



AGREEMENT BETWEEN BROWARD COUNTY AND [REDACTED] FOR THE ARTISTIC SERVICES OF [ARTIST OR NAME OF INDIVIDUAL] RELATED TO COMMISSIONED ARTWORK FOR [PROJECT NAME]

This agreement ("Agreement") is between Broward County, a political subdivision of the State of Florida ("County"), and [REDACTED], a [state and type of business, individual, etc.] ("Artist"), for the artistic services of [Artist or Name of Individual] related to commissioned artwork for the [Project Name] (each a "Party" and collectively referred to as the "Parties").

RECITALS

A. On [REDACTED], 20[REDACTED], the Broward Cultural Council approved [REDACTED] as the artist for the [Project Name].

B. County desires to retain Artist to create the Artwork (as defined below) [utilizing the artistic services of [Name of Individual] and] pursuant to the terms of this Agreement.

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. **Allied Artist** means an apprentice artist who assists Artist in a scope determined by Artist and who is paid solely by Artist.
- 1.2. **Applicable Law** means all applicable laws, codes, advisory circulars, rules, regulations, and ordinances of any federal, state, county, municipal, or other governmental entity, as amended.
- 1.3. **Artwork** means the physical artistic expression, including fabrication, construction, installation, and integration of the Design Proposal that is created, fabricated, constructed, and installed by Artist as further described in Exhibit A.
- 1.4. **Board** means the Board of County Commissioners of Broward County, Florida.
- 1.5. **Code** means the Broward County Code of Ordinances.
- 1.6. **Committee** means the County's Public Art and Design Committee.
- 1.7. **Contract Administrator** means the Director of the Cultural Division, or the Assistant Director of the Cultural Division, or such other person designated by the Director of the Cultural Division in writing.
- 1.8. **Council** means the Broward Cultural Council.

1.9. **Design Proposal** means the detailed artistic expression that includes the scope, design, color, size, medium, material, texture, budget, and location of the Artwork on the Site, as further described in Exhibit E.

1.10. **Final Acceptance** means County's written acceptance of the Artwork in its final form and completion of all required Services.

1.11. **Milestone** means the various specified scheduled timeframes for Artist to complete the deliverables expressed in Exhibit A.

1.12. **Notice to Proceed** means a written authorization issued by the Contract Administrator to proceed with a project, phase, or task.

1.13. **Project** means the creation, fabrication, delivery, and installation of the Artwork as described in Exhibit A.

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

1.15. **Site** means the location where the Artwork is to be installed.

1.16. **Subcontractor** means any entity or individual, including any subconsultant, that provides Services to County through Artist regardless of tier.

1.17. **Substantial Completion** means the stage at which all of Artist's contractual obligations directly related to the creation 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 their sole discretion, determines when Substantial Completion has been achieved.

ARTICLE 2. EXHIBITS

Exhibit A	Scope of Services
Exhibit B	Payment Schedule
Exhibit C	Cataloging Form
Exhibit D	Local Economic Impact Survey
Exhibit E	Design Proposal and Site
Exhibit F	Minimum Insurance Requirements

ARTICLE 3. SCOPE OF SERVICES

3.1. Scope of Services. Artist shall perform all Services, including, without limitation, the work specified in Exhibit A (the "Scope of Services"). The Scope of Services is a description of Artist's obligations and responsibilities and is deemed to include preliminary considerations and prerequisites, and all labor, materials, equipment, and tasks that are such an inseparable part of the work described that exclusion would render performance by Artist 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.

3.2. Qualified Personnel. The personal skill, judgment, and creativity of Artist [and the individual artist performing the artistic services, including of [Name of Individual]], are essential elements of the Artwork. Artist may employ [additional] qualified personnel to work under Artist's [or Name of Individual] supervision, but Artist shall not assign, transfer, or subcontract the creative and artistic portions of the Artwork to another person or party not identified in this section 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.

ARTICLE 4. TERM AND TIME OF PERFORMANCE

4.1. Term. This Agreement begins on the date it is fully executed by the Parties ("Effective Date") and continues through [redacted] ("Initial Term"), unless otherwise terminated or extended as provided in this Agreement. The Initial Term and any Renewal Term(s), as those terms are defined in this article, are collectively referred to as the "Term."

4.2. Renewals. County may renew this Agreement for up to [redacted] () additional one (1) year terms (each a "Renewal Term") on the same rates, terms, and conditions stated in this Agreement by sending written notice to Artist at least thirty (30) days prior to the expiration of the then-current term. The County Administrator is authorized to exercise any Renewal Term(s), and notice of same to Artist by electronic mail alone shall be effective and sufficient.

4.3. Funding. The continuation of this Agreement beyond the end of any County fiscal year (October 1 through September 30) is subject to both the appropriation and the availability of funds pursuant to Chapter 129 and, if applicable, Chapter 212, Florida Statutes. If amounts to be paid by County under this Agreement are budgeted to be funded with transportation surtax proceeds pursuant to Section 212.055(1), Florida Statutes, and such proceeds are not appropriated or available for any reason, County shall have no obligation to use ad valorem funds or any other funding source to make any payment(s) required under this Agreement and County may terminate this Agreement for convenience pursuant to Article 9.

4.4. Time of the Essence. Time is of the essence for Artist's performance of the duties, obligations, and responsibilities required by this Agreement.

