



**AGREEMENT BETWEEN BROWARD COUNTY AND _____ FOR
[COMMISSIONED ARTWORK] [ARTISTIC SERVICES]**

This Agreement Between Broward County and _____ for **[Commissioned Artwork]** **[Artistic Services]** (“Agreement”) is made and entered into by and between Broward County, a political subdivision of the State of Florida (“County”), and _____, a _____ **[nonprofit corporation, individual, etc.]** (“Artist”) (collectively referred to as the “Parties”).

RECITALS

- A. [Insert recitals if applicable]
- B. [Insert recitals if applicable]

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1. DEFINITIONS

- 1.1. **Artwork** means the physical artistic expression, including fabrication, construction, installation, and integration, of the Design Proposal.
- 1.2. **Board** means the Board of County Commissioners of Broward County, Florida.
- 1.3. **Committee** means the County’s Public Art and Design Committee.
- 1.4. **Contract Administrator** means the Director of the Cultural Division, or the Assistant Director of the Cultural Division, or such other person designated by same in writing.
- 1.5. **Council** means the Broward Cultural Council.
- 1.6. **Design Proposal** means the design proposed by Artist as set forth in Exhibit F.
- 1.7. **Duane Hanson Allied Artist or Allied Artist** means an apprentice artist who assists Artist in a scope determined by Artist and who is paid solely by Artist.
- 1.8. **Final Acceptance** means County’s written acceptance of the Artwork in its final form and all required Services.
- 1.9. **Notice to Proceed** means a written document issued by the Contract Administrator authorizing Artist to begin the project, phase, milestone, or task, issued by the Contract Administrator or the Project Manager of the Project.
- 1.10. **Project** means the project into which the Artwork will be integrated as described in this Agreement.

1.11. **Services** means all work required by Artist under this Agreement, including without limitation as specified in Exhibit A.

1.12. **Site** means the location where the Artwork is to be installed, as more fully described in Exhibit A and Exhibit F.

1.13. **Subcontractor** means an entity or individual providing Services to County through Artist for all or any portion of the work under this Agreement. The term “Subcontractor” includes all subconsultants.

[DELETE NEXT SECTION IF COMMISSIONED ARTWORK OR NOT APPLICABLE]

1.14. **Substantial Completion** means the stage at which all of Artist’s contractual obligations directly related to the fabrication and installation of the Artwork have been satisfied and the Artwork is significantly complete in accordance with the Agreement, including all conditions and requirements of permitting and regulatory agencies. The Contract Administrator, in his or her sole discretion, determines when Substantial Completion has been achieved.

ARTICLE 2. EXHIBITS

The following exhibits are attached hereto and incorporated into this Agreement:

| | |
|------------------|--|
| Exhibit A | Scope of Services |
| Exhibit B | Payment Schedule |
| Exhibit C | Cataloging Form |
| Exhibit D | Minimum Insurance Requirements |
| Exhibit E | Local Economic Impact Survey |
| Exhibit F | Design Proposal and Site |
| Exhibit G | Certification of Payments to Subcontractors and Suppliers |

If there is a conflict or inconsistency between any provision contained in the Articles of this Agreement and any provision contained in any of the Exhibits, the provision in the Articles shall prevail and be given effect unless expressly stated to the contrary.

ARTICLE 3. SCOPE OF SERVICES

3.1. Scope of Services. Artist must perform all Services identified in this Agreement including, without limitation, the work specified in Exhibit A (the “Scope of Services”). Unless expressly stated otherwise in this Agreement, the Scope of Services is deemed to include preliminary considerations and prerequisites, and all labor, materials and tasks, whether or not enumerated in the Agreement, that are such an inseparable part of the Artwork or Scope of Services that exclusion thereof would render Artist’s performance impractical, illogical, or unconscionable. Unless otherwise expressly stated in the Scope of Services, Artist shall perform all services and furnish all supplies, materials, and equipment for the design, execution, and fabrication of the Artwork; pay all necessary taxes, insurance, and consultants; purchase all supplies, materials,

tools, equipment, lighting requirements, and all other items incidental to producing the Artwork; and transport and install the Artwork at the Site.

3.1.1 Artist shall perform all Services in accordance with standards of care, skill, training, diligence, and judgment provided by highly competent professionals who perform work of a similar nature. Artist shall, without additional compensation, correct any errors, omissions, or other deficiencies in the Artwork identified by the Contract Administrator prior to Final Acceptance.

3.1.2 The personal skill, judgment, and creativity of Artist **[OR INDIVIDUAL PERSON, IF CORPORATION]** are essential elements of the Artwork. Artist may employ qualified personnel to work under Artist's supervision, but Artist shall not assign, transfer, or subcontract the creative and artistic portions of the Artwork to another party without the prior written approval of the Contract Administrator. Failure to comply with this provision shall constitute a material breach of contract permitting termination by County.

3.1.3 Artist shall, at the sole expense of Artist, secure the services of an appropriately licensed general contractor, subcontractor, engineer, and/or any other professional(s) as necessary in order to obtain all licenses and approvals required to perform the Services.

3.2. Performance.

3.2.1 Artist must complete the Services within the time frame stated in Exhibit A. County shall issue a written Notice to Proceed for each Milestone of the Services, as stated in Exhibit A. Upon issuance by County of a Notice to Proceed with the applicable Milestone, Artist shall complete all Deliverables for that Milestone as stated in Exhibit A. Artist shall not proceed with any Milestone until County issues a Notice to Proceed for that Milestone.

3.2.2 If Artist is unable to perform Artist's obligations under the Agreement within the time specified due to Artist's death, physical or mental incapacity, or other circumstances beyond Artist's control, as determined by the Contract Administrator, County may proceed with completion of the Artwork with Artist's agents, successors or assigns, to the extent permitted under applicable law, or County at its sole option may terminate this Agreement for cause.

3.2.3 In the event Artist is unavailable for an extended period of time (as determined by the Contract Administrator), the Artist shall provide another individual with similar or greater skills to perform the services within the applicable time period ("Substitute Artist"). The Substitute Artist must be approved by the Contract Administrator before performing any work pursuant to this Agreement. If the Artist fails to provide a Substitute Artist acceptable to County, the Contract Administrator may terminate the Agreement for cause with no further obligation to Artist and may place Artist on a list prohibiting Artist from applying for County contracts and grants for a period of two (2) years from the date of such failure.

3.2.4 After completion of any Milestone, the Contract Administrator will determine whether to proceed with the next Milestone(s). The Contract Administrator is authorized to

negotiate and approve in writing changes to the Scope of Services and Deliverables for Milestones provided that the total compensation due to Artist does not exceed the not-to-exceed amount stated in Section 5.1.

3.3. Design. Artist shall revise the Design Proposal consistent with the requirements of this section, the Scope of Services, and any instructions or requirements provided by the Contract Administrator and submit to the Contract Administrator for written approval. Artist shall ensure that the Artwork and all Services can be completed within the maximum compensation stated in Section 5.1. If the cost to complete the Services or any component thereof would exceed the maximum compensation for the applicable Services stated in Section 5.1, Artist shall redesign the Artwork at no additional cost to County to ensure the Services can be completed within the amounts stated in Section 5.1 and within the time frame required by the Contract Administrator. Upon written approval by the Contract Administrator of the revised Design Proposal consistent with this section, the revised Design Proposal shall constitute the “Final Design” and shall be the applicable design for any and all remaining Services relating to the Artwork.

3.3.1 The Design Proposal shall set forth in detail the artistic expression, scope, design, color, size, material, texture, and location of the Artwork on the Site. The Design Proposal shall include a proposed budget including, but not limited to, all costs for execution, fabrication, transportation, delivery, all necessary permits unless expressly stated otherwise herein, installation, insurance, consultant and professional services fees, engineering, Allied Artist payments, shop drawings, materials, cost of a subcontractor bond if applicable, and contingencies. The Design Proposal shall also include a statement that the Artist has inspected the Site and determined that the Site is suitable for the Artwork. The Design Proposal shall also include a schedule for completion for fabrication, installation, and completion of all Services.

3.3.2 County may require Artist to make revisions to any portions or aspects of the Design Proposal, and all such revisions shall be made at the sole expense of Artist.

3.3.3 Artist shall inspect the Site with County to verify that the existing Site conditions, dimensions, and substrates will support installation of the Artwork. Within fourteen (14) days after the inspection, Artist shall notify the Contract Administrator in writing of any Site condition that would render the Site unsuitable for the Artwork.

3.4. Fabrication, Construction, and Integration of Artwork.

3.4.1 Fabrication and Storage. Artist shall complete fabrication of the Artwork in conformity with the Scope of Services. Artist is solely responsible for Artwork storage pending delivery to the Site unless the Contract Administrator, at his or her sole discretion, determines in writing that County will store the Artwork.

