termination.
7. **INDEMNIFICATION FOR DAMAGES, TAXES AND CONTRIBUTIONS.** ARTIST shall exonerate, indemnify, defend, and hold harmless COUNTY (which for the purpose of paragraphs 8 and 9 shall include, without limitation, its officers, agents, employees and volunteers) from and against:

- A. Any and all claims, demands, losses, damages, defense costs, or liability of any kind or nature which COUNTY may sustain or incur or which may be imposed upon it for injury to or death of persons, or damage to property as a result of, arising out of, or in any manner connected with the ARTIST'S performance under the terms of this Contract, excepting any liability arising out of the sole negligence of the COUNTY. Such indemnification includes any damage to the person(s), or property(ies) of ARTIST and third persons. 0552
- B. Any and all Federal, State and Local taxes, charges, fees, or contributions required to be paid with respect to ARTIST and ARTIST'S officers, employees and agents engaged in the performance of this Contract (including, without limitation, unemployment insurance, social security and payroll tax withholding).
8. **INSURANCE.** ARTIST, at its sole cost and expense, for the full term of this Contract (and any extensions thereof), shall obtain and maintain at minimum all of the following insurance coverage. Such insurance coverage shall be primary coverage as respects COUNTY and any insurance or self-insurance maintained by COUNTY shall be excess of ARTIST'S insurance coverage and shall not contribute to it.
- A. Types of Insurance and Minimum Limits
- (1) Worker's Compensation and Employer's Liability Insurance in conformance with the laws of the State of California (not required if ARTIST has no employees).
 - (2) ARTIST'S vehicles used in the performance of this contract, including owned, non-owned, (e.g., owned by ARTIST'S employees), leased or hired vehicles, shall each be covered with Automobile Liability Insurance in the minimum amount of \$500,000 combined single limit per accident for bodily injury and property damage.
 - (3) ARTIST shall obtain and maintain Comprehensive or Commercial General Liability Insurance coverage in the minimum amount of \$1,000,000 combined single limit, including bodily injury, personal injury, and broad form property damage. Such insurance coverage shall include, without limitation:
 - (a) Contractual liability coverage adequate to meet the ARTIST'S indemnification obligations under this Contract;
 - (b) A cross-liability or severability of interest clause.
- B. Other Insurance Provisions
- (1) As to all insurance coverage required herein any deductible or self-insured retention exceeding one percent (1%) of a company's annual gross earnings or \$10,000 (whichever is greater) for an individual shall be disclosed to and be subject to approval by COUNTY Risk Manager, prior to the effective date of this Contract.

(2) If any insurance coverage required hereunder is provided on a “claims made” rather than “occurrence” form, ARTIST shall maintain such insurance coverage with an effective date earlier or equal to the effective date of the Contract and continue coverage for a period of three years after the expiration of the Contract and any extensions thereof. In lieu of maintaining post-contract expiration coverage as specified above, ARTIST may satisfy this provision by purchasing tail coverage for the claims made policy. Such tail coverage shall, at a minimum, provide coverage for claims received and reported three years after the expiration date of this Contract. 0553

(3) All required Automobile Liability Insurance, Comprehensive or Commercial General Liability Insurance shall contain the following endorsement as a part of each policy:

“The County of Santa Cruz is hereby added as an additional insured as respects the operation of the named.

(4) All the insurance required herein shall contain the following clause:

“It is agreed that this insurance shall not be canceled or non-renewed until thirty (30) days after the COUNTY shall have received written notice of such cancellation or non-renewal. The notice shall be deemed effective the date delivered to the COUNTY as evidenced by properly validated return receipt. Such notice shall be sent to: Department of Parks, Open Space and Cultural Services.

(5) ARTIST agrees to provide COUNTY at or before the effective date of this Contract with a certification of insurance of the coverage required. The Certificate shall be sent to:

Department of Parks, Open Space and Cultural Services
Attn: Barry C. Samuel, Director
979 1 7th Avenue
Santa Cruz, California 95062

9. **EOUAL EMPLOYMENT OPPORTUNITY.** During and in relation to the performance of this Contract, ARTIST agrees as follows:

A. The ARTIST shall not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, physical or mental disability, medical condition (cancer related), marital status, sexual orientation, age (over 18), veteran status, gender, pregnancy or any other non-merit factor unrelated to job duties. Such action shall include, but not be limited to, the following: recruitment; advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training (including apprenticeship), employment, upgrading, demotion, or transfer. The ARTIST agrees to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this non-discrimination clause.