4.5. Delay. 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 the Contract Administrator deems it appropriate in the sole discretion of the Contract Administrator. Artist's 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 their sole discretion, will not constitute a breach of contract, provided that such

obligations are suspended for no longer than the period of time caused by 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)	\$
Contingency Reserve (must not exceed 10% of maximum payment for all Services)	\$
TOTAL	\$

Payment will be made only for Services actually performed and completed pursuant to this Agreement, as set forth in Exhibit B (Payment Schedule), which amount shall 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. If an Allied Artist is required pursuant to this Agreement, Artist is responsible for contracting directly with any Allied Artist for Services, and Artist is solely responsible for paying any such Allied Artist for such Services. Under no condition is County obligated in any way or liable for any payment to any Allied Artist.

5.1.2. Contingency Reserve Amount. Artist is obligated to and has agreed to fully perform the Services for the not-to-exceed amount stated in Section 5.1 for all Services (i.e., not including 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 requested contingency payment and the recommended amount of additional payment.

5.2. Method of Billing and Payment.

5.2.1. Unless otherwise stated in Exhibit B, Artist must submit invoices no more often than once monthly, but only after the Services invoiced have been completed. Invoices 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 the expiration or earlier termination of this Agreement. Artist's delayed submission of any invoice by more than sixty (60) days, absent good cause approved in writing by the Contract Administrator, may, at the Contract Administrator's sole discretion, result in a waiver of any right to payment for the invoiced Services. Invoices shall describe 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 shall submit a Certification of Payments to Subcontractors and Suppliers (Form 00924, available at <https://www.broward.org/Purchasing/Pages/StandardTerms.aspx>) with each invoice that includes Services performed by a Subcontractor. The certification shall 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. Each invoice submitted by Artist must be in the amount set forth in Exhibit B for the applicable Services.

[If Artwork constitutes construction, replace Sections 5.2.3 and 5.2.4 with applicable BCF170 provisions]

5.2.3. County shall pay Artist within thirty (30) days after receipt of Artist's proper invoice in accordance with the "Broward County Prompt Payment Ordinance," Section 1-51.6 of the Code. To be deemed proper, all invoices must: (a) comply with all applicable requirements, whether set forth in this Agreement or the Code; (b) be submitted pursuant to instructions prescribed by the Contract Administrator; and (c) be submitted to both the County's Accounting Division (via email at AccountsPayable@Broward.org) and to the Contract Administrator. Payments shall be sent to Artist's address in accordance with Article 13, unless otherwise requested by Artist in writing and approved by the Contract Administrator in writing. Payments may be withheld for failure of Artist to comply with a term, condition, or requirement of this Agreement.

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. If Artist withholds any amount as retainage from Subcontractors or suppliers, Artist 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 to the Contract Administrator's satisfaction 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.

5.3. Reimbursable Expenses. Artist shall not be reimbursed for any expenses it incurs unless expressly provided for in this Agreement. Reimbursement of any travel costs or travel-related expenses permitted under this Agreement shall be limited to those permitted under Section 112.061, Florida Statutes, except to the extent that Exhibit B expressly provides otherwise. County shall not be liable for any expenses that exceed those allowed by Section 112.061 or that were not approved in writing in advance by the Contract Administrator.

5.4. Subcontractors. Artist shall invoice Subcontractor fees only in the actual amount paid by Artist, without markup or other adjustment.

5.5. Withholding by County; Overcharges. Notwithstanding any provision of this Agreement to the contrary, County may withhold payment, in whole or in part, (a) in accordance with Applicable Law, or (b) to the extent necessary to protect itself from loss on account of (i) inadequate or defective work that has not been remedied or resolved in a manner satisfactory to the Contract Administrator, or (ii) Artist's failure to comply with any provision of this Agreement. The amount withheld shall not be subject to payment of interest by County. In the event of an overcharge by Artist in any amount, Artist shall promptly refund to County such overcharged amount. If the overcharge exceeds five percent (5%) of the total amount charged in the invoice where the overcharge occurred, Artist shall, in addition to refunding the overcharged amount, pay liquidated damages in the amount of fifteen percent (15%) of the overcharged amount within thirty (30) days after demand by County as just compensation for damages incurred by County due to the overcharge, including, but not limited to, County's administrative costs and loss of potential investment returns (including interest).

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 Applicable Law. 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, bid, or other supporting documents submitted to County in connection with the solicitation, negotiation, or award of this Agreement, including during the procurement or evaluation 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 and warrants that it has not employed or retained any person or entity, other than a bona fide employee working solely for Artist, to solicit or secure this Agreement, and 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 wage rates, factual unit costs, and other information supplied to substantiate Artist's compensation, including without limitation those made by Artist during the negotiation of this Agreement, are accurate, complete, and current as of the date Artist executes this Agreement. Artist's compensation may be reduced by County, in its sole discretion, to correct any inaccurate, incomplete, or noncurrent information provided to County as the basis for Artist's compensation in this Agreement.

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 statute. 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; Countries of Concern. Artist represents that it has not been placed on the "discriminatory vendor list" as provided in Section 287.134, Florida Statutes, and that it has not been identified as a company or other entity subject to scrutiny under Sections 215.473 or 215.4725, Florida Statutes. Artist represents and certifies that it is not, and throughout the Term will not be, ineligible to contract with County on any of the grounds stated in Section 287.135, Florida Statutes. Artist represents that it is, and throughout the Term will remain, in compliance with Section 286.101, Florida Statutes.