3.4.2 Delivery. After fabrication is completed and Artist has received any applicable permits, other jurisdictional approval(s), and written approval from the Contract Administrator, Artist shall deliver the Artwork to the Site. Artist shall coordinate access to the Site for Artwork delivery with the Contract Administrator.

3.4.3 Installation. Artist shall install the Artwork at the Site in accordance with the Final Design and the Scope of Services. To the extent applicable, Artist shall cooperate with County's general contractor and third parties at the Site to oversee the installation of the Artwork.

3.4.4 Site Conditions. Artist shall have an ongoing obligation to report any discrepancy or defect at the Site that hinders or impairs the installation of the Artwork. Artist shall report any discrepancy or defect to the Contract Administrator in writing within three (3) calendar days after Artist first knows, should have known, of the defect, and Artist shall cease installation of the Artwork until receipt of written notice from the Contract Administrator that installation should resume. Failure of Artist to timely report any discrepancy or defect of which Artist has, or should have, knowledge in writing to the County shall waive any related objection Artist has to the installation or the Site, and Artist shall be solely responsible for any expenses associated with remedying any discrepancy or defect that hinders or impairs installation at the Site or damages the Artwork.

3.4.5 Cooperation. Artist shall work in a manner and time so as not to interfere with any of the operations, construction, or maintenance of County or its agents. The Contract Administrator has the authority to resolve any scheduling conflicts between County's general contractor, County, or Artist, and such resolution shall be binding on the parties.

3.4.6 Site Maintenance. During the installation and at all times when working on County property or at the Site, Artist shall keep the premises free from waste materials and rubbish. At the completion of the installation of the Artwork, Artist shall, at Artist's sole expense, remove any waste materials, rubbish, tools, equipment, machinery, and surplus materials from the Site attributable to the Artist, the Services, or the Artwork. Contract Administrator may withhold final compensation until receipt of any necessary clean-up payment from Artist, deduct the clean-up charge from final payment to Artist, or charge the applicable cost of the cleanup to Artist.

[DELETE SECTION 3.5 (FINAL DESIGN AMENDMENT) IF NOT APPLICABLE]

3.5. Final Design Amendment. If County deems it appropriate, the Parties will amend this Agreement to refine or otherwise modify the Scope of Services to address the Final Design and modify, if appropriate, the Payment Schedule for any remaining Milestones. If Artist is unavailable or unwilling to proceed with any remaining Milestones or Services on terms acceptable to the County, County may hire a third party to implement Artist's Final Design, in which event County shall have no further obligation to Artist.

[DELETE SECTION 3.6 (INSPECTIONS) IF COMMISSIONED ARTWORK OR NOT APPLICABLE]

3.6. Inspections.

3.6.1 Substantial Completion Inspection: The Contract Administrator will schedule an inspection to verify Substantial Completion (the "Substantial Completion Inspection") after Artist notifies the Contract Administrator in writing that the Artwork is ready and available for inspection. Contract Administrator will concurrently alert County's Risk Management Division regarding the impending completion of the Artwork. Any deficiencies observed at the Substantial Completion Inspection shall be identified by County in an inspection report and must be

corrected by Artist within the deadlines identified in the inspection report. A copy of the inspection report shall be provided to Artist within ten (10) business days after the Substantial Completion Inspection.

3.6.2 Final Completion Inspection: The Contract Administrator shall schedule a final inspection (“Final Completion Inspection”) after Artist notifies the Contract Administrator in writing that all deficiencies have been corrected and the Artwork is available for final inspection. The Final Completion Inspection shall be completed within three (3) business days after written notification from Artist. If the Contract Administrator determines that all deficiencies have not been corrected, within three (3) business days after the inspection, the Contract Administrator will provide an inspection report to Artist identifying any observed deficiencies and a deadline by which to correct the deficiencies. Artist shall notify the Contract Administrator in writing when all deficiencies have been corrected, and Contract Administrator will schedule another Final Completion Inspection.

3.6.3 Final Completion Report: If the Contract Administrator determines that the Artwork is complete, Contract Administrator will prepare a final completion report (the “Final Completion Report”) to be executed by both Parties. The Final Completion Report shall include, at a minimum, the location, a detailed description, and the value of the Artwork (including the Artist’s basis for the determination of value) and any information requested by County per Exhibit C (Cataloguing Form), and shall refer the Artwork to the Committee and the Council to authorize final payment upon completion of all Artist’s obligations under the Agreement **[DELETE IF NOT APPLICABLE]**. Contract Administrator will send the Final Completion Report to County’s Risk Management Division to enable that County to insure the Artwork.

3.6.4 Final Acceptance and Payment: The Contract Administrator will provide written Final Acceptance of the Artwork and release final payment to Artist only after all of the following have been completed: (i) the Final Completion Report; (ii) receipt from Artist, in a format acceptable to the Contract Administrator, of all reasonably requested information pertaining to the Artwork including, but not limited to, photographic documentation, maintenance and conservation requirements, economic impact information, and technical specifications; (iii) completion by Artist of any outstanding educational outreach to the extent stated in the Scope of Services; (iv) County’s Risk Management Division has arranged for the appropriate insurance of the Artwork, if any; and (v) final payment has been authorized by the Committee and Council.

3.7. Post Installation, Title, and Risk of Loss. Title to the Artwork shall pass to County upon the earlier of the following: (a) Final Acceptance; or (b) upon written notice by County of transfer of title if Artist defaults on any obligation under this Agreement and fails to cure such default within ninety (90) days after written notice of default by County. Upon transfer of title to County, County will be responsible for any and all subsequent damage to the Artwork, except damage caused by Artist or Artist’s Subcontractors or agents. At any time prior to title transfer to County, all risk of destruction or damage to the Artwork, or any part of the Artwork, from any cause whatsoever will be borne by Artist. Artist must, at Artist’s sole expense, fully repair and restore the Artwork if any destruction or damage to the Artwork occurs before title has transferred from

the Artist to County. Upon transfer of title pursuant to this section, Artist shall execute any documents as County may reasonably request to memorialize, record, or otherwise document the transfer of title.

3.8. Bond. County may, in its discretion, require Artist provide a payment and performance bond in an amount up to the total amount stated on Exhibit B, in which event Artist must provide the payment and performance bond within ten (10) days after the Effective Date. If County requires a bond under this section and Artist subcontracts any Services in an amount exceeding Two Hundred Thousand Dollars (\$200,000.00), Artist must require any such Subcontractors to provide a payment and performance bond in a form required by County prior to the Contract Administrator's issuance of Notice to Proceed some or all of the Services to be rendered by the Subcontractor.

3.9. Third-Party Integration. If Artist's Services are combined or coordinated by County with services by a third party that is not in privity with or within the control of Artist, Artist will not be responsible for such third-party services except to the extent expressly stated in this Agreement.

3.10. Change to Scope. Any minor change to the Scope of Services that does not increase the total cost to County (excluding the Contingency Reserve) under this Agreement or the timeline for Final Acceptance of the Artwork may be approved in writing by the Contract Administrator. Any other change to the Agreement or Scope of Services (including any change that would include payment from the Contingency Reserve) must be accomplished by a written amendment signed by the Parties. If Artist determines that a proposed change will require a change in the costs or the schedule, Artist must advise County in writing within ten (10) days following receipt of notice from the Contract Administrator of the proposed change, and Artist must promptly furnish County with an itemized estimate of any adjustments to the costs or the schedule resulting from the proposed change. Artist must receive the written approval of the Contract Administrator or County pursuant to this section prior to taking any action on a proposed change. During negotiations for a proposed change, Artist must continue performance in compliance with all then-current terms and conditions of this Agreement other than the item subject to the proposed change, unless otherwise directed by County.

ARTICLE 4. TERM AND TIME OF PERFORMANCE

4.1. Term. The term of this Agreement will begin on the date it is fully executed by the Parties ("Effective Date") and will end on _____ ("Term"). The County Administrator is authorized to execute an amendment to extend the Term of this Agreement.

4.2. Fiscal Year. The continuation of this Agreement beyond the end of any County fiscal year is subject to both the appropriation and the availability of funds in accordance with Chapter 129, Florida Statutes.

4.3. Time of the Essence. Time is of the essence in performing the duties, obligations, and responsibilities required by this Agreement. Artist must commence and complete each Milestone of the Artwork within the applicable time periods and deadlines stated in Exhibit A or

the applicable Notice to Proceed, unless otherwise approved in writing by the Contract Administrator. Unless otherwise agreed by the Parties in writing, all duties, obligations, and responsibilities of Artist required by this Agreement must be completed no later than the date specified in Exhibit A for completion of Services.

