

AGREEMENT

Between

BROWARD COUNTY

and

for

ARTISTIC SERVICES

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This is an Agreement, made and entered into by and between: BROWARD COUNTY, a political subdivision of the State of Florida, hereinafter referred to as "COUNTY,"

AND

<ARTIST> _____ a _____ corporation, hereinafter referred to as "ARTIST," or "_____."

WHEREAS, COUNTY is implementing its Public Art and Design Program pursuant to Section 1-88, of the Broward County Code of Ordinances ; and

WHEREAS, ARTIST has been selected to design, fabricate, deliver, install, and integrate Artwork into the architecture or the COUNTY's public art project at the Site described herein; and

WHEREAS, the Board of County Commissioners ("Board) has approved this standard agreement and authorized the County Administrator to execute this standard Agreement and certain amendments hereto; and

WHEREAS, the COUNTY desires to enter into an Agreement with ARTIST to complete the Work, and ARTIST is willing and able to provide such services and such Work as set forth hereinafter; and

[NOTE: Insert if applicable]>

WHEREAS, ARTIST shall be responsible for providing functionally integrated artwork as more fully described in Exhibit "A"; NOW, THEREFORE,

IN CONSIDERATION of the mutual terms, conditions, promises, covenants and payments hereinafter set forth, COUNTY and ARTIST agree as follows:

ARTICLE 1
DEFINITIONS AND IDENTIFICATIONS

- 1.1 **Agreement** - This document, Articles 1 through 13 inclusive, and other terms and conditions which are included in the exhibits and documents that are expressly incorporated by reference.
- 1.2 **ARTIST or "_____"** - The individual or business entity selected to perform services pursuant to this Agreement, using the artistic services of _____.
- 1.3 **Artwork** - The final physical artistic expression resulting from the fabrication, construction, installation, and integration of the design(s) provided pursuant to this Agreement. For all purposes of this Agreement, "Artwork" shall be a part of the "Work" and "Project" as defined herein.
- 1.4 **Board** - The Board of County Commissioners of Broward County, Florida, which is the governing body of the Broward County government created by the Broward County Charter.
- 1.5 **Committee** - The COUNTY's Public Art and Design Committee.
- 1.6 **Contract Administrator** - The Broward County Administrator or the Director of the Broward County Cultural Division. The primary responsibilities of the Contract Administrator are to coordinate and communicate with ARTIST and to manage and supervise execution and completion of the Scope of Services and the terms and conditions of this Agreement as set forth herein. In the administration of this Agreement, as contrasted with matters of policy, all parties may rely on the instructions or determinations made by the Contract Administrator; provided, however, that such instructions and determinations do not change the Scope of Services. After the execution of this Agreement by COUNTY, the Contract Administrator may be changed from time to time using the notice procedure under Section 13.7, "NOTICES."
- 1.7 **Contract Documents** - This Agreement, any and all additional documents the submission of which is required by this Agreement, the Notice(s) to Proceed, the Final Design Proposal, and engineering drawing and construction documents.
- 1.8 **Contract Price** - The amount established in Article 4 of this Agreement, as may be amended due to fund appropriation changes to the Project or by subsequent action of the Board prior to the issuance of the Notice to Proceed for Phase II.
- 1.9 **Contract Time** - The time between commencement and completion, including any milestone dates, established in Article 3 of the Agreement.
- 1.10 **Council** - The Broward Cultural Council.

- 1.11 **County Attorney** - The chief legal counsel for COUNTY who directs and supervises the Office of the County Attorney pursuant to Section 2.10 of the Broward County Charter.
- 1.13 **Duane Hanson Allied Artists** - is an apprentice artist who assists the commissioned artist.
- 1.14 **Notice to Proceed** - A written document issued by the Contract Administrator authorizing ARTIST to officially begin each phase of the Project.
- 1.15 **Phase I** - The preliminary design services through final design services which requires review and approval by the Committee, the Council, and the Board as more specifically stated herein.
- 1.16 **Phase II** - The execution, fabrication, transportation, delivery, installation, insurance, contingencies, fees and permits, and all other services and costs associated with integration of the design of the Artwork as approved by the Committee, the Council and the Board in Phase I.
- 1.17 **Project** - The art project referred to as the _____ Project.
- 1.18 **Site** - The art Project site location on _____, Broward County, Florida.
- 1.19 **Work** - The Work includes all labor, materials, equipment, and services provided, or to be provided, by ARTIST to fulfill ARTIST's obligations under this Agreement. The Work may constitute the whole (Phase I and Phase II) or a part (Phase I) of the Agreement.

ARTICLE 2 SCOPE OF SERVICES

2.1 General

- 2.1.1 Subject to issuance of Notice to Proceed for each phase, ARTIST shall perform all Work identified in this Agreement and Exhibit "A" attached hereto and made a part hereof. The parties agree that 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 which are such an inseparable part of the Work described that exclusion would render performance by ARTIST impractical, illogical, or unconscionable.
- 2.1.2 The Work pursuant to this Agreement may include Phase I and Phase II. After completion of Phase I and at the sole discretion of the COUNTY, COUNTY will determine whether to proceed with Phase II. If the COUNTY determines not to proceed with Phase II, COUNTY shall provide ARTIST a written notice of its reasons for not implementing the design created in Phase I and that this

Agreement is terminated. The Contract Administrator is authorized to negotiate and approve the Scope of Services and Schedule of Payment for Phase II of the Project, as necessary, provided that the compensation does not exceed that authorized by Article 4 of this Agreement.

- 2.1.3 ARTIST shall perform all services and furnish all supplies, materials and equipment as necessary for the design, execution, and fabrication of the Artwork, including, but not limited to, payment for all necessary permits, taxes, insurance, supplies, materials, tools, equipment, consultants, lighting requirements and all other items incidental to producing a complete and acceptable Artwork, and shall, transport, install, and integrate the Artwork at the Site.
- 2.1.4 In the event that ARTIST is unable to perform duties within the specified time period due to the death, physical or other incapacity of ARTIST's or Artist's _____, or other circumstances beyond ARTIST's control as determined by the Contract Administrator, COUNTY, after consultation with ARTIST where practicable, may either: (1) proceed with completion and installation of the Artwork by ARTIST pursuant to the terms of this Agreement; or (2) terminate this Agreement for cause. All Work performed by ARTIST prior to death or incapacity or inability of ARTIST's artist, _____, to perform the completion of the Artwork due to circumstances beyond ARTIST's control as determined by the Contract Administrator will be compensated as provided in this Agreement. In the event COUNTY exercises its right to terminate for cause, COUNTY may retain a qualified subcontractor of ARTIST to complete the Work, or elect to implement ARTIST's design by a mutually agreeable third party, if practicable, through a separate agreement.
- 2.1.5 The personal skill, judgment and creativity of _____ is an essential element of this Agreement. Therefore, although the parties recognize that ARTIST may employ qualified personnel to work under _____'s supervision, ARTIST shall not assign, transfer or subcontract the creative and artistic portions of the Work to another party without the prior written consent of the COUNTY. Failure to conform to this provision may be cause for termination at the sole option of the COUNTY.
- 2.1.6 ARTIST shall be responsible for the quality and timely completion of the Scope of Services. ARTIST shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in the Work upon written request of the Contract Administrator.
- 2.1.7 In the event _____ is unavailable for an extended period due to personal scheduling conflicts, ARTIST must provide for professional administration of an artist approved by the COUNTY's Committee and Council to carry out the commission in a timely manner.