6.7. Claims Against Artist. Artist represents and warrants that there is no action or proceeding, at law or in equity, before any court, mediator, arbitrator, governmental or other board or official, pending or, to the knowledge of Artist, threatened against or affecting Artist, the outcome of which may (a) affect the validity or enforceability of this Agreement, (b) materially and adversely affect the authority or ability of Artist to perform its obligations under this Agreement, or (c) have a material and adverse effect on the consolidated financial condition or results of operations of Artist or on the ability of Artist to conduct its business as presently conducted or as proposed or contemplated to be conducted.

6.8. Verification of Employment Eligibility. Artist represents that Artist and each Subcontractor have registered with and use the E-Verify system maintained by the United States Department of Homeland Security to verify the work authorization status of all newly hired employees in compliance with the requirements of Section 448.095, Florida Statutes, and that entry into this Agreement will not violate that statute. If Artist violates this section, County may immediately terminate this Agreement for cause and Artist shall be liable for all costs incurred by County due to the termination.

6.9. Warranty of Performance. Artist represents and warrants that it possesses the knowledge, skill, experience, and financial capability required to perform and provide all Services and that each person and entity that will provide Services is duly qualified and, to the extent required, licensed and certified by all appropriate governmental authorities to perform such Services, 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 shall be performed in a skillful and respectful manner, that it has or will obtain all necessary permits and approvals by applicable regulatory entities to perform the Services unless otherwise expressly stated herein, and that the quality of all Services shall equal or exceed prevailing industry standards for the provision of such Services.

6.10. Prohibited Telecommunications. Artist represents and certifies that Artist and all Subcontractors do not use, and throughout the Term will not provide or use, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, as such terms are used in 48 C.F.R. §§ 52.204-24 through 52.204-26.

6.11. Breach of Representations. Artist acknowledges that County is materially relying on the representations, warranties, and certifications of Artist stated in this article, and County shall be entitled to exercise any or all of the following remedies if any such representation, warranty, or certification is untrue: (a) recovery of damages incurred; (b) termination of this Agreement without any further liability to Artist; (c) set off from any amounts due Artist the full amount of any damage incurred; and (d) debarment of Artist.

ARTICLE 7. INDEMNIFICATION

Artist shall indemnify, hold harmless, and defend County and all of County's current, past, and future officers, agents, 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 breach of this Agreement by Artist, or any intentional, reckless, or negligent act or omission of Artist, its officers, employees, or agents, arising from, relating to, or in connection with this Agreement (collectively, a "Claim"). If any Claim is brought against an Indemnified Party, Artist shall, upon written notice from County, defend each Indemnified Party with 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. If 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. Throughout the Term, Artist shall, at its sole expense, maintain the minimum insurance coverages stated in Exhibit F in accordance with the terms and conditions of this article. Artist shall 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 shall ensure that "Broward County" is listed and endorsed as an additional insured as stated in Exhibit F on all policies required under this article.

8.3. On or before the Effective Date or at least fifteen (15) days prior to commencement of Services, as may be requested by County, Artist shall 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 shall provide complete, certified copies of all required insurance policies and all required endorsements within thirty (30) days after County's request.

8.4. Artist shall ensure that all insurance coverages required by this article remain in full force and effect without any lapse in coverage throughout the Term and until all performance required of Artist has been completed, as determined by Contract Administrator. Artist or its insurer shall 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 shall concurrently provide County with a copy of its updated Certificates of Insurance evidencing continuation of the required coverage(s).

8.5. All required insurance policies must be placed with insurers or surplus line carriers authorized to conduct business in the State of Florida with an A.M. Best rating of A- or better and a financial size category class VII or greater, unless otherwise approved by County's Risk Management Division in writing.

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

8.7. Artist shall declare in writing any self-insured retentions or deductibles over the limit(s) prescribed in Exhibit F and submit to County for approval at least fifteen (15) days prior to the Effective Date or commencement of Services. Artist shall be solely responsible for and shall 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. Any deductible or self-insured retention may be satisfied by either the named insured or County, if so elected by County, and Artist shall 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 insurers may acquire against County, and shall obtain same in an endorsement of Artist's insurance policies.

8.9. Artist shall 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 shall ensure that all such Subcontractors comply with these requirements and that "Broward County" is named as an additional insured under the Subcontractors' applicable insurance policies. Artist shall not permit any Subcontractor to provide Services unless and until all applicable requirements of this article are satisfied.

8.10. If 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. If requested by County, Artist shall provide, within one (1) business day, evidence of each Subcontractor's compliance with this article.

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; (2) the required coverage must be maintained after termination or expiration of the Agreement for at least the duration stated in Exhibit F; 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, 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 F.

ARTICLE 9. TERMINATION

9.1. Termination for Cause. 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 be terminated for cause by County for reasons including, but not limited to, any of the following:

9.1.1. Artist's (a) failure to suitably or continuously perform the Services in a manner calculated to meet or accomplish the objectives in this Agreement or Work Authorization, (b) suspension or debarment by a state or federal governmental entity or by a local governmental entity with a population in excess of one million people, or (c) repeated submission (whether negligent or intentional) for payment of false or incorrect bills or invoices; or

9.1.2. By the County Administrator for fraud, misrepresentation, or material misstatement by Artist in the award or performance of this Agreement.

Unless otherwise stated in this Agreement, if this Agreement was approved by Board action, termination for cause by County must be by action of the Board or the County Administrator; in any other instance, termination for cause may be by the County Administrator, the County representative expressly authorized under this Agreement, or the County representative (including any successor) who executed the Agreement on behalf of County. If County erroneously, improperly, or unjustifiably terminates this Agreement for cause, such termination shall be deemed a termination for convenience pursuant to Section 9.2 effective thirty (30) days after such notice was provided and Artist shall be eligible for the compensation provided in Section 9.2 as its sole remedy.