4.4. Delay. In the event the Artist causes a delay that impacts the County’s construction schedule, the Artist must mitigate the delay at no additional cost to County in a manner that is approved in advance in writing by the Contract Administrator. If the Artist is unable to mitigate the delay, the County Administrator may terminate this Agreement and the Artist must refund all compensation paid to date by County. Artist must notify County in writing whenever a delay is anticipated or experienced and set forth all facts and details related to the delay. The Contract Administrator may grant Artist an extension of time if Contract Administrator deems it appropriate in the sole discretion of the Contract Administrator. Failure to fulfill Artist’s contractual obligations due to reasons beyond Artist’s control, such as a delay created by County, as determined by the Contract Administrator in his or her sole discretion, will not constitute a breach of contract, provided that such obligations are suspended for no longer than the period of delay caused by County or reasons beyond Artist’s control, unless otherwise approved in writing by the Contract Administrator.

ARTICLE 5. COMPENSATION

5.1. Maximum Amounts. For all goods and Services provided under this Agreement, County will pay Artist up to a maximum amount as follows:

| Services/Goods | Not-To-Exceed Amount |
|---|-----------------------------|
| All Services (including all Milestones, and inclusive of any Allied Artist fees) [Note: Identify more specific Milestone not-to-exceed amounts if appropriate] | \$ |
| TOTAL FOR ALL SERVICES | \$ |
| Contingency Reserve (in addition to above total) (must be less than 10% of Total for all Services) | \$ |

Payment will be made only for Services actually performed and completed in accordance with this Agreement, as set forth in Exhibit B (Payment Schedule), which amount will be accepted by Artist as full compensation for all such Services. Artist acknowledges that the amounts set forth in this Agreement are the maximum amounts payable and constitute a limitation upon County’s obligation to compensate Artist for work under this Agreement. These maximum amounts, however, do not constitute a limitation of any sort upon Artist’s obligation to perform all Services required under this Agreement. Unless and except to the extent expressly required under this Agreement, Artist will not be reimbursed for any expenses it incurs under this Agreement.

5.1.1 Allied Artist. Artist is responsible for contracting directly with any Allied Artist for Services, and Artist is solely responsible for paying any Allied Artist for such Services. Under no condition is County obligated in any way or liable for payments to the Allied Artist.

5.1.2 Contingency Amount. Artist is obligated to and has agreed to fully perform the Services for the not-to-exceed amounts stated in Section 5.1 (excluding the Contingency Reserve). However, unforeseen costs beyond the control of Artist (excluding expenses Artist reasonably should have contemplated) may adversely affect Artist's costs for completion of all Services. Therefore, County has set aside a Contingency Reserve amount as stated in Section 5.1, which may be paid to Artist, in whole or in part, at the sole discretion of Contract Administrator upon request by Artist and Artist's submission of documentation substantiating the additional unforeseen costs, as reasonably requested by County. Any request by Artist for payment from the Contingency Reserve must be accompanied by documentation demonstrating that the contingency amount(s) set aside in Artist's design proposal budget for earlier Milestones have already been fully utilized. Any payment from the Contingency Reserve will be made in an amount determined only after approval by the County Administrator upon receipt of written recommendation from the Contract Administrator certifying the basis for the contingency payment and the recommended amount of additional payment.

5.2. Method of Billing and Payment.

5.2.1 Artist shall submit invoices for compensation in accordance with Exhibit B, but only after the Services for which the invoices are submitted have been completed. An original invoice plus one copy are due within fifteen (15) days after the end of the month covered by the invoice, except that the final invoice must be received no later than sixty (60) days after expiration or earlier termination of this Agreement. Invoices must designate the Services performed and, as applicable, the personnel, hours, tasks, or other details as requested by the Contract Administrator. If Artist subcontracts any Services under this Agreement, Artist must submit with each invoice a Certification of Payments to Subcontractors and Suppliers ("Certification") (Exhibit G). The Certification must be accompanied by a copy of the notification sent to each unpaid Subcontractor listed on the form, explaining the good cause why payment has not been made to that Subcontractor.

5.2.2 Any invoice submitted by Artist must be in the amount set forth in Exhibit B for the applicable Services.

5.2.3 County shall pay Artist within thirty (30) days of receipt of Artist's proper invoice, as required under the "Broward County Prompt Payment Ordinance," Section 1-51.6, Broward County Code of Ordinances. To be deemed proper, all invoices must comply with the requirements set forth in this Agreement and must be submitted on the then-current form and pursuant to instructions prescribed by the Contract Administrator. Payment may be withheld for failure of Artist to comply with a term, condition, or requirement of this Agreement. Payment shall be made to Artist at the address designated in the "Notices" section in the Miscellaneous Article.

5.2.4 Artist must pay Subcontractors and suppliers within fifteen (15) days following receipt of payment from County for such subcontracted work or supplies. Artist agrees that if it withholds any amount as retainage from Subcontractors or suppliers, it will release such retainage and pay same within fifteen (15) days following receipt of payment of retained amounts from County. Failure to pay a Subcontractor or supplier in accordance with this subsection will be a material breach of this Agreement, unless Artist demonstrates that such failure to pay results from a bona fide dispute with the Subcontractor or supplier and, further, Artist promptly pays the applicable amount(s) to the Subcontractor or supplier upon resolution of the dispute. Artist must include requirements substantially similar to those set forth in this subsection in its contracts with Subcontractors and suppliers.

5.2.5 Reimbursable Expenses. Artist shall not be reimbursed for any expenses unless expressly authorized in Exhibit B and approved in writing in advance by the Contract Administrator. If any travel costs or travel-related expenses are expressly authorized in Exhibit B, Artist must comply with Section 112.061, Florida Statutes, except to the extent that Exhibit B expressly provides to the contrary. County is not liable for any such expenses that exceed those allowed by Section 112.061 or that have not been approved in writing in advance by the Contract Administrator.

5.2.6 Subcontractors. Artist must invoice all Subcontractor fees, whether paid on a “lump sum” or other basis, to County with no markup. All Subcontractor fees must be invoiced to County in the actual amount paid by Artist.

5.2.7 Withholding by County; Refunds by Artist. Notwithstanding any provision of this Agreement to the contrary, County may withhold, in whole or in part, payment to the extent necessary to protect itself from loss on account of inadequate or defective work that has not been remedied or resolved in a manner satisfactory to the Contract Administrator, Artist’s failure to timely pay Subcontractors, or Artist’s failure to comply with any provision of this Agreement. The amount withheld will not be subject to payment of interest by County. If Artist fails to perform the Services within the time frame designated in this Agreement or County terminates for convenience or cause, Artist shall refund to County all payments made by County for Services not fully or properly performed.

ARTICLE 6. REPRESENTATIONS AND WARRANTIES

6.1 Representation of Authority. Artist represents and warrants that this Agreement constitutes the legal, valid, binding, and enforceable obligation of Artist, and that neither the execution nor performance of this Agreement constitutes a breach of any agreement that Artist has with any third party or violates any law, rule, regulation, or duty arising in law or equity applicable to Artist. Artist further represents and warrants that execution of this Agreement is within Artist’s legal powers, and each individual executing this Agreement on behalf of Artist is duly authorized by all necessary and appropriate action to do so on behalf of Artist and does so with full legal authority.

6.2 Artist Representations. Artist represents and warrants that all statements and representations made in Artist's proposal, if any, or other supporting documents submitted to County in connection with any proposal, negotiation, or award of this Agreement, including during the initial stages of the contract process, were true and correct when made and are true and correct as of the date Artist executes this Agreement, unless otherwise expressly disclosed in writing by Artist.

6.3 Contingency Fee. Artist represents that it has not paid or agreed to pay any person or entity, other than a bona fide employee working solely for Artist, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement.

6.4 Truth-In-Negotiation Representation. Artist's compensation under this Agreement is based upon its representations to County, and Artist certifies that the information supplied to substantiate Artist's compensation, including, without limitation, in the negotiation of this Agreement, are accurate, complete, and current as of the date Artist executes this Agreement. Artist's compensation will be reduced to exclude any significant sums by which the contract price was increased due to inaccurate, incomplete, or noncurrent information.

6.5 Public Entity Crime Act. Artist represents that it is familiar with the requirements and prohibitions under the Public Entity Crime Act, Section 287.133, Florida Statutes, and represents that its entry into this Agreement will not violate that Act. Artist further represents that there has been no determination that it committed a "public entity crime" as defined by Section 287.133, Florida Statutes, and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether Artist has been placed on the convicted vendor list.

6.6 Discriminatory Vendor and Scrutinized Companies Lists. Artist represents that it has not been placed on the discriminatory vendor list as provided in Section 287.134, Florida Statutes. Artist further represents that it is not ineligible to contract with County on any of the grounds stated in Section 287.135, Florida Statutes.

6.7 Warranty of Performance. Artist represents and warrants that it possesses the knowledge, skill, experience, and financial capability required to perform and provide all Services required under this Agreement, and that each person and entity that will provide Services under this Agreement is duly qualified to perform such Services by all appropriate governmental authorities, where required, and is sufficiently experienced and skilled in the area(s) for which such person or entity will render Services. Artist represents and warrants that the Services under this Agreement shall be performed in a skillful and respectful manner, and that the quality of all such Services shall equal or exceed prevailing industry standards for the provision of such Services.