B. If this Contract provides compensation in excess of \$50,000 to ARTIST and if ARTIST employs fifteen (15) or more employees, the following requirements shall apply: ^{055,}

- (1) The ARTIST shall, in all solicitations or advertisements for employees placed by or on behalf of the ARTIST, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, ancestry, physical or mental disability, medical condition (cancer related), marital status, sexual orientation, age (over 18), veteran status, gender, pregnancy or any other non-merit factor unrelated to job duties. In addition, the ARTIST shall make a good faith effort to consider Minority/Women/Disabled Owned Business Enterprises in ARTIST'S solicitation of goods and services. Definitions for Minority/Women/Disabled Business Enterprises are available from the COUNTY General Services Purchasing Division.
- (2) The ARTIST shall furnish COUNTY Affirmative Action Office information and reports in the prescribed reporting format (PER 40 12) identifying the sex, race, physical or mental disability, and job classification of its employees and the names, dates and methods of advertisement and direct solicitation efforts made to subcontract with Minority/Women/Disabled Business Enterprises.
- (3) In the event of the ARTIST'S non-compliance with the non-discrimination clauses of this Agreement or with any of the said rules, regulations, or orders said ARTIST may be declared ineligible for further agreements with the COUNTY.
- (4) The ARTIST shall cause the foregoing provisions of this Subparagraph B. To be inserted in all subcontracts for any work covered under this Agreement by a subcontractor compensated more than \$50,000 and employing more than fifteen (15) employees, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

10. **INDEPENDENT CONTRACTOR STATUS.** ARTIST and COUNTY have reviewed and considered the principal test and secondary factors below and agree that ARTIST is an independent contractor and not an employee of COUNTY. ARTIST is responsible for all insurance (workers compensation, unemployment, etc.) and all payroll related taxes. ARTIST is not entitled to any employee benefits. COUNTY agrees that ARTIST shall have the right to control the manner and means of accomplishing the result contracted for herein.

PRINCIPAL TEST: The ARTIST rather than COUNTY has the right to control the manner and means of accomplishing the result contracted for.

SECONDARY FACTORS: (a) The extent of control which, by Contract, COUNTY may exercise over the details of the work is slight rather than substantial; (b) ARTIST is engaged in a distinct occupation or business; (c) In the locality, the work to be done by ARTIST is usually done by a specialist without supervision, rather than under the direction of any employer; (d) The skill required in the particular occupation is substantial rather

than slight; (e) The ARTIST rather than the COUNTY supplies the instrumentalities, tools⁵⁵⁵ and work place; (f) The length of time for which ARTIST is engaged is of limited duration rather than indefinite; (g) The method of payment of ARTIST is by the job rather than by the time; (h) The work is part of a special or permissive activity, program, or project, rather than part of the regular business of COUNTY; (i) ARTIST and COUNTY believe they are creating an independent contractor relationship rather than an employer-employee relationship; and (j) The COUNTY conducts public business.

It is recognized that it is not necessary that all secondary factors support creation of an independent contractor relationship, but rather that overall there are significant secondary factors which indicate that the ARTIST is an independent contractor.

11. **TITLE AND RISK OF LOSS.** Title to the WORK passes to the COUNTY upon final acceptance of the completed WORK by the COUNTY. The ARTIST is not responsible for damage occurring during installation of the WORK through the negligence by the COUNTY'S general contractor. The ARTIST bears the risk of damage to or loss of the WORK until title passes to the COUNTY and shall take all necessary measures to protect the WORK from loss or damage until final acceptance. ARTIST is entitled to full payment for the accepted WORK upon submittal of final invoice to the COUNTY.
12. **NON-ASSIGNMENT OR TRANSFER.** The personal skill, judgment and creativity of the ARTIST is an essential element of this Contract. Therefore, although the parties recognize that the ARTIST may employ qualified personnel to work under ARTIST'S supervision, the ARTIST shall not assign, transfer or subcontract the creative and artistic portions of the WORK to another party without the prior written consent of the COUNTY.
13. **SUCCESSORS AND ASSIGNS.** The COUNTY and the ARTIST each binds themselves, partners, successors, assigns, and legal representatives to the other party to this Contract and to the partners, successors, assigns, and legal representative of such other party in respect to all covenants of this Contract. Neither the COUNTY nor the ARTIST shall assign, sublet, or transfer an interest in this Contract without the written consent of the other. In no event shall any contractual relation be created between any third party and the COUNTY.
14. **NO KICK-BACK.** The ARTIST warrants that no person has been employed or retained to solicit or secured this Contract upon an agreement or understanding for commission, percentage, brokerage, or contingent fee, and that no member of the COUNTY Council, or an employee of the COUNTY of Santa Cruz has any interest, financially or otherwise, in the ARTIST'S business.
15. **RETENTION AND AUDIT OF RECORDS.** ARTIST shall retain records pertinent to this Contract for a period of not less than five (5) years after final payment under this Contract or until a final audit report is accepted by the COUNTY, whichever occurs first. ARTIST hereby agrees to be subject to the examination and audit by the Santa Cruz County Auditor-Controller, the Auditor General of the State of California, or the designee of either for a period of five (5) years after final payment under this Contract.