9.2. Termination for Convenience; Other Termination. This Agreement may also be terminated for convenience by the Board with at least thirty (30) days' advance written notice to Artist. Artist acknowledges that it has received good, valuable, and sufficient consideration for County's right to terminate this Agreement for convenience including in the form of County's obligation to provide advance written notice to Artist of such termination in accordance with this section. This Agreement may also be terminated by the County Administrator upon such notice as the County Administrator deems appropriate under the circumstances if the County Administrator determines that termination is necessary to protect the public health, safety, or welfare. If this Agreement is terminated by County pursuant to this section, Artist shall be paid for any Services properly performed 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, and County shall have no further obligation to pay Artist for Services under 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 addition to any termination rights stated in this Agreement, County shall be entitled to seek any and all available contractual or other remedies available at law or in equity including recovery of costs incurred by County due to Artist's failure to comply with any term(s) of this Agreement.

ARTICLE 10. EQUAL EMPLOYMENT OPPORTUNITY AND CBE COMPLIANCE

10.1. Artist and Subcontractors shall not discriminate on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, pregnancy, or any other basis prohibited by Applicable Law in the performance of this Agreement. Artist shall include the foregoing or similar language in its contracts with all Subcontractors, except that any project assisted by U.S. Department of Transportation funds shall comply with the nondiscrimination requirements in 49 C.F.R. Parts 23 and 26.

10.2. By January 1 of each year, Artist must submit, and cause each Subcontractor to submit, an Ownership Disclosure Form (or such other form or information designated by County), available at <https://www.broward.org/econdev/Pages/forms.aspx>, identifying the ownership of

the entity and indicating whether the entity is majority-owned by persons fitting specified classifications.

ARTICLE 11. WARRANTIES AND 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 for the Term of this Agreement shall remain 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 after 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 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 completed 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, and the Artwork will not contain libelous or otherwise defamatory 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 to perform the Services and to convey the rights in Artwork as stated herein 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 shall control over the provisions of 17 U.S.C. § 106A and shall 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 of domestic or international law, including without limitation, the laws of the European Union, 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 the laws of other jurisdiction(s) 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 and to 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/or 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 the Artwork, including the 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 any applicable 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 commercially reasonable 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 express 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 materially 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 (as defined herein). 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 with 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 after the written notice from County. If Artist purchases the Artwork, removal of the Artwork, which shall be without any material damage to or destruction of the Site, 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. Contract Administrator Authority. The Contract Administrator is authorized to coordinate and communicate with Artist to manage and supervise the performance of this Agreement. Artist acknowledges that the Contract Administrator has no authority to make changes that would increase, decrease, or otherwise materially modify the Scope of Services except as expressly set forth in this Agreement or, to the extent applicable, in the Broward County Procurement Code. Unless expressly stated otherwise in this Agreement or otherwise set forth in the Code or the Broward County Administrative Code, the Contract Administrator may exercise ministerial authority in connection with the day-to-day management of this Agreement. The Contract Administrator may also approve in writing minor modifications to the Scope of Services that do not increase the total cost to County or waive any rights of County.

13.2. Public Records. Notwithstanding any other provision in this Agreement, any action taken by County in compliance with, or in a good faith attempt to comply with, the requirements of Chapter 119, Florida Statutes, shall not constitute a breach of this Agreement. If Artist is acting on behalf of County as stated in Section 119.0701, Florida Statutes, Artist shall:

13.2.1. Keep and maintain public records required by County to perform the Services;

13.2.2. 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 Applicable Law;

13.2.3. Ensure that public records that are exempt or confidential and exempt from public record requirements are not disclosed except as authorized by Applicable Law throughout

the Term and after completion or termination of this Agreement if the records are not transferred to County; and

13.2.4. Upon expiration 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 shall destroy any duplicate public records that are exempt or confidential and exempt. If Artist keeps and maintains the public records, Artist shall meet all requirements of Applicable Law 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.

If Artist receives a request for public records regarding this Agreement or the Services, Artist must immediately notify the Contract Administrator in writing and provide all requested records to County to enable County to timely respond to the public records request. County will respond to all such public records requests.

Artist must separately submit and conspicuously label as “RESTRICTED MATERIAL – DO NOT PRODUCE” any material (a) that Artist contends constitutes or contains its trade secrets under Chapter 688, Florida Statutes, or (b) for which Artist asserts a right to withhold from public disclosure as confidential or otherwise exempt from production under Florida public records laws (including Chapter 119, Florida Statutes) (collectively, “Restricted Material”). In addition, Artist must, simultaneous with the submission of any Restricted Material, provide a sworn declaration or affidavit in a form acceptable to County from a person with personal knowledge attesting that the Restricted Material constitutes trade secrets or is otherwise exempt or confidential under Florida public records laws, including citing the applicable Florida statute and specifying the factual basis for each such claim. Upon request by County, Artist must promptly identify the specific applicable statutory section that protects any particular document. If a third party submits a request to County for records designated by Artist as Restricted Material, County shall refrain from disclosing such material unless otherwise ordered by a court of competent jurisdiction, authorized in writing by Artist, or the claimed exemption is waived. Any failure by Artist to strictly comply with the requirements of this section shall constitute Artist’s waiver of County’s obligation to treat the records as Restricted Material. Artist must 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 nondisclosure of Restricted Material in response to a third-party request.