6.8 Domestic Partnership Requirement. Unless this Agreement is exempt from the provisions of the Broward County Domestic Partnership Act, Section 16½-157, Broward County Code of Ordinances, Artist certifies and represents that it will comply with the provisions of

Section 16½-157 for the duration of this Agreement, and the contract language referenced in Section 16½-157 is deemed incorporated in this Agreement as though fully set forth in this section.

6.9 Breach of Representations. In entering into this Agreement, Artist acknowledges that County is materially relying on the representations and warranties of Artist stated in this article. County is entitled to recover any damages it incurs to the extent any such representation or warranty is untrue. In addition, if any such representation or warranty is false, County has the right, at its sole discretion, to terminate this Agreement without any further liability to Artist, to deduct from the compensation due Artist under this Agreement the full amount of any value paid in violation of a representation or warranty, or to recover all sums paid to Artist under this Agreement. Furthermore, a false representation may result in Artist becoming ineligible to participate in future public art related activities.

ARTICLE 7. INDEMNIFICATION

Artist shall indemnify, hold harmless, and defend County and all of County's officers, agents, servants, and employees (collectively, "Indemnified Party") from and against any and all causes of action, demands, claims, losses, liabilities, and expenditures of any kind, including attorneys' fees, court costs, and expenses, including through the conclusion of any appellate proceedings, raised or asserted by any person or entity not a party to this Agreement, and caused or alleged to be caused, in whole or in part, by any intentional, reckless, or negligent act or omission of Artist, its officers, employees, agents, or servants, arising from, relating to, or in connection with this Agreement (collectively, a "Claim"). In the event any Claim is brought against an Indemnified Party, Artist shall, upon written notice from County, defend each Indemnified Party against each such Claim by counsel satisfactory to County or, at County's option, pay for an attorney selected by the County Attorney to defend the Indemnified Party. The obligations of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by the Contract Administrator and the County Attorney, any sums due Artist under this Agreement may be retained by County until all Claims subject to this indemnification obligation have been settled or otherwise resolved. Any amount withheld shall not be subject to payment of interest by County.

ARTICLE 8. INSURANCE

8.1 For the duration of the Agreement, Artist must, at its sole expense, maintain the minimum insurance coverages stated in Exhibit D in accordance with the terms and conditions of this article. Artist must maintain insurance coverage against claims relating to any act or omission by Artist, its agents, representatives, employees, or Subcontractors in connection with this Agreement. County reserves the right at any time to review and adjust the limits and types of coverage required under this article.

8.2 Artist must ensure that "Broward County" is listed and endorsed as an additional insured as stated in Exhibit D on all policies required under this article. The Certificate Holder shall be Broward County, Cultural Division, 115 South Andrews Avenue, Fort Lauderdale, Florida 33301.

8.3 On or before the Effective Date or at least fifteen (15) days prior to commencement of Services, Artist must provide County with a copy of all Certificates of Insurance or other documentation sufficient to demonstrate the insurance coverage required in this article. If and to the extent requested by County, Artist must provide complete, certified copies of all required insurance policies and all required endorsements within thirty (30) days after County's request.

8.4 Artist must ensure that all insurance coverages required by this article remain in full force and effect for the duration of this Agreement and until all performance required by Artist has been completed, as determined by Contract Administrator. Artist or its insurer must provide notice to County of any cancellation or modification of any required policy at least thirty (30) days prior to the effective date of cancellation or modification, and at least ten (10) days prior to the effective date of any cancellation due to nonpayment, and must concurrently provide County with a copy of its updated Certificates of Insurance evidencing continuation of the required coverage(s). Artist must ensure that there is no lapse of coverage at any time during the time period for which coverage is required by this article.

8.5 Artist must ensure that all required insurance policies are issued by insurers: (1) assigned an A. M. Best rating of at least "A-" with a Financial Size Category of at least Class VII; (2) authorized to transact insurance in the State of Florida; or (3) a qualified eligible surplus lines insurer pursuant to Section 626.917 or 626.918, Florida Statutes, with approval by County's Risk Management Division.

8.6 If Artist maintains broader coverage or higher limits than the minimum insurance requirements stated in Exhibit D, County will be entitled to any such broader coverage and higher limits maintained by Artist. All required insurance coverages under this article must provide primary coverage and shall not require contribution from any County insurance, self-insurance or otherwise, which will be in excess of and will not contribute to the insurance required and provided by Artist.

8.7 Artist must declare in writing any self-insured retentions or deductibles over the limit(s) prescribed in Exhibit D and submit to County for approval at least fifteen (15) days prior to the Effective Date or commencement of Services. Artist will be solely responsible for and must pay any deductible or self-insured retention applicable to any claim against County. County may, at any time, require Artist to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. Artist agrees that any deductible or self-insured retention may be satisfied by either the named insured or County, if so elected by County, and Artist agrees to obtain same in endorsements to the required policies.

8.8 Unless prohibited by the applicable policy, Artist waives any right to subrogation that any of Artist's insurer may acquire against County, and agrees to obtain same in an endorsement of Artist's insurance policies.

8.9 Artist must require that each Subcontractor maintains insurance coverage that adequately covers the Services provided by that Subcontractor on substantially the same

insurance terms and conditions required of Artist under this article. Artist must ensure that all Subcontractors comply with these requirements and that “Broward County” is named as an additional insured under Subcontractors’ applicable insurance policies.

8.10 In the event Artist or any Subcontractor fails to maintain the insurance required by this Agreement, County may pay any costs of premiums necessary to maintain the required coverage and deduct such costs from any payment otherwise due to Artist. Artist must not permit any Subcontractor to provide Services under this Agreement unless and until the requirements of this article are satisfied. If requested by County, Artist must provide, within one (1) business day, evidence of each Subcontractor’s compliance with this section.

8.11 If any of the policies required under this article provide claims-made coverage: (1) any retroactive date must be prior to the Effective Date or commencement of Services; (2) the required coverage must be maintained after termination or expiration of the Agreement for at least the duration stated in Exhibit D, and (3) if coverage is canceled or nonrenewed and is not replaced with another claims-made policy form with a retroactive date prior to the Effective Date or commencement of Services, Artist must obtain and maintain “extended reporting” coverage that applies after termination or expiration of the Agreement for at least the duration stated in Exhibit D.

ARTICLE 9. TERMINATION

9.1 This Agreement may be terminated for cause by the aggrieved party if the party in breach has not corrected the breach within ten (10) days after receipt of written notice from the aggrieved party identifying the breach. This Agreement may also be terminated for convenience by the Board. Termination for convenience by the Board will be effective on the termination date stated in written notice provided by County, which termination date shall be not less than thirty (30) days after the date of such written notice. This Agreement may also be terminated by the County Administrator upon such notice as the County Administrator deems appropriate under the circumstances in the event the County Administrator determines that termination is necessary to protect the public health, safety, or welfare. If County erroneously, improperly, or unjustifiably terminates for cause, such termination shall be deemed a termination for convenience and shall be effective thirty (30) days after such notice of termination for cause is provided.

9.2 This Agreement may be terminated for cause by County for reasons including, but not limited to, any of the following:

9.2.1 Artist’s failure to suitably perform the Services, failure to continuously perform the Services in a manner calculated to meet or accomplish the objectives in this Agreement, or repeated submission (whether negligent or intentional) for payment of false or incorrect bills or invoices;

9.2.2 If Artist is a “scrutinized company” pursuant to Section 215.473, Florida Statutes, if Artist is placed on a “discriminatory vendor list” pursuant to Section 287.134, Florida

Statutes, or if Artist provides a false certification submitted pursuant to Section 287.135, Florida Statutes;

9.2.3 By the Contract Administrator for any fraud, misrepresentation, or material misstatement by Artist in the award or performance of this Agreement.

9.3 Notice of termination shall be provided in accordance with the “Notices” section of this Agreement except that notice of termination by the County Administrator to protect the public health, safety, or welfare may be oral notice that shall be promptly confirmed in writing.

9.4 In the event this Agreement is terminated for convenience by County, Artist will be paid for any Services properly performed under this Agreement through the termination date specified in the written notice of termination, subject to any right of County to retain any sums otherwise due and payable. Artist acknowledges that it has received good, valuable, and sufficient consideration from County, the receipt and adequacy of which are acknowledged by Artist, for County’s right to terminate this Agreement for convenience.

9.5 In addition to any right of termination stated in this Agreement, County will be entitled to seek any and all available remedies, whether stated in this Agreement or otherwise available at law or in equity.

9.6 If terminated for cause or convenience by County, County will have the right to the possession and transfer of the title to the sketches, design, and models already produced and submitted by the Artist.