- 2.1.8 ARTIST shall not make any public information release in connection with services performed pursuant to this Agreement without prior written permission of the Contract Administrator.
- 2.1.9 ARTIST agrees that all services performed under this Agreement shall comply with all applicable laws, ordinances, codes and regulations. ARTIST shall, at the sole expense of ARTIST, secure the services of an appropriately licensed general contractor, subcontractor, and/or design professional as necessary in order to obtain all permits, licenses, and approvals required for services pursuant to this Agreement.
- 2.1.10 ARTIST shall faithfully perform the Work in accordance with standards of care, skill, training, diligence, and judgment provided by highly competent professionals who perform work of a similar nature.

2.2 Phase I: Design

In addition to services otherwise required elsewhere in this Agreement, exhibits, and documents, Phase I shall include the following:

- 2.2.1 ARTIST shall determine the artistic expression, scope, design, color, size, material, texture, and location of the Artwork on the Site, subject to review and approval by the Committee, Council (Note: Insert if applicable: and Board if over \$100,000). During the final design review in Phase I, the COUNTY may require ARTIST to make such revisions to the design as are necessary for the Artwork to comply with applicable laws and the COUNTY's conservation standards. The COUNTY may also request revisions for other practical and/or non-aesthetic reasons.
- 2.2.2 The final design submission in Phase I shall include a budget that includes all costs for design, execution, fabrication, transportation, delivery, permits, installation, insurance, contingencies and a proposed schedule for completion of Phase II. ARTIST's Final Design Proposal ("Final Proposal") in Phase I, if approved by COUNTY's _____, will be incorporated herein as ARTIST's proposal for the Scope of Services in Phase II.

2.3 Phase II: Fabrication, Construction, and Integration of Artwork

If the COUNTY opts to proceed with Phase II after completion of Phase I, ARTIST agrees to provide the services required for Phase II. In the event that ARTIST is unavailable or unwilling to proceed with Phase II, COUNTY, after consultation with ARTIST, shall have the right to implement ARTIST's design by a third party not named by the artist through a separate agreement. The COUNTY's Cultural Division shall recommend to the Board whether to cancel implementation or proceed with Phase II through a third party. In addition to services otherwise required elsewhere in this document, Phase II shall include the following conditions:

2.3.1 Fabrication

- a. ARTIST shall complete the fabrication, transportation, and installation of the Artwork in conformity with the approved artwork design development documents as described in the Scope of Services for Phase II at the time of the parties' written amendment to add the services for Phase II.
- b. Minor changes in form, shape, materials, and color may be made at the discretion of ARTIST for refinement of the design of the Artwork, provided that ARTIST notifies Contract Administrator of proposed changes and obtains prior written agreement that the changes are minor.
- c. All changes requested by either party shall be provided in writing. Significant changes requested by COUNTY or ARTIST including, but not limited to, a change in the scope, design, color, size or material of the Artwork which affects cost, installation, site preparation, maintenance, and/or concept as represented in the approved design development documents must be fully approved by the Contract Administrator and ARTIST in advance in writing prior to such changes becoming effective. If ARTIST determines that a change requested by COUNTY will require a change in the costs or the schedule, ARTIST will advise COUNTY in writing within ten (10) calendar days after ARTIST receives COUNTY's change request. ARTIST will furnish COUNTY with an itemized estimate of any adjustments to the costs or the schedule resulting from the change. COUNTY approval and signature as evidence of authorization shall be required prior to ARTIST taking any action on the change request. If a written amendment by ARTIST and County Administrator is required to implement the change, ARTIST and Contract Administrator will negotiate as soon as reasonably practicable. During negotiations regarding a written amendment, ARTIST will continue performance of this Agreement (other than the terms and conditions to be addressed in an amendment). ARTIST is required to perform its duties and obligations within the limitations of the budget agreed upon for Phase II of the Project.

2.3.2 Delivery

- a. The Artwork shall not be delivered to the Site or installed until ARTIST has received applicable permits, other jurisdictional approval(s), and written approval from the Contract Administrator that the Artwork has been completed according to the approved design and specific installation plans.
- b. Arrangements for access to the Site for delivery and installation must be made and coordinated through Contract Administrator.

2.3.3 Integration

- a. Since ARTIST's Artwork will be integrated into the Project, ARTIST shall continue to monitor the progress of the Project for conditions and limitations the Project will impose on the installation of the Artwork. Prior to fabricating major portions of the Artwork and installing the Artwork on Site, ARTIST shall conduct an inspection(s) of the Site with COUNTY to verify existing Site conditions, dimensions, and the adequacy of substrates that will receive the Artwork. ARTIST shall notify the COUNTY and promptly report in writing to Contract Administrator, within fourteen (14) calendar days, any existing Site condition that would render the Site or receiving substrate unsuitable for the installation of the Artwork.
- b. ARTIST shall be responsible to work with COUNTY's general contractor for the capital improvement project to oversee, as necessary, the construction during the integration of Artwork enhancements designed by ARTIST during Phase I and included in construction documents to be installed by others. If ARTIST subcontracts construction work for the Project in an amount exceeding \$200,000, ARTIST shall require ARTIST's subcontractor (if any as identified in Phase II exhibit(s) or approved in advance in writing by the Contract Administrator) to provide a performance and payment bond in a form required by the COUNTY prior to commencement of such construction work.
- c. The Contract Administrator shall give, or shall require the COUNTY's general contractor to give, reasonable written notice to ARTIST of the capital improvement project's construction schedule and construction schedule changes in order to coordinate the Work obligations under this Agreement.
- d. In the event that the services of ARTIST are integrated into, combined, or otherwise coordinated with services by third parties not within the control of ARTIST, ARTIST shall not be responsible for such third party services. If any part of ARTIST's Work depends upon proper execution or results from the work of the COUNTY or a third party responsible to the COUNTY, ARTIST shall have an ongoing duty to promptly report in writing to the COUNTY within fourteen (14) calendar days any apparent discrepancies or other defects in such other work which render it unsuitable for proper execution and proper results by ARTIST, prior to proceeding with the Work. Failure of ARTIST to report in writing to the COUNTY an apparent discrepancy or defect shall constitute an acceptance of the COUNTY's or third party's work as fit and proper for installation and integration of ARTIST's Artwork. Any costs caused by defective or ill-timed work shall be borne by the party responsible therefor. Nothing in this section shall limit the responsibility of ARTIST to

take all reasonable steps to coordinate ARTIST's Work with the work of the COUNTY's general contractor, or of another third party on the Site.

- e. ARTIST shall, when working on COUNTY property or at the Project Site, at all times keep the premises free from accumulation of waste materials or rubbish caused by ARTIST's Work. At the completion of the Work, ARTIST shall remove all waste materials and rubbish from and about the Project Site as well as ARTIST's tools, equipment, machinery and surplus materials. If ARTIST fails to clean up as required by this Agreement, COUNTY may do so and the cost thereof shall be charged to ARTIST. If a dispute arises between ARTIST and separate contractors as to responsibility for cleaning up, COUNTY may clean up and charge the cost thereof to the responsible parties as COUNTY shall determine to be just and reasonable.
- f. The COUNTY and any third party contractor on the Site shall notify ARTIST of their operation, construction, and maintenance schedules in and around the area where ARTIST's Work is to be performed. ARTIST shall perform ARTIST's Work in a manner and time so as not to cause interference with any of the operations, construction, or maintenance of the COUNTY, including its general contractor, or third party contractor. In the event of a conflict between the schedules of the COUNTY's general contractor, the COUNTY, or ARTIST, the conflict will be resolved by the COUNTY's Contract Administrator. If the resolution of the conflict results in a delay of performance by ARTIST, ARTIST may request an amendment of this Agreement to compensate ARTIST for any additional costs or expenses caused by the delay, unless the delay was caused by ARTIST.