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 CUSTODIAN OF PUBLIC RECORDS AT (954) 357-7532, CULTURALDIV@BROWARD.ORG, 100 S. ANDREWS AVE., 6TH FLOOR, FORT LAUDERDALE, FLORIDA 33301.

13.3. Audit Rights and Retention of Records. County shall have the right to audit the books, records, and accounts of Artist and all Subcontractors that are related to this Agreement. Artist and all Subcontractors shall keep such books, records, and accounts as may be necessary to record complete and correct entries related to this Agreement and performance under this Agreement. All such books, records, and accounts shall be kept in written form or in a form capable of conversion into written form within a reasonable time; upon request by County, Artist and all Subcontractors shall make same available to County in written form at no cost and allow County to make copies. Artist shall provide County with reasonable access to Artist's facilities, and County shall be allowed to interview all employees to discuss matters pertinent to the performance of this Agreement.

Artist and all Subcontractors shall 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. This section shall survive any dispute or litigation between the Parties, and Artist expressly acknowledges and agrees to be bound by this section throughout the course of any dispute or litigation with County. 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. Artist shall make all such records and documents available electronically, in common file formats, and/or via remote access, if and to the extent requested by County.

Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for County's disallowance and recovery of any payment based upon such entry. Artist shall refund to County any overcharged amount identified as a result of an audit, regardless of the amount of the overcharge. If the overcharge exceeds five percent (5%) of the total contract charges audited by County, Artist shall, in addition to refunding the overcharged amount, pay liquidated damages in the amount of fifteen percent (15%) of the overcharged amount as just compensation for damages incurred by County due to the overcharge, including, but not limited to, County's administrative costs and loss of potential investment returns (including interest). Any adjustments or payments due as a result of such audit must be made within thirty (30) days after presentation of County's findings to Artist.

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

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

13.5. 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 and not in its regulatory capacity. If County exercises its regulatory authority, the exercise of such authority and the enforcement of Applicable Law 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.

13.6. Sovereign Immunity. Except to the extent sovereign immunity may be deemed waived by entering into this Agreement, nothing herein is intended to serve as a waiver of sovereign immunity by County nor shall anything included herein be construed as consent by County to be sued by third parties in any matter arising out of this Agreement.

13.7. Third-Party Beneficiaries. Neither Artist nor County intends to primarily or directly 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 shall be entitled to assert a right or claim against either of them based upon this Agreement.

13.8. Notices. Unless otherwise stated herein, for 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 email, to the addresses listed below and shall be effective upon mailing or hand delivery (provided the contemporaneous email is also sent). A Party may change its notice address by giving notice of such change in accordance with this section.

FOR COUNTY:

Broward County Cultural Division

Attn: Broward Cultural Division Director

100 South Andrews Avenue, Sixth Floor, Fort Lauderdale, Florida 33301

Email address: [REDACTED]

With simultaneous copies to [REDACTED]

FOR ARTIST:

[REDACTED]

[REDACTED]

Email address: [REDACTED]

13.9. Subcontracting; Assignment; Change of Control. All Subcontractors must be expressly identified in this Agreement or otherwise approved in advance and in writing by County's Contract Administrator. Except for approved subcontracting, 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. Any change of control (as defined herein) shall be deemed an assignment. Any assignment, transfer, encumbrance, or subcontract in violation of this section shall be void and ineffective, constitute a breach of this Agreement, and permit County to immediately terminate this Agreement, in addition to any other remedies available to

County at law or in equity. County reserves the right to condition its approval of any assignment, transfer, encumbrance, or subcontract upon further due diligence and an additional fee paid to County to reasonably compensate it for the performance of any such due diligence.

For purposes of this section, “change of control” means: (a) a transfer of more than fifty percent (50%) of the ownership interests in Artist, whether in a single transaction or a series of related transactions; (b) a merger, consolidation, or other reorganization that results in a change in voting control in Artist or in the entity that controls Artist’s business; or (c) the sale, lease, or transfer of all or substantially all of Artist’s assets. A change of control does not include (i) a transfer to an entity wholly owned, directly or indirectly, by Artist or its parent, or (ii) a transfer between existing owners of Artist that does not result in a change in majority ownership; provided, however, that any such transfer shall not relieve Artist of its obligations under this Agreement unless County expressly agrees otherwise in writing.

13.10. Confidential Information; Generative Artificial Intelligence. Unless expressly authorized in this Agreement or in writing in advance by the Contract Administrator, Artist is strictly prohibited from disclosing, uploading, or otherwise making available to third parties, directly or indirectly, including but not limited to through utilization of generative artificial intelligence tools, any exempt, confidential, sensitive security, or personal information of County. Artist must ensure that any use of generative artificial intelligence tools by Artist or its Subcontractors does not involve the disclosure of exempt, confidential, sensitive security, or personal information, including without limitation for large language model learning or training. Artist must implement and maintain appropriate technological and operational safeguards to ensure compliance with the obligations of this section.

13.11. 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, none of Artist’s officers or employees shall serve as an expert witness against County in any legal or administrative proceeding in which they or Artist is not a party, unless compelled by legal process. Further, such persons shall not give sworn testimony or issue a report or writing as an expression of such person’s 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 legal process. The limitations of this section shall 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. If Artist is permitted pursuant to this Agreement to utilize Subcontractors to perform Services, Artist shall require such Subcontractors, by written contract, to comply with the provisions of this section to the same extent as Artist.

13.12. 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. 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 shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of this Agreement. To be effective, any waiver must be in writing signed by an authorized signatory of the Party granting the waiver.