ARTICLE 10. EQUAL EMPLOYMENT OPPORTUNITY AND CBE COMPLIANCE

10.1 No party to this Agreement may discriminate on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, pregnancy, or gender identity and expression in the performance of this Agreement. Artist must include the foregoing or similar language in its contracts with any Subcontractors, except that any project assisted by the U.S. Department of Transportation funds must comply with the nondiscrimination requirements in 49 C.F.R. Parts 23 and 26.

10.2 Failure by Artist to carry out any of the requirements of this article will constitute a material breach of this Agreement, which will permit County to terminate this Agreement or exercise any other remedy provided under this Agreement, the Broward County Code of Ordinances, the Broward County Administrative Code, or under other applicable law, all such remedies being cumulative.

ARTICLE 11. WARRANTIES/STANDARDS

11.1 Original Art. Artist warrants that the design or Artwork being commissioned is the original product of Artist’s own creative efforts, and, unless otherwise expressly stated herein, the Artwork is original and is a single edition.

11.2 Warranty of Quality. Artist warrants that the Artwork is and shall be free of defects in material and workmanship, including without limitation, any defects consisting of “inherent vice” or qualities accelerating the deterioration of the Artwork, and that Artist will correct, at Artist’s expense, any defects that appear within a period of two (2) years from Final Acceptance of the Artwork.

11.3 Sale or Reproduction. Artist represents and warrants that Artist will not sell or reproduce the Artwork or allow others to do so without the prior written approval of County. For the purposes of this Agreement, the Artwork is considered “reproduced” if the dimensions of another work exceed seventy-five percent (75%) of the dimensions of the commissioned Artwork. For purposes of this section, “dimensions” shall include, but not be limited to, sound, light, and other expressions not captured in a two or three dimensional physical object. This covenant will continue in effect for a period consisting of the life of Artist plus fifty (50) years and will be binding on Artist’s successors, heirs and assigns.

11.4 Materials. Artist represents and warrants that all materials used in the Artwork will be new unless otherwise specified herein and that all Services will conform in all ways with the Agreement. Artist shall deliver the Artwork to County free and clear of any liens.

11.5 Intellectual Property Warranty. Artist warrants that the Artwork will not infringe upon or violate any license, copyright law, patent law, trade secret law, trademark law, moral rights law, semiconductor chip protection law, unfair competition law, proprietary information, nondisclosure, intellectual property rights of any third party, any privacy right or law, or any other applicable law, rule, regulation, or code, and the Artwork will not contain libelous material. If the Artwork contains or utilizes any protected patent, trademark, or copyright interest, or Artist uses any protected material, process or procedure in connection with the Artwork, Artist warrants and represents that Artist has obtained all necessary permissions and authorities and will disclose and provide documentation of same to County.

11.6 Warranty of Authorization. Artist represents that Artist possesses full power to enter into this Agreement and to convey the rights granted by this Agreement to County without the consent of any third party.

ARTICLE 12. RIGHTS IN ARTWORK

12.1 The provisions of this Agreement control over the provisions of 17 U.S.C. § 106A and constitute a waiver by Artist of any rights in the Artwork set out in or otherwise granted by the Visual Artists Rights Act of 1990, 17 U.S.C. § 106A. If there is a conflict or inconsistency between any provision contained in this Agreement and any provision contained in any provision of domestic or international law, including without limitation, the European Union law, Artist understands and agrees that the provisions of this Agreement will control and will constitute a waiver by Artist of any rights in the Artwork set out in or otherwise granted by laws of other jurisdictions addressing Artist’s rights in the Artwork.

12.2 Artwork may become an integral part of the architecture of the applicable building, structure, or site, and installation and integration of the Artwork may subject the Artwork to future removal, destruction, or other modifications including without limitation, in connection with the renovation, destruction, or redevelopment of the applicable building, structure, or site or change of use. Artist consents to the incorporation of the Artwork into the building or structure or at the site, and waives any rights in the Artwork granted by 17 U.S.C. § 106A or any other applicable law.

12.3 The Parties agree and acknowledge that the Artwork constitutes a work made for hire, and, unless otherwise expressly stated herein, all rights in and to the Artwork, including without limitation, all rights in the nature of “Droit Moral” relating to any continuing interest Artist may otherwise have in the maintenance or modification of the Artwork, are expressly waived by Artist and, insofar as such rights are transferable, are assigned to County.

12.4 Artist grants to County an unlimited, perpetual, royalty-free, and irrevocable right to use or reproduce the Artwork, in whole or in part, in any noncommercial manner or media whatsoever, including without limitation, to make, copy, publish, and distribute photographs, drawings, derivatives, or other forms of reproductions of the Artwork, including as installed and accepted by the County, and to prepare derivative works based upon the Artwork for reference, promotional, educational and scholarly purposes. After transfer of title of the Artwork to County, and provided County is not in default of any payment obligation under this Agreement, County has the right to sell Artwork, including deaccessioned Artwork.

12.5 County has the right to determine when and if repairs and restorations to the Artwork are made. Artist may be given the right of first refusal to perform repairs or restoration. If the Parties cannot agree on repair services, if Artist is unable or unwilling to perform the repairs on terms acceptable to County, or if County cannot locate Artist using reasonable efforts, County may have such work performed at County’s own expense in accordance with recognized principles of repair, restoration, or conservation.

12.6 Provided Artist completes the Artwork in accordance with the terms of this Agreement, County will, at its expense, prepare and install a plaque or sign identifying Artist, the title of the Artwork, and the year of completion, and will maintain such identifying plaque in good condition and repair. All references to and all reproductions of the Artwork by County will credit Artist. If County significantly modifies the Artwork after Final Acceptance, Artist may request removal of Artist’s name from the Artwork, in which event the Artist’s name will be removed.

12.7 County must make a reasonable effort to notify Artist of any proposed action that will remove, destroy, or otherwise modify the Artwork by providing notice to Artist in accordance with the “Notices” section of this Agreement, including, if applicable, notice of any planned Deaccession. Lack of notice to Artist will not impede County’s ability to proceed with any modification, repair, or removal.

12.8 If County chooses to remove the Artwork from its collection (“Deaccession”), County will use reasonable efforts to notify Artist in writing, and provide Artist the option to purchase the Artwork at a price set by a professional appraiser (selected and paid for by County) within forty-five (45) calendar days of the written notice from County. If Artist purchases the Artwork, removal of the Artwork will be at Artist’s sole expense. If Artist does not exercise this option, County may dispose of the Artwork in accordance with its Deaccession policy.

ARTICLE 13. MISCELLANEOUS

13.1 Public Records. To the extent Artist is acting on behalf of County as stated in Section 119.0701, Florida Statutes, Artist shall:

- (a) Keep and maintain public records required by County to perform the services under this Agreement;
- (b) Upon request from County, provide County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time and at a cost that does not exceed that provided in Chapter 119, Florida Statutes, or as otherwise provided by law;
- (c) Ensure that public records that are exempt or confidential and exempt from public record requirements are not disclosed except as authorized by law for the duration of this Agreement and following completion or termination of this Agreement if the records are not transferred to County; and
- (d) Upon completion or termination of this Agreement, transfer to County, at no cost, all public records in possession of Artist or keep and maintain public records required by County to perform the Services. If Artist transfers the records to County, Artist must destroy any duplicate public records that are exempt or confidential and exempt. If Artist keeps and maintains the public records, Artist must meet all applicable requirements for retaining public records. All records stored electronically must be provided to County upon request in a format that is compatible with the information technology systems of County.

A request for public records regarding this Agreement must be made directly to County, who will be responsible for responding to any such public records requests. Artist will provide any requested records to County to enable County to respond to the public records request.

Any material submitted to County that Artist contends constitutes or contains trade secrets or is otherwise exempt from production under Florida public records laws (including Chapter 119, Florida Statutes) (“Trade Secret Materials”) must be separately submitted and conspicuously labeled “EXEMPT FROM PUBLIC RECORD PRODUCTION – TRADE SECRET.” In addition, Artist must, simultaneous with the submission of any Trade Secret Materials, provide a sworn affidavit from a person with personal knowledge attesting that the Trade Secret Materials constitute trade secrets under Section 812.081, Florida Statutes, and stating the factual basis for same. In the

event that a third party submits a request to County for records designated by Artist as Trade Secret Materials, County shall refrain from disclosing the Trade Secret Materials, unless otherwise ordered by a court of competent jurisdiction or authorized in writing by Artist. Artist shall indemnify and defend County and its employees and agents from any and all claims, causes of action, losses, fines, penalties, damages, judgments and liabilities of any kind, including attorneys' fees, litigation expenses, and court costs, relating to the nondisclosure of any Trade Secret Materials in response to a records request by a third party.