2.3.4 Installation and Inspections

- a. Substantial Completion Inspection: The Contract Administrator will schedule and coordinate a substantial completion inspection after receiving notification from ARTIST that all of ARTIST's contractual obligations related to construction and installation of the Artwork have been satisfied and that the Artwork is substantially complete in accordance with the Contract Documents and that the Artwork is available for substantial completion inspection by COUNTY. The inspection will be conducted by the Contract Administrator, COUNTY's Project Manager, the COUNTY's general contractor (if applicable), and other relevant personnel as determined by the Contract Administrator, at least three (3) business days before the final completion inspection. If the Artwork is Substantially Complete, any known deficiencies shall be identified in a "Substantial Completion Inspection Report," and a punch list shall be prepared therefrom by the COUNTY's Project Manager. Copies of the report and punch list shall be provided to ARTIST within

three (3) business days after the Substantial Completion Inspection. "Substantial Completion" shall mean that 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 Contract Documents. All conditions and requirements of permits and regulatory agencies must have been satisfied for Substantial Completion to be achieved, however, such satisfaction does not automatically mean that the Contract Administrator will make a determination that Substantial Completion has been achieved for the Artwork.

- b. Final Completion Inspection: Any and all deficiencies noted on the Substantial Completion Inspection Report and punch list shall be promptly corrected and completed by ARTIST within thirty (30) calendar days or as otherwise acceptable to Contract Administrator as stated in writing in advance prior to the expiration of such thirty day period. The Contract Administrator will schedule and coordinate a Final Completion inspection after receipt of written notification from ARTIST that all noted deficiencies have been corrected and completed, that construction and installation of the Artwork is complete in accordance with the Contract Documents and the Substantial Completion Inspection Report, and that the Artwork is available for Final Completion Inspection by COUNTY. The Final Inspection will be conducted by the Contract Administrator, the COUNTY's general contractor (if applicable), and other personnel selected by the Contract Administrator, within three (3) business days after written notification from ARTIST that the Artwork is available for Final Completion Inspection.
- c. At the Final Completion Inspection, the Contract Administrator will prepare a Final Completion Condition Report to be signed by ARTIST. If the Contract Administrator determines that the Artwork is finally complete, the Contract Administrator will also sign the Final Completion Condition Report on behalf of the COUNTY, subject to the following additional conditions.

Upon completion of the Artwork and prior to the Contract Administrator's execution of a Final Completion Condition Report for the Artwork, ARTIST shall provide information on the Artwork requested by the Contract Administrator, including, but not limited to, routine maintenance information, technical specifications and conservation requirements, in a format acceptable to the COUNTY. Prior to signing the condition report, Contract Administrator and ARTIST shall jointly complete a written notification to be sent to COUNTY's Risk Management Division. Such notification shall, as a minimum, include location, agreed value, and size specifications of the Artwork. Contract Administrator shall send such notification to COUNTY's Risk Management Division to enable the Risk

Management Division to insure the Artwork upon COUNTY becoming responsible for same.

- d. Within three (3) business days of Contract Administrator's execution of the Final Completion Condition Report, the Contract Administrator shall refer the Artwork to the Committee and the Council for Final Acceptance.

2.3.5 Post Installation; Title; Risk of Loss: Title to the Artwork passes to the COUNTY upon written Final Acceptance of the complete, installed Artwork by the COUNTY's Contract Administrator. With the signature of both parties on the Final Completion Condition Report, the COUNTY shall be responsible for any and all subsequent damage to the Artwork except damage caused by ARTIST and ARTIST's subcontractors. At any time prior to the full execution of the Final Completion Condition Report, all risk of destruction or damage to the Artwork or any part thereof from any cause whatsoever shall be borne by ARTIST. ARTIST shall, at ARTIST's sole expense, rebuild, repair, restore, and make good all such damage to any portion of the Artwork that occurs until the Final Completion Condition Report is signed by both parties.

- 2.4 COUNTY shall: (1) arrange for access so that ARTIST may enter upon public and private property, as required for ARTIST to perform the services under this Agreement; (2) give written notice of at least fourteen (14) calendar days to ARTIST whenever the COUNTY observes or otherwise becomes aware of any development that affects the scope or timing of ARTIST's services;; (3) make available to ARTIST any COUNTY and contractor work schedules relating to the intended Site of the Artwork; (4) arrange COUNTY's meetings and consultations as needed for ARTIST to fulfill ARTIST's obligations under this Agreement; (5) review materials submitted pursuant to Exhibit "A" in a timely manner of at least fourteen (14) calendar days; and (6) provide all public information available pertaining to the Project to ARTIST without cost.

ARTICLE 3 TERM AND TIME OF PERFORMANCE

- 3.1 This Agreement shall become effective upon execution by the parties (the "Effective Date") and shall end on _____, 20_____, subject to earlier termination as provided herein. In the event that this Agreement extends beyond a single fiscal year of COUNTY, the continuation shall be subject to the availability of funding from COUNTY as determined by the Board in accordance with Chapter 129, Florida Statutes (as amended). The COUNTY represents that its fiscal year begins on October 1 of each year and ends on September 30 of the following year. The County Administrator may execute amendment(s) with ARTIST to extend the term of this Agreement.
- 3.2 COUNTY's Contract Administrator shall instruct ARTIST to commence each Phase of the Work by written instructions in the form of a Notice to Proceed issued by the Contract Administrator.

ARTIST shall commence each Phase of the Work within the time period stated in the specific Notice to Proceed. The date of the Notice to Proceed shall be deemed to be the initiation date for each Phase of the Work.

- 3.3 Beginning from the initiation date as described in Section 3.2 above, all duties, obligations, and responsibilities of ARTIST required for each Phase shall be substantially completed not later than the deadline set forth in the Notice to Proceed. Time shall be deemed to be of the essence in performing the duties, obligations, and responsibilities required by this Agreement.
- 3.4 It shall be the responsibility of ARTIST to notify COUNTY in writing whenever a delay is anticipated or experienced and to inform COUNTY in writing of all facts and details related to the delay.
- 3.5 The Contract Administrator may grant an extension of time (for example to the project schedule) to ARTIST in the event that Contract Administrator in his/her sole discretion determines that there is a delay caused by COUNTY or other third parties (other than ARTIST's fault or delay) in completing the underlying Work for the applicable Phase, or if conditions beyond ARTIST's control or Acts of God render timely performance of ARTIST's Work impossible or unexpectedly burdensome. Failure to fulfill contractual obligations due to conditions beyond either party's reasonable control will not be considered a breach of contract; provided that such obligations shall be suspended only for the duration of such conditions.
- 3.6 Any extension of time (for example as to the project schedule) granted pursuant to this Article shall be in a writing which shall be signed by ARTIST and the Contract Administrator; however, extension of the term of the Agreement shall be by written amendment signed by the ARTIST and the County Administrator. Except where reasonably necessary to accomplish the purposes of this Section, such writing shall be limited to the grant of the extension of time and shall not amend any other portion of this Agreement.

ARTICLE 4 COMPENSATION

- 4.1 COUNTY agrees to pay ARTIST a maximum amount of _____ Dollars (\$_____) for Phase I of this Agreement, payable as set forth on Exhibit B. The COUNTY may make partial payments for completed work as more fully set forth on Exhibit B. The COUNTY may make partial payments for completed work as more fully set forth on Exhibit "B." Should COUNTY, through its Contract Administrator, choose to proceed to Phase II of this Agreement, COUNTY agrees to pay ARTIST a maximum amount of _____ Dollars (\$_____) for Phase II of this Agreement, to be payable upon ARTIST's achievement of milestones as the parties shall agree. It is acknowledged and agreed by ARTIST that these amounts are the maximums payable and constitute a limitation upon COUNTY's obligation to

compensate ARTIST for its services and expenses related to this Agreement, notwithstanding that COUNTY has set aside the Contingency Reserve identified in Section 4.2. These maximum amounts, however, do not constitute a limitation, of any sort, upon ARTIST's obligation to perform all items of work required by or which can be reasonably inferred from the Scope of Services.