16. **PRESENTATION OF CLAIMS.** Presentation and processing of any or all claims arising out of or related to this Contract shall be made in accordance with the provisions contained in Chapter 1.05 of the Santa Cruz County Code, which by this reference is incorporated herein. ⁰⁵⁵⁶

By their signatures to the Contract, each of the undersigned certifies that it is his or her considered judgement that the ARTIST engaged under this Contract is in fact an independent contractor.

IN WITNESS WHEREOF, the parties hereto have set their hands the day and year first above written.

COUNTY OF SANTA CRUZ

ARTIST: **SHANNA KUEMPEL**

By: _____

By: *Shanna Kuempel*

APPROVED AS TO INSURANCE:

Address: 220 Trevethan Avenue
City/State: Santa Cruz, CA 95062
Phone: 469-7252

By: *Janet McKinley*
Risk Management 11-22-99

APPROVED AS TO FORM:

By: *Marie Costa*
County Counsel

DISTRIBUTION:

County Administrative Office, Auditor-Controller, County Counsel, Risk Management, POSCS, Artist, General Services

Request for Taxpayer Identification Number and Certification

County of Santa Cruz

0557
Give this form to the
County of Santa Cruz
Do NOT send to the IRS

Please print or type

Name (If joint names, list first and circle the name of the person or entity whose number you enter in Part I below. See instructions on page 2 if your name has changed.)

Shanna Kuempel

Business name (Sole proprietors see instructions on page 2.)

Please check appropriate box: ☐ Individual/Sole proprietor ☐ Corporation ☐ Partnership ☐ Other ▶

Address (number, street, and apt. or suite no.)

220 Trevethan Avenue

City, state, and ZIP code

Santa Cruz, CA 95062

YOU ARE PAID FOR:

- ☐ Health Care Service
☐ Other Service
☐ Rent ☐ Goods
☐ Freight ☐ Interest
☐ Other (Explain) _____

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. For individuals, this is your social security number (SSN). For sole proprietors, see the instructions on page 2. For other entities, it is your employer identification number (EIN). If you do not have a number, see How To Get a TIN below.

Social security number

87 IL 550534

OR

Employer identification number

_____|_____|_____|_____|_____|_____|_____|_____|

Part II For Payees Exempt From Backup Withholding (See Part II instructions on page 2)

Part III Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding.

Certification Instructions.—You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because of underreporting interest or dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, the acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. (Also see Part III instructions on page 2.)

Sign Here

Signature ▶

Shanna Kuempel

Date ▶

11.22.99

Section references are to the Internal Revenue Code.

Purpose of Form.—A person who is required to file an information return with the IRS must get your correct TIN to report income paid to you, real estate transactions, mortgage interest you paid, the acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA. Use Form W-9 to give your correct TIN to the requester (the person requesting your TIN) and, when applicable, (1) to certify the TIN you are giving is correct (or you are waiting for a number to be issued), (2) to certify you are not subject to backup withholding, or (3) to claim exemption from backup withholding if you are an exempt payee. Giving your correct TIN and making the appropriate certifications will prevent certain payments from being subject to backup withholding.

Note: If a requester gives you a form other than a W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

What Is Backup Withholding?—Persons making certain payments to you must withhold and pay to the IRS 31% of such

payments under certain conditions. This is called "backup withholding." Payments that could be subject to backup withholding include interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

If you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return, your payments will not be subject to backup withholding. Payments you receive will be subject to backup withholding if:

1. You do not furnish your TIN to the requester, or
2. The IRS tells the requester that you furnished an incorrect TIN, or
3. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or
4. You do not certify to the requester that you are not subject to backup withholding under 3 above (for reportable

interest and dividend accounts opened after 1963 only), or

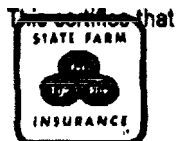
5. You do not certify your TIN. See the Part III instructions for exceptions.