IF ARTIST HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ARTIST'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE RECORDS CUSTODIAN OF PUBLIC RECORDS AT (954) 357-7532, LFORDHAM@BROWARD.ORG 100 S. ANDREWS AVE., 6TH FLOOR, FORT LAUDERDALE, FLORIDA 33301.

13.2 Audit Rights and Retention of Records. County has the right to audit the books, records, and accounts of Artist and its Subcontractors that are related to this Agreement. Artist and its Subcontractors must keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Agreement and performance under this Agreement. All such books, records, and accounts must be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, Artist or its Subcontractor must make same available in written form at no cost to County.

Artist and its Subcontractors must preserve and make available, at reasonable times within Broward County, Florida, for examination and audit, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for at least three (3) years after expiration or termination of this Agreement or until resolution of any audit findings, whichever is longer. Any audit or inspection pursuant to this section may be performed by any County representative (including any outside representative engaged by County). Artist hereby grants County the right to conduct such audit or review at Artist's place of business, if deemed appropriate by County, with seventy-two (72) hours' advance notice.

Any incomplete or incorrect entry in such books, records, and accounts will be a basis for County's disallowance and recovery of any payment upon such entry. If an audit or inspection in accordance with this section discloses overpricing or overcharges to County of any nature by Artist in excess of five percent (5%) of the total contract billings reviewed by County, the reasonable actual cost of County's audit must be reimbursed to County by Artist in addition to making adjustments for the overcharges. Any adjustments or payments due as a result of such audit or inspection must be made within thirty (30) days after presentation of County's findings to Artist.

Artist must ensure that the requirements of this section are included in all agreements with its Subcontractor(s).

13.3 Independent Contractor. Artist is an independent contractor under this Agreement, and nothing in this Agreement constitutes or creates a partnership, joint venture, or any other relationship between the Parties. In providing Services under this Agreement, neither Artist nor its agents will act as officers, employees, or agents of County. Artist does not have the right to bind County to any obligation not expressly undertaken by County under this Agreement.

13.4 Regulatory Capacity. Notwithstanding the fact that County is a political subdivision with certain regulatory authority, County's performance under this Agreement is as a party to this Agreement. In the event County exercises its regulatory authority, the exercise of such authority and the enforcement of any rules, regulation, laws, and ordinances shall have occurred pursuant to County's regulatory authority as a governmental body separate and apart from this Agreement, and shall not be attributable in any manner to County as a party to this Agreement.

13.5 Sovereign Immunity. Except to the extent sovereign immunity may be deemed to be waived by entering into this Agreement, nothing in this Agreement is intended to serve as a waiver of sovereign immunity by County nor should anything included in this Agreement be construed as consent by County to be sued by third parties in any matter arising out of this Agreement. County is a political subdivision as defined in Section 768.28, Florida Statutes, and is responsible for the negligent or wrongful acts or omissions of its employees pursuant to Section 768.28, Florida Statutes.

13.6 Third-Party Beneficiaries. Neither Artist nor County intends to directly or substantially benefit a third party by this Agreement. Therefore, the Parties acknowledge that there are no third-party beneficiaries to this Agreement and that no third party may assert a right or claim against either of them based upon this Agreement.

13.7 Notices. In order for a notice to a party to be effective under this Agreement, notice must be sent via U.S. first-class mail, hand delivery, or commercial overnight delivery, each with a contemporaneous copy via e-mail, to the addresses listed below and shall be effective upon mailing or hand delivery (provided the contemporaneous email is also sent). The addresses for notice shall remain as set forth in this section unless and until changed by providing notice of such change in accordance with the provisions of this section.

FOR COUNTY:

Broward County, Cultural Division
Attn: Broward Cultural Division Acting Director
100 S. Andrews Avenue
Fort Lauderdale, Florida 33301-1829
E-mail Address: lfordham@broward.org
With simultaneous copies to: ddenis@broward.org

FOR ARTIST:

E-mail address: _____

13.8 Assignment. All Subcontractors must be expressly identified in this Agreement or otherwise approved in advance and in writing by County's Contract Administrator. Except for subcontracting approved by County in advance, neither this Agreement nor any right or interest in it may be assigned, transferred, subcontracted, or encumbered by Artist without the prior written consent of County. If Artist violates this provision, County may immediately terminate this Agreement.

13.9 Conflicts. Neither Artist nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Artist's loyal and conscientious exercise of judgment and care related to its performance under this Agreement. During the term of this Agreement, none of Artist's officers or employees may serve as an expert witness against County in any legal or administrative proceeding in which he, she, or Artist is not a party, unless compelled by court process. Further, such persons may not give sworn testimony or issue a report or writing as an expression of his or her expert opinion that is adverse or prejudicial to the interests of County in connection with any such pending or threatened legal or administrative proceeding unless compelled by court process. The limitations of this section do not preclude Artist or any persons in any way from representing themselves, including giving expert testimony in support of such representation, in any action or in any administrative or legal proceeding. In the event Artist is permitted pursuant to this Agreement to utilize Subcontractors to perform any Services required by this Agreement, Artist must require such Subcontractors, by written contract, to comply with the provisions of this section to the same extent as Artist.

13.10 Materiality and Waiver of Breach. Each requirement, duty, and obligation set forth in this Agreement was bargained for at arm's-length and is agreed to by the Parties. Each requirement, duty, and obligation set forth in this Agreement is substantial and important to the formation of this Agreement, and each is, therefore, a material term of this Agreement. County's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement. To be effective, any waiver must be in writing signed by an authorized signatory of the party.

13.11 Compliance with Laws. Artist and all Services must comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations including, without limitation, American with Disabilities Act, 42 U.S.C. § 12101, Section 504 of the Rehabilitation Act of 1973, and any related federal, state, or local laws, rules, and regulations.

13.12 Severability. In the event any part of this Agreement is found to be unenforceable by any court of competent jurisdiction, that part shall be deemed severed from this Agreement and the balance of this Agreement shall remain in full force and effect.

13.13 Joint Preparation. This Agreement has been jointly prepared by the Parties, and shall not be construed more strictly against either party.

13.14 Interpretation. The titles and headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement include the other gender, and the singular includes the plural, and vice versa, unless the context otherwise requires. Terms such as “herein,” “hereof,” “hereunder,” and “hereinafter” refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a section or article of this Agreement, such reference is to the section or article as a whole, including all of the subsections of such section, unless the reference is made to a particular subsection or subparagraph of such section or article. Any reference to “days” means calendar days, unless otherwise expressly stated.

13.15 Priority of Provisions. If there is a conflict or inconsistency between any term, statement, requirement, or provision of any document or exhibit attached to, referenced by, or incorporated in this Agreement and any provision of Articles 1 through 13 of this Agreement, the provisions contained in Articles 1 through 13 will prevail and must be given effect.

13.16 Law, Jurisdiction, Venue, Waiver of Jury Trial. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. The exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Agreement must be litigated in federal court, the exclusive venue for any such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. **BY ENTERING INTO THIS AGREEMENT, ARTIST AND COUNTY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS AGREEMENT AFTER WRITTEN NOTICE BY THE OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS’ FEES AND COSTS OF THE OTHER PARTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.**

13.17 Amendments. No modification, amendment, or alteration in the terms or conditions contained in this Agreement will be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by duly authorized representatives of County and Artist.

13.18 Prior Agreements. This Agreement represents the final and complete understanding of the Parties regarding the subject matter and supersedes all prior and contemporaneous negotiations and discussions regarding that subject matter. There is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document.

13.19 Payable Interest. County shall not be liable to pay any interest to Artist for any reason, whether as prejudgment interest or for any other purpose, and in furtherance thereof Artist waives, rejects, disclaims, and surrenders any and all entitlement it has or may have to receive interest in connection with a dispute or claim arising from, related to, or in connection with this Agreement. This section shall not apply to any claim for interest, including for post-judgment interest, if such application would be contrary to applicable law. If the preceding provisions of this section are inapplicable or are determined to be invalid or unenforceable by a court of competent jurisdiction, the annual rate of interest payable by County under this Agreement, whether as prejudgment interest or for any other purpose, shall be, to the full extent permissible under applicable law, one quarter of one percent (0.25%) simple interest (uncompounded).

13.20 Incorporation by Reference. Any and all Recital clauses stated above are true and correct and are incorporated in this Agreement by reference. The attached Exhibits are incorporated into and made a part of this Agreement.

13.21 Counterparts and Multiple Originals. This Agreement may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

13.22 Publicity/Use of County Logo. Artist shall not issue any public information releases through any media, including social media, regarding the Artwork or the Services without prior written approval of the Contract Administrator. Artist shall not use County's name, logo, or otherwise refer to this Agreement in any marketing or publicity materials without the prior written consent of the Contract Administrator.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement: Broward County, signing by and through its County Administrator, authorized to execute same pursuant to Broward County Administrative Code Section 33.47, and the Artist, _____, duly authorized to execute same.