13.13. Compliance with Laws. Artist and the Services must comply with all Applicable Law, including, without limitation, the Americans with Disabilities Act, 42 U.S.C. § 12101, Section 504 of the Rehabilitation Act of 1973, and the requirements of any applicable grant agreements, and all deliverables provided for online utilization must meet or exceed the World Wide Web Consortium/Web Content Accessibility Guidelines (WCAG) 2.1 Level AA standard or any higher standard as required by Applicable Law.

13.14. Severability. If any part of this Agreement is found to be unenforceable by any court of competent jurisdiction or contrary to Applicable Law, that part shall be deemed severed from this Agreement and the balance of this Agreement shall remain in full force and effect.

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

13.16. 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 shall include any other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as “herein” 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 subsections thereof, 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. Any reference to approval by County shall require approval in writing, unless otherwise expressly stated.

13.17. 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 within an article or section of this Agreement, the article or section shall prevail and be given effect.

13.18. 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. **EACH PARTY HEREBY EXPRESSLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.**

13.19. Amendments. Unless expressly authorized herein, no modification, amendment, or alteration of any portion of this Agreement is effective unless contained in a written document executed with the same or similar formality as this Agreement and by duly authorized representatives of County and Artist.

13.20. Prior Agreements. This Agreement represents the final and complete understanding of the Parties regarding the subject matter of this Agreement and supersedes all prior and contemporaneous negotiations and discussions regarding same. All commitments, agreements, and understandings of the Parties concerning the subject matter of this Agreement are contained herein.

13.21. Payable Interest.

13.21.1. Payment of Interest. Unless prohibited by Applicable Law, County shall not be liable for interest to Artist for any reason, whether as prejudgment interest or for any other purpose, and Artist waives, rejects, disclaims, and surrenders any and all entitlement to interest in connection with a dispute or claim arising from, related to, or in connection with this Agreement.

13.21.2. Rate of Interest. If the preceding subsection is inapplicable or is 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).

13.22. 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.

13.23. Multiple Originals and Counterparts. This Agreement may be executed in multiple originals or in counterparts, whether signed physically or electronically; each of which shall be deemed to be an original, and all of which, taken together, shall constitute one and the same agreement.

13.24. Use of County Name or Logo. Artist shall not use County's name or logo in marketing or publicity materials without prior written consent from the Contract Administrator.

13.25. Polystyrene Food Service Articles. Artist shall not sell or provide for use on County property expanded polystyrene products or food service articles (e.g., Styrofoam), unencapsulated expanded polystyrene products, or single-use plastic straws or stirrers, as set forth in more detail in Section 27.173, Broward County Administrative Code.

13.26. Anti-Human Trafficking. By execution of this Agreement by an authorized representative of Artist, Artist hereby attests under penalty of perjury that Artist does not use coercion for labor or services, as such terms are defined in Section 787.06, Florida Statutes. Under penalties of

perjury, the undersigned authorized representative of Artist declares that they have read the foregoing statement and that the facts stated in it are true.

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

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

COUNTY

BROWARD COUNTY, by and through
its County Administrator

By: _____
County Administrator

____ day of _____, 20__

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

By _____
Attorney's Name (Date)
Senior/Assistant County Attorney

By _____
Attorney's Name (Date)
Senior/Assistant County Attorney

JN/SS
Commissioned Artwork Agreement Template
07/31/25
#1134920.9

AGREEMENT BETWEEN BROWARD COUNTY AND _____ FOR THE ARTISTIC
SERVICES OF [ARTIST OR NAME OF INDIVIDUAL] RELATED TO COMMISSIONED ARTWORK FOR
[PROJECT NAME]

ARTIST

ARTIST NAME

By: _____
Authorized Signer

Print Name and Title

_____ day of _____, 20____

Exhibit A
Scope of Services

1. **PURPOSE:** Artist shall 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 all applicable building codes, including the 2023 Florida Building Code (8th edition) or, if superseded, the most current edition. The Artwork shall be durable, permanent (i.e., 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), which must be able to be performed by County staff who handle general routine maintenance.
4. **DESIGN PROPOSAL:** Artist shall set forth in detail the artistic expression, scope, design, color, size, material, and proposed location for installation of the Artwork. The Design Proposal shall include a proposed budget including, but not limited to, all costs for execution, fabrication, and all necessary permits unless expressly stated otherwise herein, Subcontractor and professional services fees, and Artist contingencies. The Design Proposal shall also include a schedule for completion of fabrication, installation, and completion of all Services.

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 the revised Design Proposal to the Contract Administrator for written approval within the timeframe specified by the Contract Administrator or the applicable Milestone. Upon written approval by the Contract Administrator of the revised Design Proposal consistent with this section, the revised Design Proposal (including any changes approved in writing by the Contract Administrator) shall be deemed incorporated into Exhibit E. If there is any conflict between the revised Design Proposal and the original Design Proposal, the revised Design Proposal shall supersede to the extent of the conflict. County will provide Artist with a final copy of the approved revised Design Proposal.

Artist shall be responsible for ensuring the Artwork can be completed with the available compensation provided in Article 5 of this Agreement, not including the Contingency Reserve. If implementation of the Design Proposal exceeds the available budget, the Artist shall be obligated to modify the project scope, at no additional cost to the County, within the time frame established in the project schedule (or any modification thereof approved in writing by the Contract Administrator or the Project Manager).

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

5. ADMINISTRATIVE COORDINATION: The Contract Administrator shall serve as, or shall designate a representative of the Cultural Division to serve as, the project manager ("Project Manager"). Artist shall maintain regular communication with the Project Manager via phone, fax, letter, and/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 their sole discretion.