<<NOTE: Option #1 is above. Use option #1 above unless option #2 below is applicable and delete option provision that does not apply>>

<<NOTE: *OPTION #2*

COUNTY agrees to pay ARTIST a maximum amount of _____ Dollars (\$_____) for Phase I of this Agreement, which includes the amount of _____ Dollars (\$_____) for ARTIST and the amount of _____ Dollars (\$_____) that ARTIST shall be responsible for paying to the Allied Artist for Phase I Design. Such amount(s) shall be payable as set forth on Exhibit "B." The COUNTY may make partial payments for completed work as more fully set forth on Exhibit "B." Should COUNTY, through its Contract Administrator, choose to proceed to Phase II of this Agreement, COUNTY agrees to pay ARTIST a maximum amount up to _____ Dollars (\$_____) (subject to negotiations of the dollar amount and execution of a written amendment) for Phase II of this Agreement, which includes the amount of _____ Dollars (\$_____) to be paid to the Allied Artist for Phase II Fabrication, to be payable upon ARTIST's achievement of milestones as the parties shall agree for the Work for Phase II in the written amendment. ARTIST acknowledges and agrees that these amounts are the maximums payable and constitute a limitation upon COUNTY's obligation to compensate ARTIST for his or her Work and expenses related to this Agreement, notwithstanding that COUNTY has set aside the Contingency Reserve identified in Section 4.2. These maximum amounts, however, do not constitute a limitation, of any sort, upon ARTIST's obligation to perform the Work required by or which can be reasonably inferred from the Scope of Services.

- 4.2 ARTIST has agreed to fully perform the Scope of Services set forth in Article 2 for the total compensation set forth in Section 4.1 above. However, unforeseen costs, including, but not limited to, construction delays or site changes which are beyond the control of and are not the fault of ARTIST may adversely affect ARTIST's costs for Phase II services. Therefore, COUNTY has set aside a separate additional Contingency Reserve amount of up to _____ Dollars (\$_____) (subject to negotiations of the dollar amount and written amendment for Phase II) which specifically excludes the amount(s) in Section 4.1 above and which may, in the sole discretion of COUNTY, be paid to ARTIST in whole or in part, provided that ARTIST submits documentation to the Contract Administrator that the regular contingency in ARTIST's design proposal budget for Phase II Fabrication has already been consumed. Any additional compensation paid to ARTIST from the Contingency Reserve shall be pursuant to a written document in accordance with Section 13.17 except that the document may be

signed by the Contract Administrator on behalf of the COUNTY. (In no event may the Contingency Reserve amount exceed ten percent (10%) of the total compensation provided for in Section 4.1, above.) For purposes of this section, "unforeseen costs" shall not include expenses which the Contract Administrator reasonably determines should have been contemplated by ARTIST when developing the Project budget, including the original design and related Work budget.

4.3 ARTIST acknowledges and agrees that the dollar limitation set forth in this Article is a limitation upon, and describes the maximum extent of, COUNTY's obligation to reimburse ARTIST for expenses, but does not constitute a limitation, of any sort, upon ARTIST's obligation to incur such expenses in the performance of services hereunder.

4.4 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 which has not been remedied or from loss due to fraud or reasonable evidence indicating fraud by ARTIST. When the above reasons for withholding payment are removed or resolved in a manner satisfactory to Contract Administrator, payment may be made to ARTIST. The amount withheld pursuant to this provision shall not be subject to payment of interest by COUNTY.

4.5 METHOD OF BILLING AND PAYMENT

4.5.1 ARTIST may submit invoices for compensation as described in Exhibit "B," but only after the services for which the invoices are submitted have been completed by ARTIST. Each invoice shall be accompanied by a Consent of Surety or release of liens relative to the Work which is the subject of the invoice, if a payment bond is required by Section 2.3.3 b. The final invoice must be received no later than sixty (60) days after this Agreement expires. Invoices shall outline the nature of the services performed and/or the expenses incurred by ARTIST. A written summary shall accompany each original invoice describing the work completed during that payment period. ARTIST shall submit with each invoice a Certification of Payments to Subcontractors and Suppliers (Exhibit "D"). The certification shall be accompanied by a copy of the notification sent to each subcontractor and supplier listed in item 2 of Exhibit "D."

4.5.2 COUNTY shall pay ARTIST within thirty (30) calendar days of receipt of ARTIST's proper invoice statement, as required by the "Broward County Prompt Payment Ordinance" (Broward County Ordinance No. 89-49, as amended). To be deemed proper, all invoices must comply with the requirements set forth in this Agreement and must be submitted on the form and pursuant to instructions prescribed by Contract Administrator. Payment may be withheld by ARTIST for failure of ARTIST to comply with a term, condition, or requirement of this Agreement.

4.6 Payment will be made to ARTIST in the name of " _____ " at:

<<ARTIST's Legal Name>>

Attn: <Title> _____

ARTIST may change any of the information provided under Section 4.6 herein by providing written notice of such change to Contract Administrator using the notice procedure under Section 13.7, "NOTICES." ARTIST shall provide its federal identification number on the form provided by COUNTY's Contract Administrator at the time of ARTIST's execution of this Agreement.

ARTICLE 5 CHANGES IN SCOPE OF SERVICES

Any change to the Scope of Services shall be accomplished by a written amendment, executed by ARTIST and the COUNTY, through its Board or the County Administrator by written amendment(s) as authorized by Section 13.17 in Article 13 below.

ARTICLE 6 INDEMNIFICATION

ARTIST shall at all times hereafter indemnify, hold harmless and, at the County Attorney's option, defend or pay for an attorney selected by the County Attorney to defend COUNTY, its officers, agents, servants, and employees from and against any and all causes of action, demands, claims, losses, liabilities and expenditures of any kind, including attorney fees, court costs, and expenses, caused or alleged to be caused by intentional or negligent act of, or omission of, ARTIST, its employees, agents, servants, or officers, or accruing, resulting from, or related to the subject matter of this Agreement including, without limitation, any and all claims, losses, liabilities, expenditures, demands or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property. In the event any lawsuit or other proceeding is brought against COUNTY by reason of any such claim, cause of action or demand, ARTIST shall, upon written notice from COUNTY, resist and defend such lawsuit or proceeding by counsel satisfactory to COUNTY or, at COUNTY's option, pay for an attorney selected by County Attorney to defend COUNTY. The provisions and 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 of COUNTY's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved; and any amount withheld shall not be subject to payment of interest by COUNTY.

ARTICLE 7 INSURANCE

7.1 ARTIST shall at all times described in Section 7.2 and during the term of this Agreement (including any extension hereof), maintain in force those insurance policies

as designated in the Exhibit "E," entitled "Certificate of Insurance" attached and made a part hereof, and ARTIST will comply with those requirements as stated therein. Such certificate of insurance will provide COUNTY with thirty (30) calendar days' prior written notice of any cancellation and/or non-renewal. If any of the insurance coverages will expire prior to the completion of the Work, copies of renewal policies shall be furnished to COUNTY at least thirty (30) calendar days prior to the date of their expiration.