COUNTY

WITNESSES:

BROWARD COUNTY, through its County Administrator

Signature above

By: _____
County Administrator

Print Name: _____

_____ day of _____, 2019

Signature above

Approved as to form by
Andrew J. Meyers
Broward County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-7641

Print Name: _____

By: _____
[Name] (Date)
Assistant County Attorney

ABC/wp
_____.doc
02/02/2019
#_____

**AGREEMENT BETWEEN BROWARD COUNTY AND _____ FOR
[COMMISSIONED ARTWORK] [ARTISTIC SERVICES]**

ARTIST

WITNESSES:

ARTIST NAME

Signature

By: _____
Authorized Signor

Print Name of Witness above

Print Name

Signature

Print Title

Print Name of Witness above

_____ day of _____, 20__

ATTEST:

Corporate Secretary or other person
authorized to attest

(Corporate Seal or Notary)

EXHIBIT A – SCOPE OF SERVICES

1. **PURPOSE:** Artist will create an Artwork consisting of _____.
2. **LOCATION:** The Artwork will be located _____.
3. **ARTWORK QUALITIES:** The Artwork will enhance the environment of _____. The Artwork shall be in compliance with the 2017 Florida Building Code (6th edition) or the most updated version, whichever is most current. The Artwork shall be durable, permanent (with at least fifteen (15) years lifespan from the date of Final Acceptance) and shall require only low maintenance (i.e., requiring no more than annual general cleaning, once every twelve (12) month period) that may be performed by County staff who handles general routine maintenance.
4. **ADMINISTRATIVE COORDINATION:** The Contract Administrator shall serve as, or designate, a Cultural Division’s project manager (“Project Manager”). Artist shall maintain regular communication with Cultural Division’s Project Manager via phone, fax, letter, or e-mail. Prior to submittal of Deliverables for each Milestone, Artist shall resolve all relevant issues with the Deliverables to the satisfaction of the Project Manager in his or her sole discretion.

Artist shall notify Project Manager in writing when the Artwork is complete and request a “Substantial Completion Inspection.” The “Substantial Completion Inspection” is a meeting attended by Artist and Project Manager to evaluate any defects, omissions, or deficiencies in the Artwork. Artist shall correct any identified discrepancies, omissions, or defects within three (3) business days of the inspection. Following resolution of all identified defects, discrepancies, or omissions and notification from Artist and all issues have been addressed, the Project Manager shall conduct a Final Completion Inspection of the Artwork. The “Final Completion Inspection” means that, upon written notification by Artist that all deficiencies, omissions, and defects have been corrected, the Project Manager shall inspect the Artwork and determine if County will accept the Artwork and issue Final Acceptance. The Project Manager shall notify Artist in writing of the outcome of the Final Completion Inspection.

5. **DESIGN TEAM COLLABORATION AND COORDINATION:** Artist shall collaborate and coordinate with County’s contractors, consultants, subconsultants, subcontractors, County’s Cultural Division, and any other stakeholders, as identified by the Project Manager.
6. **CONSTRUCTION DOCUMENTS AND PERMITTING:** It shall be Artist’s sole responsibility to ensure that all necessary permits are applied for and obtained within the required timeline. Artist shall provide all Artwork’s digital files upon request by the Project Manager and as required any applicable Milestone. If the Design Proposal requires specialized professional services, Artist shall hire the appropriate subcontractor at Artist’s sole expense. Artists shall require structural and other engineers employed by Artist to maintain professional liability

insurance as shown in Exhibit D. Valid proof of insurance is required prior to the written approval of the subcontractors by the Contract Administrator.

7. CONSERVATION AND MAINTENANCE REVIEW: In accordance with the Notice to Proceed issued by the Project Manager, Artist shall provide a written summary of all future maintenance and conservation requirements for the period following Final Acceptance. Artist shall consider the local conditions and shall anticipate accelerated weathering of the Artwork due to climate. Artist shall apply UV coating onto the Artwork. Artist shall modify the Artwork's Design Proposal, materials, or artistic approach based on the recommendations of County, as requested in writing by the Project Manager, within the requested time period. All modifications to the Design Proposal shall require the written approval of the Project Manager before and after modification.

8. DESCRIPTION OF DELIVERABLES: Artist shall provide the Deliverables identified below. Upon receipt and approval of the Deliverables from each Milestone and any necessary approvals of the Design Proposal, the Project Manager shall issue a Notice to Proceed for the next Milestone. Changes to the schedule approved by the Project Manager must be approved in advance in writing by the Project Manager in his or her sole discretion. All Deliverables must be reviewed and accepted in writing by the Project Manager to constitute completion of the Deliverable. The Project Manager will notify Artist in writing by e-mail or otherwise stating whether the Deliverables are complete and acceptable to County.

Milestone 1: Kickoff and Project Plan

Deliverables:

- Artist shall attend one (1) or more conference calls with the Project Manager to further define the Project scope of work and discuss the Project timeline to facilitate the submittal of a revised Design Proposal. Project Manager will provide Artist with the date, time, and telephone number for the conference call(s).

Deadline: Ten (10) days following Notice to Proceed for Milestone 1.

Milestone 2: Final Design

Deliverables:

- Artist shall attend one (1) or more meeting(s) with the Project Manager and County's representative. The focus of the meeting(s) will be to visit the Site, to review the Project's scope of work, and to collect data that will facilitate the design development of the Artwork including the coordination of the Artwork's location at the Site. Project Manager will provide Artist with the date, time, location, and telephone number for the meeting(s).
- Final Design, including:
 - a. Final design illustrating all components of the Artwork

- b. Written specifications and illustrations showing Artwork paint colors.
- c. Final material samples.
- d. Description of all proposed materials, including UV coating application, as applicable.
- e. A detailed budget.
- f. Installation subcontractors' list, if applicable.
- g. Installation schedule.

Deadline: __ days following Notice to Proceed for the Milestone unless otherwise approved in writing by the Project Manager.

Milestone 3: Completion of fifty percent (50%) of the Artwork

Deliverables:

- Complete fifty (50%) of the Artwork, as determined by the Project Manager.
- Provide documentation that all necessary permits, if applicable, have been applied for and obtained by Artist. Artist is solely responsible for determining if permits are necessary.
- Artist shall provide written summary of all future maintenance and conservation requirements for the period following Final Acceptance.

Deadline: __ days following Notice to Proceed for the Milestone unless otherwise approved in writing by the Project Manager. Artist must submit documentation that permit applications have been made at least thirty (30) days prior to Artwork installation.

Milestone 4: Artwork Completion and Installation

Completion of one hundred percent (100%) of the Project, which requires installation of the Artwork at the Site and written acceptance by the Project Manager.

Deliverables:

- Complete fabrication of the Artwork in accordance with the schedule approved by the Project Manager.
- Complete installation of the Artwork in accordance with the schedule approved by the Project Manager.

Deadline: __ days following Notice to Proceed for the Milestone unless otherwise approved in writing by the Project Manager.

Milestone 5: Final Inspection

Deliverables:

- Participate in an inspection of the Artwork and obtain written Final Acceptance from the Project Manager. Artist must correct any deficiencies identified by the Project Manager.
- Cleanup of Site and repair any area damaged by Artist (beyond ordinary wear and tear as determined by the Project Manager).
- A final inspection of the Artwork by the Project Manager will take place following the correction of all identified deficiencies within the agreed upon time noted in the inspection or as otherwise determined by the Project Manager.

Deadline: __ days following Notice to Proceed for the Milestone unless otherwise approved in writing by the Project Manager.

Milestone 6: Final Acceptance

Deliverables:

- Two (2) identical flash drives with a minimum of fifteen (15) professional digital images illustrating all components of the Artwork in both vertical and horizontal format with a minimum resolution of 300 dpi and file sizes at least 10 MB or above along with two (2) professional 8" x 10" color photographs.
- Photos or video time lapse (compressed down to a few seconds) of the Artwork installation.
- Completion of all remaining Deliverables from all Milestones.
- Submit documentation including required releases that all subcontractors and suppliers have been paid.
- Submit completed Cataloging Form (Exhibit C).
- Submit completed Local Economic Impact Study (Exhibit E) and invoice with all necessary supporting documentation.
- Obtain written final Acceptance by Project Manager.

Deadline: __ days following Notice to Proceed for the Milestone unless otherwise approved in writing by the Project Manager

9. COMMUNITY PROCESS: Artist shall participate in County's Agency meeting(s) and in interviews with County staff as requested in writing by Project Manager.

10. TIMELINE FOR COMPLETION: Artist shall coordinate the Artwork installation with the Project Manager and ensure that Artwork is completed and installed according to the established Project schedule provided by the Project Manager to Artist. The Artwork's fabrication and installation timeline may be adjusted only with the prior written approval of the Contract Administrator based upon delays beyond the control of the Artist.