Certain payees and payments are exempt from backup withholding and information reporting. See the Part II instructions and the separate **Instructions for the Requester of Form W-9.**

How To Get a TIN.—If you do not have a TIN, apply for one immediately. To apply, get Form SS-5, Application for a Social Security Number Card (for individuals), from your local office of the Social Security Administration, or Form SS-4, Application for Employer Identification Number (for businesses and all other entities), from your local IRS office.

If you do not have a TIN, write "Applied For" in the space for the TIN in Part I, sign and date the form, and give it to the requester. Generally, you will then have 60 days to get a TIN and give it to the requester. If the requester does not receive your TIN within 60 days, backup withholding, if applicable, will begin and continue until you furnish your TIN.

CERTIFICATE OF INSURANCE



- ☐ STATE FARM FIRE AND CASUALTY COMPANY, Bloomington, Illinois
☐ STATE FARM GENERAL INSURANCE COMPANY, Bloomington, Illinois
☐ STATE FARM FIRE AND CASUALTY COMPANY, Scarborough, Ontario
☐ STATE FARM FLORIDA INSURANCE COMPANY, Winter Haven, Florida
☐ STATE FARM LLOYDS, Dallas, Texas

0558

insures the following policyholder for the coverages indicated below:

Name of policyholder **KEMPEL, MARK J. & SHANNA**

Address of policyholder **220 TREVETHAN AVENUE**

Location of operations **50 JUNCO DRIVE**

Description of operations **SANTA CRUZ, CA 95060**

The policies listed below have been issued to the policyholder for the policy periods shown. The insurance described in these policies is subject to all the term exclusions, and conditions of those policies. The limits of liability shown may have been reduced by any paid claims.

POLICY NUMBER	TYPE OF INSURANCE	POLICY PERIOD		LIMITS OF LIABILITY (at beginning of policy period)
		Effective Date	Expiration Date	
97-PZ-8003-0	Comprehensive Business Liability	11/16/99	11/16/00	BODILY INJURY AND PROPERTY DAMAGE
This insurance includes:	<input checked="" type="checkbox"/> Products - Completed Operations			Each Occurrence \$ 1MM
	<input type="checkbox"/> Contractual Liability			General Aggregate \$ 2MM
	<input type="checkbox"/> Underground Hazard Coverage			Product - Completed Operations Aggregate \$ 2MM
	<input checked="" type="checkbox"/> Personal Injury			
	<input type="checkbox"/> Advertising Injury			
	<input checked="" type="checkbox"/> Explosion Hazard Coverage			
	<input type="checkbox"/> Collapse Hazard Coverage			
	EXCESS LIABILITY	POLICY PERIOD		BODILY INJURY AND PROPERTY DAMAGE (Combined Single Limit)
	<input type="checkbox"/> Umbrella	Effective Date : Expiration Date		Each Occurrence \$
	<input type="checkbox"/> Other			Aggregate \$
	Workers' Compensation and Employers Liability			Part 1 STATUTORY Part 2 BODILY INJURY
				Each Accident \$ Disease Each Employee \$ Disease - Policy Limit \$
POLICY NUMBER	TYPE OF INSURANCE	POLICY PERIOD Effective Date : Expiration Date		LIMITS OF LIABILITY (at beginning of policy period)

THE CERTIFICATE OF INSURANCE IS NOT A CONTRACT OF INSURANCE AND NEITHER AFFIRMATIVELY NOR NEGATIVELY AMENDS, EXTENDS OR ALTERS THE COVERAGE APPROVED BY ANY POLICY DESCRIBED HEREIN.

Name and Address of Certificate Holder

COVONTY OF SANT CRUZ-POSCS
 979 17TH AVENUE
 SANTA CRUZ, CA 95062

It any of the described policies are canceled before its expiration date. State Farm will try to mail a written notice to the certificate holder 30 days before cancellation. If however, we fail to mail such notice, no obligation or liability will be imposed on State Farm or its agents or representatives.

Signature of Authorized Representative

AGENT

12/07/99

Title

Date

Agent's Code Stamp

AFO Code F146