6. DESIGN TEAM COLLABORATION AND COORDINATION: Upon written notification to Artist by the Project Manager, Artist shall collaborate and coordinate with County's Cultural Division representatives and any other stakeholders as determined necessary by the Project Manager or Contract Administrator.

7. CONSTRUCTION DOCUMENTS AND PERMITTING: Artist shall provide the Design Proposal in the format requested by the Contract Administrator or Project Manager, and Artist shall obtain all applicable permits and permissions for installation of the Artwork, as needed. It shall be solely Artist's responsibility to ensure that all necessary permits have been applied for and obtained by Artist, who shall provide proof of same to the Contract Administrator or the Project Manager within the period specified below in Section 11, Description of Deliverables. In accordance with the written Notice to Proceed for each Milestone (as described below), the Artist shall provide all Artwork construction documents and permitting deliverables as specified in this Agreement. Artist shall engage qualified licensed professionals (i.e., the services of a Florida registered engineer) to ensure that the plans and specifications prepared by Artist are sealed by the registered professional and meet all applicable Florida building code requirements.

Prior to submittal of deliverables for each Project Milestone, Artist shall resolve all relevant design coordination issues to the satisfaction of the Project Manager. If the design of the Artwork requires specialized professional services, Artist shall hire the appropriate subcontractor at Artist's sole expense. Structural and other engineers employed by Artist shall be required by Artist to maintain professional liability insurance as shown in Exhibit F. Valid proof of insurance in compliance with Article 8 and Exhibit F shall be required for each Subcontractor prior to written approval of the Subcontractor by the Contract Administrator pursuant to Section 13.9 of the Agreement.

8. 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 Milestone(s) 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.

9. DELIVERABLES SUBMITTALS AND APPROVALS: Artist shall submit all deliverables, in a format requested by the Contract Administrator or the Project Manager, within the time period specified in Section 11, Description of Deliverables. In accordance with the written Notice to

Proceed for each Milestone (as described below), the Artist shall work with its consultant, if any, to provide all deliverables as specified below.

Prior to submittal of deliverables for each Project Milestone, Artist shall resolve all relevant design coordination issues to the satisfaction of the Project Manager.

10. CONSERVATION AND MAINTENANCE REVIEW: At the time of submission of the Design Proposal, Artist shall provide a written summary of all future maintenance and conservation requirements. Artist shall consider the local conditions and shall anticipate accelerated weathering due to climate and the Artwork's location near a major vehicular corridor, as applicable. Artist shall submit documentation that it has consulted with an artwork conservation expert familiar with Broward County climate conditions, and that materials selected for the Artwork are highly durable and low maintenance. An "artwork conservation expert" means an individual: with a minimum of five (5) years' experience in the conservation of artwork; or holding a master's degree in the field of artwork restoration; or a Fellow of the American Institute for Conservation of Historic and Artistic Works. County may undertake a conservation review of the materials and Artwork construction design prior to Artist's commencement of installation. Artist shall modify the Design Proposal, materials, or approach as requested by the Contract Administrator or the Project Manager within the requested period.

11. DESCRIPTION OF DELIVERABLES: Artist shall provide the following:

Milestone 1: Kickoff and Project Plan

Deliverables:

- Artist shall attend one (1) or more conference calls with the Project Manager/Contract Administrator 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: Thirty (30) 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/Contract Administrator 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 including contingency reserve amounts.
- f. Installation Subcontractors' list, if applicable.
- g. Installation schedule.

Deadline: Complete in accordance with the Notice to Proceed for Milestone 2, or as otherwise advised by the Project Manager/Contract Administrator in writing.

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 any, have been applied for and obtained by Artist.
- Artist shall provide a written summary of all future maintenance and conservation requirements for time periods following Final Acceptance.

Deadline: Complete in accordance with the Notice to Proceed for Milestone 3, or as otherwise advised by the Project Manager/Contract Administrator in writing.

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 or Contract Administrator.

Deliverables:

- Complete fabrication of the Artwork in accordance with the approved Design Proposal.
- Complete installation of the Artwork in accordance with the approved Design Proposal.

Deadline: Complete in accordance with the Notice to Proceed for Milestone 4, or as otherwise advised by the Project Manager/Contract Administrator in writing.

Milestone 5: Final Inspection

Deliverables:

- Participate in a Substantial Completion Inspection of the Artwork (Section 12 below) and obtain written Final Acceptance from the Project Manager or the Contract Administrator.
- Correction of any deficiencies identified by the Project Manager or Contract Administrator.
- Cleanup of Site and repair any area damaged by Artist (beyond ordinary wear and tear as determined by the Project Manager or the Contract Administrator).
- Successful completion and passage of a Final Completion Inspection of the Artwork (Section 13 below) by the Project Manager after the correction of all identified deficiencies noted in the Substantial Completion Inspection or as otherwise determined by the Project Manager or Contract Administrator.

Deadline: [REDACTED] days following Notice to Proceed for Milestone 5 unless otherwise approved in writing by the Project Manager/Contract Administrator.

Milestone 6: Final Acceptance

Deliverables:

- 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.
- 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 indicating that all Subcontractors and suppliers have been fully paid.
- Submit completed Cataloging Form (Exhibit C).
- Submit completed Local Economic Impact Survey (Exhibit D) and invoice with all necessary supporting documentation.
- Obtain written Final Acceptance by Project Manager or Contract Administrator.
- Host one (1) community outreach activity in coordination with the Project Manager or the Contract Administrator.
- Execution of the Final Completion Report.