- 11. EDUCATIONAL OUTREACH:** Educational outreach is/is not required for this project.
- 12. ALLIED ARTIST:** An Allied Artist will/will not be affiliated with this Artwork.
- 13. FUNCTIONALLY-INTEGRATED ARTWORK:** The Artwork will be functionally integrated as stated herein. The Artwork shall:
 - Develop and create an awareness of the unique aspects of a place's built and natural environments and fulfill the civic responsibility of County to provide art and design for livability, accessibility, beauty, and comfort.
 - Stimulate cultural tourism, community pride, and shared positive identity with such structures as gateways, landmarks, cultural heritage landmarks, memorials, and way-finding devices.
 - Be fully integrated to the site as a component of capital improvement projects, including all County facilities (i.e., not portable), and address a broad range of functional objectives supporting the missions of Broward County's agencies.
- 14. LOCAL ECONOMIC IMPACT:** Artist shall provide an itemized list of the value of payments made to Broward County suppliers, vendors, artists, and other businesses for any work or services related to the design, fabrication, and installation of the Artwork, including, but not limited to, materials, fabricators, engineering and other artist services, electrical contractors, installers, studio assistants, studio rental, equipment rental, insurance, printing, photography, hotels, car rental, and meals (see Exhibit E). Artist must submit the Survey to the Project Manager annually for the term of the Agreement at the end of County's fiscal year (September 30), and must submit a combined list of all prior surveys and the current survey upon Final Acceptance of the Artwork.
- 15. BOARD APPROVAL:** Artist agrees that this Agreement may be subject to the Board's approval of the Design Proposal.
- 16. ADDITIONAL REQUIREMENTS FOR COMPLETION OF ARTWORK:** In the event that Artist does not complete the Artwork and all Services required under the Agreement and the Project Manager has provided written direction (which may include Notices to Proceed) to complete the Artwork, the Project Manager may demand by written notice and, upon such demand, Artist shall refund in full all payments made by County to Artist within thirty (30) days of the written demand. Alternately, if County so elects, County may appoint a Substitute Artist to complete any uncompleted portion of the Services.

EXHIBIT B – PAYMENT SCHEDULE

Each Invoice must be submitted on an invoice form approved or provided by Contract Administrator and accompanied by appropriate documentation as may be requested by the Contract Administrator and a narrative report summarizing work completed during each Milestone in accordance with the Scope of Services. Each invoice shall be accompanied by a release of liens and/or consent of surety relative to any work covered by a bond under this Agreement.

If approved in writing in advance by Contract Administrator, Artist may invoice for partial payments for portions of a Milestone that have been actually completed, but only in such amounts as approved by the Contract Administrator. In no event may the amount of a partial payment exceed the value of the Services for which such payment is made.

Milestones shall be invoiced only upon written approval by the Project Manager that the Deliverables for that Milestone are approved and complete. Final payment shall be invoiced only after written Final Acceptance of the Artwork by the Project Manager in his or her sole discretion. Upon receipt of the required written approval(s), Artist shall invoice for the applicable Milestone as follows:

| Milestone | Summary Description (full description stated in Exhibit A) | Milestone Payment |
|------------------|---|--------------------------|
| 1 | Kickoff and Project Plan | \$ |
| 2 | Final Design | \$ |
| 3 | Completion of fifty percent (50%) of the Artwork | \$ |
| 4 | Completion and Installation | \$ |
| 5 | Final Inspection | \$ |
| 6 | Final Acceptance | \$ |
| TOTAL | | \$ |

Artist shall provide a performance and payment bond in the following amount: \$_____.

(The remainder of this page is intentionally left blank.)

EXHIBIT C Catalog # _____
BROWARD COUNTY PUBLIC ART AND DESIGN CATALOGING FORM

NOTE: Please add attachments to provide comprehensive information if necessary.

| I. <u>Artist's Information</u> | |
|--|--|
| Name: | |
| Name for use on label and public relations materials, if differs from above: | |
| Date of Birth: | |
| Place of Birth: | |
| Address: | |
| E-mail: | |
| Website (if any): | |
| Phone (business): | |
| Phone (home): | |
| Fax: | |
| One paragraph biography of Artist: | |

| II. <u>Work of Art</u> | |
|---|---|
| Title: | |
| Medium: | |
| Dimensions in inches or centimeters: | H: W: D: |
| Dimensions with frame (if any): | H: W: D: |
| Frame Description: | |
| Inscription or marks: | |
| In case of portable and multiple artworks, any notes as to Artist's preference for display (ex: sequential series, installation height, spacing, etc.): | |
| Artwork with electronic components used: | Name of item: Manufacturer info (address, telephone, fax, e-mail): Supplier info (address, telephone, fax, e-mail): |
| Artist's statement: | |

| III. Fabrication Information | |
|---|--|
| Material(s) used in Artwork: | |
| Material Finish: | |
| Materials used in the presentation of the Artwork (maquette): | |
| Fabricators (name, address, phone, fax, e-mail, web site): | |
| Fabrication method (attach diagrams or drawings): | |
| Architect/Engineer (name, address, telephone, fax, e-mail): | |

| IV. Installation | |
|--|--|
| Installation executed by (name, address, phone, fax, e-mail, website): | |
| Installation method (attach diagram of substructure, footings): | |
| Date of Installation: | |

| V. Documentation | |
|---|--|
| Artist has supplied two (2) identical CD's with a minimum of fifteen (15) professional quality digital format images illustrating all components of the Artwork with a minimum resolution of 300 dpi and two (2) professional 8" x 10" color photographs. | |

| VI. External Factors | |
|--|--|
| Describe physical positioning of the Artwork: | |
| Describe existing environmental factors which may affect the condition of the Artwork: | |
| If the Artwork is site-specific, describe the relationship of the Artwork to its site: | |

| VII. Maintenance (attach schedule of maintenance for specific items: light bulb, electronics, etc.) |
|--|
| |

| | |
|---|--|
| Short-term: | |
| Long-term: | |
| Note desired appearance of the Artwork: | |

| | |
|--|--|
| VII. <u>Digital copies</u> (for use in repair of sound art and graphic reproduction): | |
| Identify (if any): | |

 Authorized Signature for Artist

 Date

 Print name and, if applicable, title above of
 Authorized Signature for Artist

[The remainder of this page intentionally left blank.]

EXHIBIT D
INSURANCE REQUIREMENTS

EXHIBIT E
BROWARD COUNTY ECONOMIC IMPACT SURVEY

Project: _____ **Artist:** _____
Reporting Period: _____

Artist shall provide an itemized list of the value of payments made specifically to Broward County suppliers, vendors, consultants and other businesses for any work or services related to the design, fabrication, and installation of the Artwork. Information should be provided annually for the term of the Agreement, in concurrence with County’s fiscal year which is October 1 through September 30, and also at the completion of the Artwork. The report shall be submitted on this form to the Contract Administrator no later than October 14 of each year. Payments include but are not limited to:

| | |
|------------------------------------|-----------|
| Materials: | \$ |
| Engineering: | \$ |
| Consultant services: | \$ |
| Electrical contractors: | \$ |
| Fabrication: | \$ |
| Installation: | \$ |
| Studio assistants: | \$ |
| Studio rental: | \$ |
| Equipment rental: | \$ |
| Insurance: | \$ |
| Project administration: | \$ |
| Professional visual documentation: | \$ |
| Printing: | \$ |
| Hotels: | \$ |
| Car rental: | \$ |
| Meals: | \$ |
| Other (_____): | \$ |
| TOTAL: | \$ |

EXHIBIT F
DESIGN PROPOSAL AND SITE

EXHIBIT G
CERTIFICATION OF PAYMENTS TO SUBCONTRACTORS AND SUPPLIERS

Date of original Agreement: _____, 20____
 Project Title _____

The undersigned Artist hereby swears under penalty of perjury that:

1. Artist has paid all subcontractors and suppliers all undisputed contract obligations for labor, services, or materials provided on this Artwork in accordance with this Agreement, except as provided in paragraph 2 below.
2. The following subcontractors and suppliers have not been paid because of disputed contractual obligations; a copy of the notification sent to each, explaining in reasonably specific detail the good cause why payment has not been made, is attached to this form:

| Subcontractor's or supplier's name and address | Date of Disputed Invoices | Amount in Dispute |
|--|---------------------------|-------------------|
| | | |
| | | |

3. The undersigned is authorized to execute this Certification on behalf of Artist.

Dated _____, 20____

_____ Artist

By _____
 (Authorized Signature)

 (Name and Title of Authorized Signor)

The foregoing instrument was acknowledged before me this __ day of _____, 20__, by _____ who is personally known to me or who has produced _____ as identification and who did/did not take an oath.

WITNESS my hand and official seal, this _____ day of _____, 20__.

 (Signature of person taking acknowledgment)

 (Name of officer taking acknowledgment)

 (Title or rank)

(NOTARY SEAL)

My commission expires:

 (Serial number, if any)