- 7.2 ARTIST shall furnish to the Contract Administrator Certificates of Insurance or endorsements evidencing the insurance coverages specified by this Article at least ten (10) calendar days prior to commencing services on the Project Site or other COUNTY property. ARTIST may commence services on the Project Site or other COUNTY property only after the Contract Administrator acknowledges in writing that the insurance has been accepted by the COUNTY's Risk Management Division by written approval.
- 7.3 The COUNTY's Risk Management Division, through its Director, its Assistant Director or Risk Insurance Requirements Manager may authorize (in advance in writing) the suspension of the insurance requirements during prolonged delays in the project attributable to the COUNTY, when such suspension of insurance does not jeopardize the COUNTY's interests. The suspension must be authorized in advance and in writing using the Insurance Suspension form attached hereto as Exhibit "F" and must specify an ending date or event at which time ARTIST must furnish Certificates of Insurance or endorsements to the Contract Administrator for written approval by COUNTY's Risk Management Division. ARTIST shall not resume work on the Project before the COUNTY's Risk Management Division accepts in writing the renewed insurance. The COUNTY's Risk Management Division reserves the right in its sole discretion to approve the suspension of insurance.
- 7.4 Coverage must reflect COUNTY in the name of "Broward County" as an additional insured. The certificate holder address shall read "Broward County". The official title of the owner is "Broward County". The official title shall be used in all insurance documentation. All policies must be endorsed to provide COUNTY with at least thirty (30) days' notice of cancellation and/or restriction. Coverage is not to cease and is to remain in force until all performance required of ARTIST is completed. .
- 7.5 COUNTY reserves the right to review and revise any insurance requirements at any time, including, but not limited to, deductibles, limits, coverage, and endorsements based on insurance market conditions affecting the availability or affordability of coverage, or changes in the scope of work or specifications that affect the applicability of coverage.
- 7.6 ARTIST shall comply with the following additional insurance requirements during the term of the Agreement, including any extension of such term, as follows:

Workers' Compensation insurance to apply for all employees in compliance with the "Workers' Compensation Law" of the State of Florida and all applicable federal laws. In addition, the policy(ies) must include:

Employers' Liability with a limit of Five Hundred Thousand Dollars (\$500,000.00) each accident.

Comprehensive Liability with minimum limits of _____ Dollars (\$_____) per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability and _____ Dollars (\$_____) per aggregate. Coverage must be afforded on a form no more restrictive than the latest edition of the Comprehensive or General Liability policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include:

Premises and/or Operations.
Independent Contractors.

Products and/or Completed Operations including Broad Form Property Damage.

Broad Form Contractual Coverage applicable to this specific Contract, including any hold harmless and/or indemnification agreement.

Personal Injury Coverage with Employee and Contractual Exclusions removed, with minimum limits of coverage equal to those required for Bodily Injury Liability and Property Damage Liability.

Business Automobile Liability with minimum limits of _____ Dollars (\$_____) per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include:

Owned Vehicles, if applicable.
Hired and Non-Owned Vehicles, if applicable.
Employers' Non-Ownership, if applicable.

ARTICLE 8 TERMINATION

- 8.1 This Agreement may be terminated for cause by the aggrieved party if the party in breach has not corrected the breach within ten (10) calendar days after written notice from the aggrieved party identifying the breach. This Agreement may also be terminated for convenience by the Board or County Administrator. Termination for convenience shall be effective on the termination date stated in written notice provided by the COUNTY, through its Contract Administrator, which termination date shall be not less than thirty (30) calendar 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. The parties agree that if the COUNTY erroneously, improperly, or unjustifiably terminates for cause, such termination shall be deemed a termination for convenience.

- 8.2 This Agreement may be terminated for cause for reasons including, but not limited to, ARTIST's repeated (whether negligent or intentional) submission for payment of false or incorrect bills or invoices for payment, failure to suitably perform the Work; or failure to continuously perform the Work in a manner calculated to meet or accomplish the objectives as set forth in this Agreement.
- 8.3 Notice of termination shall be provided in accordance with the "NOTICES" section of this Agreement except that notice of termination by the County Administrator, which the County Administrator deems necessary to protect the public health, safety, or welfare may be verbal notice that shall be promptly confirmed in writing in accordance with the "NOTICES" section in Article 13 of this Agreement .
- 8.4 In the event this Agreement is terminated for convenience by COUNTY, ARTIST shall be paid for any services properly performed under the Agreement through the termination date specified in the written notice of termination. ARTIST acknowledges and agrees that it has received good, valuable and sufficient consideration from COUNTY, the receipt and adequacy of which are, hereby acknowledged by ARTIST, for COUNTY's right to terminate this Agreement for convenience.
- 8.5 In the event this Agreement is terminated for any reason, any amounts due ARTIST shall be withheld by COUNTY until all documents are provided to COUNTY pursuant to the "RIGHTS IN DOCUMENTS AND WORK" section in Article 13.
- 8.6 Scrutinized Companies

In the event that the total goods and services purchased under the Agreement is \$1 million or more, then, this Agreement may also be terminated for cause immediately in writing by COUNTY's County Administrator or action of its Board, through written notice from Contract Administrator, if ARTIST is placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List created pursuant to Section 215.473, Florida Statutes, as amended, or if ARTIST provides a false certification submitted pursuant to Section 287.135, Florida Statutes, as amended

ARTICLE 9 WARRANTIES/STANDARDS

- 9.1 ARTIST warrants that: (a) the design or Artwork being commissioned is the original product of ARTIST's own creative efforts; (b) unless otherwise stipulated, the Artwork is original and is an edition of one; and (c) that ARTIST shall not sell or reproduce the Artwork, or allow others to do so without the prior written consent of COUNTY.

9.2 Warranty of Quality.

9.2.1 ARTIST warrants that the Artwork shall be free of defects in material and workmanship, including any defects consisting of "inherent vice" or qualities accelerating deterioration of the Artwork and that ARTIST shall correct, at ARTIST's expense, any such defects which appear within a period of two (2) years from Final Acceptance of the Artwork. Should the Artwork during the lifetime of ARTIST deteriorate to the point that it no longer represents the intent of ARTIST and/or poses a safety hazard due to its deteriorated state, and the COUNTY chooses to restore the Artwork rather than deaccession it, ARTIST will be given the first right of refusal to perform the restoration. If funds for such restoration are not available, the COUNTY shall have the right to destroy the Artwork upon notifying ARTIST in writing (by certified mail, return receipt requested, sent to ARTIST's last known address) that ARTIST may be granted the right of consultation regarding the Artwork's removal or destruction. "Restore" means to effect repairs to the Artwork necessitated by extensive damage or deterioration which requires artistic talents of the creating artist in order to ensure that the restored Artwork reflects the qualities and artistic integrity of the Artwork as originally accepted in writing by the COUNTY, through its Contract Administrator.

9.2.2 In the event the Artwork cannot be successfully restored in accordance with Section 9.2, as determined by the COUNTY, or the COUNTY chooses to remove the Artwork from its collection ("Deaccession") pursuant to its Deaccession Policy ARTIST will be notified in writing (by certified mail, return receipt requested, sent to ARTIST's last known address) by the COUNTY. ARTIST will have the option to purchase the Artwork back from the COUNTY at a price set by a professional appraiser selected and paid for by the COUNTY. ARTIST must exercise this option within forty-five (45) calendar days of written notice from the COUNTY's Contract Administrator. If ARTIST exercises this option, removal of the Artwork shall 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 and related surplus property laws and policies.

9.3 ARTIST promises and covenants not to execute or authorize another to execute another Artwork of the same design, dimensions, and materials as the Artwork commissioned pursuant to this Agreement. For the purposes of this section, if the dimensions of another work exceed seventy-five percent (75%) of the dimensions of the commissioned Artwork, the other work shall be deemed to be the same dimensions as 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 shall continue in effect for a period consisting of the life of ARTIST plus fifty (50) years and shall be binding on ARTIST's successors, heirs and assigns.

- 9.4 ARTIST warrants to the COUNTY that all materials used under this Agreement will be new unless otherwise specified, and that all services will conform to the standards of Section 2.10 and will conform in all ways with the Contract Documents as defined in Section 1.6. ARTIST shall deliver the Artwork to the COUNTY free and clear of any liens from any source whatsoever.