Deadline: [REDACTED] days following Notice to Proceed for the Milestone unless otherwise approved in writing by the Project Manager or Contract Administrator.

12. 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. 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 five (5) business days after the Substantial Completion Inspection.

13. 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, the Contract Administrator will provide an inspection report within three (3) business days after the inspection to Artist identifying any observed deficiencies and a deadline by which to correct the deficiencies. Artist shall complete all such deficiencies and shall notify the Contract Administrator in writing when all such deficiencies have been corrected; and the Contract Administrator will schedule another Final Completion Inspection. The foregoing process shall repeat until the Contract Administrator determines that the Artwork is complete.

14. FINAL COMPLETION REPORT: If the Contract Administrator determines that the Artwork is complete, the Contract Administrator will prepare a final completion report (the "Final Completion Report"), which shall 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). Contract Administrator will send the Final Completion Report to County's Risk Management Division to enable County to insure the Artwork.

15. 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 executed 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.

16. POST INSTALLATION, TITLE, AND RISK OF LOSS: Subject to completion of Milestone 4, 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 pursuant to this section, Artist shall execute any documents as County may reasonably request to memorialize, record, or otherwise document the transfer of title.

17. COMMUNITY PROCESS: Project Manager shall advise Artist in writing of all community meetings, and Artist shall participate as requested by the Project Manager in writing. The Project Manager may determine if the community meeting(s) may be conducted virtually.

18. TIMELINE FOR COMPLETION: Artist will begin work upon issuance of the Notice to Proceed provided by the Project Manager and shall complete all work in accordance with the Notice to Proceed issued for the applicable Milestone. Artist will proceed with all work without delay or interruption to the project schedule unless approved by the Project Manager/Contract Administrator in writing (by mail or otherwise).

19. EDUCATIONAL OUTREACH: Artist shall design and host one (1) community outreach activity in accordance with Milestone 6.

20. LOCAL ECONOMIC IMPACT: Artist shall provide an itemized list of the value of payments made to Broward County suppliers, vendors, Consultants, and other businesses for any work or services related to the design and creation, fabrication, or installation of the Artwork, including, but not limited to, materials, fabricators, engineering and other consultant services, electrical contractors, installers, studio assistants, studio rental, equipment rental, insurance, printing, photography, hotels, car rental, and meals (see Exhibit D). The survey will be submitted to the Project Manager/ Contract Administrator annually for the Term at the end of each County fiscal year (September 30), and a combined list of all prior surveys and the current survey shall be submitted upon Final Acceptance of the Artwork.

21. BOARD APPROVAL: This project [is/is not] subject to Board approval.

22. ADDITIONAL REQUIREMENTS FOR COMPLETION OF ARTWORK: If Artist does not complete the Artwork and all Services required under the Agreement and the Project Manager/Contract Administrator has provided written direction (which may include Notices to Proceed) to complete the Artwork, the Project Manager/Contract Administrator 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 after the written demand. Alternately, if County elects, County may appoint a replacement artist to complete any uncompleted portion of the Services.

23. SERVICES: 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.

24. PERFORMANCE: If Artist is unable to perform Artist's obligations under the Agreement within the time specified due to Artist's or the individual artist performing the artistic services 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.

If Artist is unavailable for an extended period (as determined by the Contract Administrator), Artist shall provide an individual with similar or greater skills to perform the Services within the applicable 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.

25. 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.

26. 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 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.

27. PAYMENT AND PERFORMANCE BONDS: If required by County, Artist shall provide a completed Performance Bond (Form 007500-1) and a completed Payment Bond (Form 007500-2) (both available at <https://www.broward.org/Purchasing/Pages/StandardTerms.aspx>). Each bond shall be in the amount of one hundred percent (100%) of the Section 5.1 not-to-exceed amount for all Services guaranteeing to County the completion and performance of all Services as well as full payment of all suppliers, laborers, and Subcontractors. Each bond shall continue in effect for one (1) year after Final Acceptance of the Artwork with liability equal to one hundred percent (100%) of the Section 5.1 not-to-exceed amount for all Services.

Exhibit B
Payment Schedule

Each invoice must be submitted on an invoice form approved or provided by Contract Administrator or Project Manager and accompanied by (i) appropriate documentation as may be requested by the Contract Administrator or Project Manager, and (ii) 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 applicable.

Milestones shall be invoiced only upon written approval by the Contract Administrator or the Project Manager that all deliverables for that Milestone are approved and complete. Final payment shall be invoiced only after written Final Acceptance of the Artwork by the Contract Administrator or Project Manager in their sole discretion. Upon receipt of the required written approval(s), Artist shall invoice for the applicable Milestone as indicated below.

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

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	Artwork Completion and Installation	\$
5	Final Inspection	\$
6	Final Acceptance	\$
TOTAL		\$

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

Exhibit C
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. <u>Fabrication Information</u>	
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. <u>Installation</u>	
Installation executed by (name, address, phone, fax, e-mail, website):	
Installation method (attach diagram of substructure, footings):	
Date of Final Completion Inspection of the Installation:	

V. <u>Documentation</u>	
Artist has supplied two (2) identical CDs 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. <u>External Factors</u>	
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. <u>Maintenance</u> (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 Signer for Artist

Date

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

Exhibit D
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 must be provided annually for the term of the Agreement, in concurrence with County's fiscal year (October 1 through September 30), and 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 E
Design Proposal and Site

Exhibit F
Minimum Insurance Requirements
[USE FORM PROVIDED BY RISK, NOT ARTIST]