ARTICLE 10
ARTIST'S RIGHTS AND WAIVER

- 10.1 The COUNTY, shall, at its expense, prepare and install a plaque or sign identifying ARTIST, the title of the Artwork and year of completion, and shall maintain such identifying plaque in good condition and repair. The COUNTY agrees that all references to the Artwork and all reproductions of the Artwork shall credit the Artwork to ARTIST. If the Artwork becomes significantly modified after Final Acceptance by COUNTY, ARTIST may request removal of ARTIST's name from the Artwork. Any such request shall be provided to COUNTY in accordance with the requirements of Section 13.7.
- 10.2 The COUNTY shall reasonably assure that the Artwork is properly maintained and protected, taking into account the recommendations of ARTIST.
- 10.3 ARTIST may be given the right of first refusal to perform repairs. If the parties cannot come to agreement for repair services, or ARTIST is unable or unwilling to perform any necessary repairs, or the COUNTY cannot locate ARTIST, COUNTY will have such work performed at the COUNTY's own expense in accordance with recognized principles of conservation.
- 10.4 ARTIST understands and agrees that the provisions of this Agreement shall control to the exclusion of the provisions of the European Union law or other domestic or international law, and shall 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.

ARTICLE 11
ARTIST'S WAIVER FOR INTEGRATED ARTWORK

- 11.1 ARTIST understands and agrees that, as to ARTIST's rights in the Work, the provisions of this Article shall control over the provisions of 17 U.S.C. §106A(a), and shall constitute a waiver by ARTIST of any rights in the Artwork set out in or otherwise granted by 17 U.S.C. §106A(a), Visual Artists Rights Act of 1990.
- 11.2 ARTIST hereby acknowledges that the Artwork will become an integral part to the architecture of the building, structure, or site and that installation and integration of the Artwork may subject the Artwork to future removal, destruction, or other modifications by reason of its removal from the building, structure, or site or the renovation, destruction, or redevelopment of the building, structure, or site. Notwithstanding the foregoing, ARTIST hereby 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(a).

- 11.3 All other rights in and to the Artwork, including, but not limited to, all rights in the nature of "Droit Moral" relating to any continuing interest ARTIST may have in the maintenance or modification of the Artwork, are expressly waived by ARTIST and, insofar as such rights are transferable, are assigned to the COUNTY.
- 11.4 Notwithstanding this waiver, COUNTY shall make a diligent good faith effort to notify ARTIST of any proposed action which will remove, destroy, or otherwise modify the Artwork by providing notice to ARTIST by registered mail at the most recent address recorded with the Register of Copyrights or the Broward County Cultural Division. ARTIST shall have the option to purchase the Artwork from the COUNTY in accordance with Section 9.2.2. In the event that COUNTY makes a diligent, good faith attempt without success to notify ARTIST of its intended action, COUNTY shall have the right to proceed with alteration of the Artwork by reason of repair, removal, or renovation of the building or structure or other activities performed at the site.

ARTICLE 12 COPYRIGHTS

- 12.1 ARTIST retains (1) copyright of the design(s) created; (2) all rights to the Artwork under the Copyright Act of 1976, 17 U.S.C. §101, et seq., as amended by the Visual Artists Rights Act of 1990, and any successor act, except that ARTIST hereby waives the rights under 17 U.S.C. §106A(a); and (3) all rights expressly granted in this Agreement. ARTIST grants to COUNTY an irrevocable license to graphically depict the Artwork in any non-commercial manner or media whatsoever to promote the COUNTY or the COUNTY's cultural programs.
- 12.2 ARTIST agrees that all Work performed under this Agreement shall comply with all applicable patent, trademark and copyright laws, rules, regulations, and codes. ARTIST further agrees that the Work will not utilize any protected patent, trademark or copyright unless ARTIST has obtained proper permission and all releases and other necessary documents.
- 12.3 If ARTIST uses any protected material, process or procedure, ARTIST shall disclose such patent, trademark or copyright in the construction drawings and technical specifications.
- 12.4 **WARRANTY OF AUTHORIZATION AND NON-INFRINGEMENT.** ARTIST warrants that the Work provided under this Agreement, to the best knowledge of ARTIST, 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, non-disclosure, intellectual property or other right of any third party; infringe upon or violate any right of privacy, or contain libelous material, and

ARTIST possesses full power to enter into this Agreement and to convey the rights herein granted to COUNTY without the consent of any third party.

ARTICLE 13 MISCELLANEOUS

13.1 RIGHTS IN DOCUMENTS AND WORK

Any and all drawings, specifications, designs, maquettes, reports, photographs, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of COUNTY. ARTIST grants to COUNTY a non-exclusive license to use the copyrighted item(s) indefinitely, to make and distribute copies by various means to members of the public, and for other non-commercial purposes. In the event of termination of this Agreement, any drawings, specifications, designs, maquettes, reports, photographs, surveys, and other data and documents prepared by ARTIST, whether finished or unfinished, shall become the property of COUNTY and shall be delivered by ARTIST to the Contract Administrator within seven (7) calendar days of termination of this Agreement by either party. Any compensation due to ARTIST shall be withheld until all documents are received as provided herein.

13.2 AUDIT RIGHT AND RETENTION OF RECORDS

COUNTY shall have the right to audit the books, records, and accounts of ARTIST that are related to this Agreement. ARTIST shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Agreement. All books, records, and accounts of ARTIST shall 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 shall make same available at no cost to COUNTY in written form.

ARTIST shall preserve and make available, at reasonable times for examination and audit by COUNTY, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Florida Statutes, as may be amended from time to time), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by COUNTY to be applicable to ARTIST's records, ARTIST shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by ARTIST. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for COUNTY's disallowance and recovery of any payment upon such entry.

ARTIST shall, by written contract, require its subcontractors to agree to the requirements and obligations of this Section 13.2.

13.3 EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

ARTIST shall not unlawfully discriminate on the basis of race, color, national origin, sex, religion, age, marital status, political affiliation, familial status, disability, sexual orientation, pregnancy, or gender identity and expression in the performance of this Agreement, the solicitation for or purchase of goods or services relating to this Agreement, or in subcontracting work in the performance of this Agreement and shall not otherwise unlawfully discriminate in violation of the Broward County Code, Chapter 16½, as may be amended from time to time.

ARTIST shall include the foregoing or similar language in its contracts with any subcontractors or subconsultants, except that any project assisted by the U.S. Department of Transportation funds shall comply with the non-discrimination requirements in 49 C.F.R. Parts 23 and 26, as amended. Failure to comply with the foregoing requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as COUNTY deems appropriate.

ARTIST shall not unlawfully discriminate against any person in its operations and activities or in its use or expenditure of funds in fulfilling its obligations under this Agreement. ARTIST shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded by COUNTY, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, ARTIST shall take affirmative steps to ensure nondiscrimination in employment against disabled persons.

By execution of this Agreement, ARTIST represents that it has not been placed on the discriminatory vendor list (as provided in Section 287.134, Florida Statutes, as amended). COUNTY hereby materially relies on such representation in entering into this Agreement. An untrue representation of the foregoing shall entitle COUNTY to terminate this Agreement and recover from ARTIST all monies paid by COUNTY pursuant to this Agreement, and may result in debarment from COUNTY's competitive procurement activities.

13.4 PUBLIC ENTITY CRIMES ACT

ARTIST represents that the execution of this Agreement will not violate the Public Entity Crimes Act (Section 287.133, Florida Statutes, as amended), which essentially provides that a person or affiliate who is a contractor, consultant or other provider and who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to COUNTY, may not submit a bid on a contract with COUNTY for the construction or repair of a public building or public work, may not submit bids on leases of real property to COUNTY, may not be awarded or perform work as a contractor, supplier, subcontractor, or

consultant under a contract with COUNTY, and may not transact any business with COUNTY in excess of the threshold amount provided in Section 287.017, Florida Statutes, as may be amended from time to time, for category two purchases for a period of thirty-six (36) months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid by COUNTY pursuant to this Agreement, and may result in debarment from COUNTY's competitive procurement activities.

In addition to the foregoing, ARTIST further represents that there has been no determination, based on an audit, that it committed an act defined by Section 287.133, Florida Statutes, as amended, as a "public entity crime" 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.

13.5 INDEPENDENT CONTRACTOR

ARTIST is an independent contractor under this Agreement. Services provided by ARTIST pursuant to this Agreement shall be subject to the supervision of ARTIST. In providing such services, neither ARTIST nor its agents shall act as officers, employees, or agents of the COUNTY. No partnership, joint venture, or other joint relationship is created hereby. COUNTY does not extend to ARTIST or ARTIST's agents any authority of any kind to bind the COUNTY in any respect whatsoever.

13.6 THIRD PARTY BENEFICIARIES

Neither ARTIST nor COUNTY intends to directly or substantially benefit a third party by this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement.

13.7 NOTICES

Whenever either party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or sent by commercial express carrier with acknowledgment or delivery, or by hand delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the parties designate the following:

FOR BROWARD COUNTY:

Director
Attn: _____
Broward County
Broward Cultural Division
100 S. Andrews Avenue
Fort Lauderdale, Florida 33301-1829

FOR ARTIST:

<<ARTIST's Legal Name>>
Attn: <<Title>> _____

Either party may change its information provided in Section 13.7 herein by providing written notices to the other party using the notices procedures in Section 13.7, "NOTICES" herein. As authorized in Section 1.5, the Contract Administrator may also be changed using the notices procedure in Section 13.7, "NOTICES" herein.

13.8 ASSIGNMENT AND PERFORMANCE

Neither this Agreement nor any interest herein shall be assigned, transferred, or encumbered without the written consent of the other party. In addition, ARTIST shall not subcontract any portion of the Work required by this Agreement except as authorized in advance, in writing, by COUNTY's Contract Administrator.

ARTIST represents that each person who will render services pursuant to this Agreement is duly qualified to perform such services by all appropriate governmental authorities, where required, and that each such person is reasonably experienced and skilled in the area(s) for which he or she will render his or her services.

ARTIST shall perform its duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of ARTIST's performance and all interim and final product(s) provided to or on behalf of COUNTY shall be comparable to the best local and national standards.

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.

ARTIST further agrees that none of its officers or employees shall, during the term of this Agreement, 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, ARTIST agrees that such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which 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 shall not preclude ARTIST or any persons in any way from representing themselves, including giving expert testimony in support thereof, 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 agrees to require such subcontractors, by written contract, to comply with the provisions of this section to the same extent as ARTIST.

13.10 CONTINGENCY FEE

To the extent required by the funding source for this Project, ARTIST warrants that it has not employed or retained any company, or person, 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, company, corporation, individual or firm, 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. For a breach or violation of this provision, Board shall have the right to terminate this Agreement without liability at its discretion, or to deduct from the Agreement price or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

13.11 MATERIALITY AND WAIVER OF BREACH

COUNTY and ARTIST agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof.

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.

13.12 COMPLIANCE WITH LAWS

ARTIST shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to this Agreement.

13.13 SEVERANCE

In the event this Agreement or a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be

effective unless COUNTY or ARTIST elects to terminate this Agreement. An election to terminate this Agreement based upon this provision shall be made within seven (7) business days after the finding by the court becomes final.

13.14 JOINT PREPARATION

The parties acknowledge that they have sought and received whatever competent advice and counsel necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

13.15 PRIORITY OF PROVISIONS

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 13 of this Agreement shall prevail and be given effect.

13.16 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. All parties agree and accept that jurisdiction of any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be exclusively in the state courts of the Seventeenth Judicial Circuit in Broward County, Florida, and venue for litigation arising out of this Agreement shall be in such state courts, forsaking any other jurisdiction which either party may claim by virtue of its residency or other jurisdictional device. 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.

13.17 AMENDMENTS

The County Administrator may execute written amendment(s) to the Agreement to add and/or amend Phase II services. Additionally, the County Administrator on behalf of the COUNTY may execute written amendment(s) to the Agreement to change any of the provision(s) on any of the exhibit(s), to change the term and time of performance, to change the scope of services, to change the compensation as long as such change does not increase the total dollar amounts budgeted for the Project, including contingency, to change the insurance requirements. Except as otherwise provided herein and except as may otherwise be provided in Chapter 24, Section 24.20 of the Broward County Administrative Code, no modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written

document prepared with the same or similar formality as this Agreement and executed by the Board and ARTIST or others delegated authority to or otherwise authorized to execute same on their behalf.

13.18 PRIOR AGREEMENTS

This document represents the final and complete understanding of the parties and incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. The parties agree that there is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written.

13.19 INCORPORATION BY REFERENCE

The truth and accuracy of each "Whereas" clause set forth above is acknowledged by the parties. The attached Exhibits "A" (Scope of Services), "B" (Compensation and Schedule of Payments), "C" (Cataloging Form), "D" (Certification of Payment to Subcontractors), "E" (Certificate of Insurance), "F" (Insurance Suspension form) attached hereto, are incorporated into and made a part of this Agreement. If there are any additional exhibit(s) attached hereto, then, such exhibit shall also be deemed a part hereof and incorporated herein by reference.

13.20 NO INTEREST

Any monies which are the subject of a dispute regarding this Agreement and which are not paid by COUNTY when claimed to be due shall not be subject to interest.

All requirements inconsistent with this provision are hereby waived by ARTIST.

13.21 MULTIPLE ORIGINALS

Multiple copies of this Agreement may be executed by all parties, each of which, bearing original signatures, shall have the force and effect of an original document.

13.22 REPRESENTATION OF AUTHORITY

Each individual executing this Agreement on behalf of a party hereto does hereby represent and warrant that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such party.

13.23 SURVIVAL

The following provisions shall survive the expiration or earlier termination of this Agreement: Article 6, "Indemnification"; Article 9, "Warranties/Standards";

Article 10, "Artist's Rights and Waiver"; Article 11, "Artist's Waiver For Integrated Artwork"; Article 12, "Copyrights"; Section 13.16, "Jurisdiction, Venue, Waiver of Jury Trial"; and Section 13.20, "No Interest." The following provisions shall survive the expiration or earlier termination of this Agreement for at least a period of five (5) years after such expiration or termination or longer if required by the Florida Public Records Act (Chapter 119, Florida Statutes, as may be amended from time to time); Section 13.2, "Audit Right and Retention of Records" and Section 13.7, "Notices."

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

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement for Artistic Services: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its County Administrator, authorized to execute same, and ARTIST, _____, signing by and through _____, duly authorized to execute same.

COUNTY

WITNESSES:

BROWARD COUNTY, by and through
the County Administrator

Signature

By _____
County Administrator

Print/Type Name

____ day of _____, 20____.

Signature

Approved as to form by
Office of the County Attorney
for Broward County, Florida
JONI ARMSTRONG COFFEY,
County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-7641

Print/Type Name

Insurance requirements
approved by Broward County
Risk Management Division

By _____
Authorized Signature (Date)

By _____
Andrea S. Froome (Date)
Senior Assistant County Attorney

ASF:dp
2012ArtisticServices-form-[10-04-11]
10/04/11
#11-110.12

AGREEMENT BETWEEN BROWARD COUNTY AND ARTIST FOR ARTISTIC SERVICES OF

ARTIST

WITNESSES:

<<ARTIST's Legal Name>>

Signature

By _____
Authorized Signature

Print/Type Name

(Print/type Name & title)

Signature

____ day of _____, 20____.

Print/Type Name

ATTEST:

Corporate Secretary

(SEAL)

EXHIBIT A
SCOPE OF SERVICES

PROJECT _____

AGREEMENT BETWEEN BROWARD COUNTY AND _____
FOR ARTISTIC SERVICES

Phase I: Design

1. **PURPOSE:** _____ for functionally integrated Artwork
2. **LOCATION:** _____, Broward County, Florida.
3. **ARTWORK QUALITIES:** _____
4. **ADMINISTRATIVE COORDINATION:** _____
5. **DESIGN TEAM COLLABORATION AND COORDINATION:**

6. **CONSTRUCTION DOCUMENTS AND PERMITTING:**

7. **CONSERVATION AND MAINTENANCE REVIEW:**

8. **DESCRIPTION OF DELIVERABLES:** _____
9. **COMMUNITY PROCESS:** _____
10. **TIMELINE FOR COMPLETION:** _____
11. **EDUCATIONAL OUTREACH:** _____
12. **ALLIED ARTIST:** An Allied Artist will be affiliated with this project. The Parties' agree that the Allied Artist is an independent third party artist who shall be retained by ARTIST to assist ARTIST with the services under this Agreement. ARTIST shall be solely responsible for paying the Allied Artist with no less than the amount agreed to herein to be paid to the Allied Artist.
13. **FUNCTIONALLY-INTEGRATED ARTWORK:** ARTIST The Artwork shall meet the requirements for functionally- integrated artwork of Section 1-88, as amended, of the Broward County Code of Ordinances as follows:

[*NOTE: Add most updated requirements required by the Ordinance*]

14. **BOARD APPROVAL:** NOTE: SAMPLE LANGUAGE ONLY FOR INSERTION AS APPLICABLE. Artist agrees that this Agreement is subject to the Board's approval of the Conceptual Proposal. The COUNTY's Contract Administrator shall not allow any work to begin for payments #___ through #_____ until after the Contract Administrator has received the Board's approval of the Conceptual Proposal. The Parties agree that such Board approval is required prior to any written amendment to include Phase II Word prior to the issuance of the Notice to Proceed for Phase II. The Contract Administrator, in its sole discretion, reserves the right to have the Board approve the amount of funding for Phase II, which may be less than the dollar amounts stated in Article 4 of the Agreement.
15. **PHASE II: FABRICATION, CONSTRUCTION, AND INTEGRATION:** Scope of Work to be determined at completion of Phase I, should COUNTY choose to proceed to Phase II of this Agreement in accordance with Article 2] of the Agreement. ARTIST shall be responsible for contracting directly with the independent third party artist, the Allied Artist, for Phase II services and shall be solely responsible for paying the paying the Allied Artist the funds stated in Article 4 of this Agreement.

[The remainder of this page intentionally left blank.]

EXHIBIT B
COMPENSATION AND SCHEDULE OF PAYMENTS
_____ PROJECT
AGREEMENT BETWEEN BROWARD COUNTY AND _____
FOR ARTISTIC SERVICES

Phase I: Design

Each Invoice must be submitted on the COUNTY's standard Vendor Invoice form (in the form provided by Contract Administrator or attached hereto as an exhibit), and accompanied by documentation where appropriate as determined by the Contract Administrator and a narrative report summarizing work completed during each milestone period, based upon the stated Scope of Services and payment description. Each invoice shall be accompanied by release of liens and/or consent of surety relative to the Work which is covered by a Payment Bond pursuant to [Article 2] of this Agreement.

In the event that the anticipated order of the Work is changed after Payment # _____ after _____, ARTIST may bill for a specified payment or for a partial payment, upon approval in writing by Contract Administrator, in his/her sole discretion, once that Work is completed. The amount of partial payment is subject to prior written approval of the Contract Administrator; however, in no event, may the amount of a partial payment exceed the value of services actually completed. _____ (____) milestone payments shall be made as follows:

Payment #__: _____

Payment #__: _____

Payment #__: _____

Payment #__: _____

The COUNTY and ARTIST agree that ARTIST shall be solely responsible for making any and all payments to <<<any other artist _____>>, and the independent third party artist referred to herein as the "Allied Artist.". Upon payment by the COUNTY to ARTIST the COUNTY shall automatically be relieved of any and all payments for services performed by <<<any other artist _____>>, and the Allied Artist.

[The remainder of this page intentionally left blank.]

EXHIBIT C

Catalog #_____

**BROWARD COUNTY PUBLIC ART AND DESIGN
CATALOGING FORM**

NOTE: Please add attachments to provide comprehensive information for the following:

I. Artist Information

A. 1. Name:

2. Name you want to use on label and PR materials, if differs from above:

B. Date of Birth:

C. Place of Birth:

D. Address, e-mail, web site:

E. Phone: Business:

Home:

FAX:

F. One paragraph biography of ARTIST:

EXHIBIT C – (Continued) Catalog #_____ (Page 2 of 4)

II. Work of Art

A. Title:

B. Medium:

C.1. Dimensions in inches or centimeters:

H: W: D:

2. Image with frame (if any):

H: W: D:

D. Frame Description:

E. Inscription, marks:

F. In case of portable and multiple artwork, note on ARTIST preference for display
(ex: sequential series, installation height, spacing, etc.):

G. Artwork with electronic components used:

-Name of item:

-Manufacturer info (address, telephone, fax, e-mail):

-Supplier info (address, telephone, fax, e-mail):

EXHIBIT C – (Continued) Catalog # _____ (Page 3 of 4)

H. ARTIST's statement:

III. Fabrication Information

A. Material(s) used in Artwork:

B. Material Finish:

C. Materials used in the presentation of the project (maquette):

D. Fabricators (name, address, phone, fax, e-mail, web site):

E. Fabrication method (attach diagrams or drawings):

F. Architect/Engineer (name, address, telephone, fax, e-mail):

IV. Installation

A. Installation executed by (name, address, phone, fax, e-mail, website):

B. Installation method (attach diagram of substructure, footings):

C. Date of Installation:

V. Documentation

A. 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 300dpi and two (2) professional 8" x 10" color photographs.

EXHIBIT C – (Continued) Catalog #_____ (Page 4 of 4)

V. External Factors

A. Describe physical positioning of the artwork:

B. Describe existing environmental factors which may affect the condition of the artwork:

C. If the Artwork is site-specific, describe the relationship of the Artwork to its site:

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

A. Short-term:

B. Long-term:

C. Note desired appearance of the artwork:

VII: Digital copies for use in repair of sound art and graphic reproduction:

<<Insert ARTIST's complete name>>

Authorized Signature for ARTIST

Date

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

EXHIBIT D
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 project in accordance with Section 4.5.1 of 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 or
supplier's name
and address

Date of disputed
invoice

Amount in
dispute

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

Dated _____, 20____

<<Insert ARTIST's name above>>

By _____
(Authorized Signature for ARTIST-
CONTRACTOR)

By _____
(Name and, if applicable, Title
of Authorized Signature above)

EXHIBIT D - Continued
CERTIFICATION OF PAYMENTS TO SUBCONTRACTORS AND SUPPLIERS

STATE OF)
) SS.
COUNTY OF)

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__.

(NOTARY SEAL)

(Signature of person taking acknowledgment)

(Name of officer taking acknowledgment)
typed, printed, or stamped

(Title or rank)

My commission expires:

(Serial number, if any)

EXHIBIT E
INSURANCE CERTIFICATE

[Insurance certificate is attached.]

EXHIBIT F – Insurance Suspension Form

<<Insert name of project>>
ARTIST: <<Insert name of ARTIST>>
Date of original Agreement: _____

<<Insert approved provisions from the COUNTY's Risk Management Division>>

APPROVED BY COUNTY'S RISK MANAGEMENT DIVISION:

By: _____ Date: _____
Authorized Signature

Print Authorized Name and, if applicable,
Title of Authorized Signature above

AGREED TO AND APPROVED BY ARTIST:

<<Insert name of ARTIST in CAPS>>

By: _____ Date: _____
Authorized Signature for ARTIST

Print Authorized Name and, if applicable,
Title of Authorized Signature above

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