

AGREEMENT

Between

BROWARD COUNTY

and

for

PURCHASE OF ARTWORK

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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

<<Insert name of ARTIST>>, an individual, hereinafter referred to as
"_____."

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

WHEREAS, the COUNTY's Public Art and Design Program, provides for Artwork to be functionally integrated; and

WHEREAS, "_____" submitted design proposals in response to the COUNTY's Public Art and Design Committee's ("Committee") Call to Artist for _____; and

WHEREAS, ARTIST's proposals were selected by the COUNTY for the _____ project; and

WHEREAS, ARTIST has been selected to _____; and

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

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

WHEREAS, negotiations pertaining to the services to be performed and the compensation therefor were undertaken the COUNTY and "_____" and this Agreement incorporates the results of such negotiations; 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

The definitions and identifications set forth below are assumed to be true and correct and are agreed upon by the parties.

- 1.1 "_____": is the individual artist selected pursuant to this Agreement.
- 1.2 **ARTWORK:** Any work(s) of art purchased under this Agreement.
- 1.3 **CONTRACT ADMINISTRATOR:** The Director of the Broward 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 Article 7, "NOTICES."
- 1.4 **COUNTY:** Broward County, a body corporate and politic and a political subdivision of the state of Florida.

ARTICLE 2
PURCHASE AND COMPENSATION

- 2.1 ARTIST has created a certain Artwork or is the owner of a piece of Artwork as more fully described in Exhibit A, Scope of Services, attached hereto.
- 2.2 ARTIST hereby transfers full rights, title, interests, and possession of the aforementioned Artwork to the COUNTY with any approved redesigns in accordance with Exhibit A.

COUNTY agrees to pay ARTIST a fixed fee of _____ Thousand Dollars (\$_____) subject to the provisions on Exhibit "B" with no contingency and no reimbursable expenses. Payment shall be made to ARTIST as set forth in Exhibit "B," Compensation and Payment Schedule, attached hereto, within thirty (30) calendar days of receipt of a proper invoice from ARTIST. Compensation for transportation and installation costs, if any, shall be included as part of the total fixed fee stated above. Payment will be made to ARTIST payable in the name of <<<NOTE Insert name of ARTIST " _____ ">>> at:

ARTIST agrees to provide his/her/its federal identification number on a form available from Contract Administrator at the time of his execution of this Agreement or within five (5) calendar days after such execution by ARTIST.

- 2.3 ARTIST may change any of the information provided under Section 2.2 herein by providing notice of such change to Contract Administrator using the notice procedure under Article 7, "NOTICES."
- 2.4 It is understood that the COUNTY has no obligations whatsoever with respect to sales commissions or any fee agreements with galleries or other agents with whom ARTIST may have contracted for the sale of the Artwork.
- 2.5 The Artwork is to be delivered by ARTIST for installation in accordance with Exhibit "A."

2.6 If ARTIST is responsible for the installation of the Artwork, the following provisions shall apply:

- (a) any unusual or extraordinary installation requirements, including engineering studies prior to ARTIST 's application for permit(s), whether to be performed by ARTIST or others, shall be authorized by the COUNTY in writing before the start of the installation; and
- (b) ARTIST shall at all times during the term of this Agreement maintain in force those insurance policies as outlined in Exhibit "D," Certificate of Insurance, attached hereto. Such Certificate of Insurance shall provide COUNTY with thirty (30) days' prior written notice of any cancellation and/or non renewal.

2.7 Before final payment, ARTIST shall provide COUNTY with the following items:

- (a) ARTIST's current professional resume,
- (b) Exhibit "C," Cataloging Form, including past owner(s) and provenance of Artwork,
- (c) detailed information concerning the materials used in the creation of the Artwork and in the event that Work is assembled, engineering or detailed drawings, and
- (d) Additional documentation as specified on Exhibit "A."

2.8 OBLIGATIONS OF COUNTY: COUNTY shall:

- a. provide all public information available pertaining to the Project to ARTIST without cost;
- b. arrange access to public and private property as required for ARTIST to perform the services under this Agreement;
- c. give prompt written notice to ARTIST whenever the COUNTY observes or otherwise becomes aware of any development that affects the scope or timing of ARTIST 's services;
- d. arrange COUNTY meetings and consultations as needed for ARTIST to fulfill ARTIST's obligations under this Agreement; and
- e. review materials submitted pursuant to this Agreement in a timely manner.

ARTICLE 3
TERM AND TIME OF PERFORMANCE

- 3.1 The term of this Agreement shall begin on the date it is fully executed by both parties and shall end on _____, 20_____, subject to earlier termination as provided for herein; however, if the term of this Agreement extends beyond a single fiscal year of COUNTY, the continuation of this Agreement beyond the end of any fiscal year shall be subject to the availability of funds from COUNTY in accordance with Chapter 129, Florida Statutes, as amended. The County Administrator may execute amendment(s) with ARTIST to extend the term of this Agreement.
- 3.2 All duties, obligations, and responsibilities of ARTIST required by this Agreement shall be completed no later than _____, 20_____. Time shall be deemed to be of the essence in performing the duties, obligations, and responsibilities required by this Agreement.
- 3.3 The provisions of Exhibits "A" and "B" have been agreed to in anticipation of the orderly and continuous progress of the Project.
- 3.4 In the event ARTIST is unable to complete the services because of delays which are not the fault of ARTIST, the Contract Administrator may grant a reasonable extension of time for completion in writing to ARTIST. The determination of whether a delay is the fault of ARTIST shall be made by the Contract Administrator, and ARTIST agrees to abide by the Contract Administrator's decision.

ARTICLE 4
WARRANTIES/STANDARDS

- 4.1 ARTIST warrants that the Artwork being purchased is: (a) the original product of ARTIST's own creative efforts; (b) unless otherwise stipulated, the Artwork is original, that it is an edition of one (1); and (c) that ARTIST shall not sell or reproduce the Artwork, or allow others to do so without the prior written consent of COUNTY. ARTIST warrants that, except as disclosed in detail on Exhibit "A," no reproduction or use of the likeness of the Artwork has been authorized by ARTIST.
- 4.2 Warranty of Quality. ARTIST warrants that the Artwork shall be free of defects in material and quality of work, including any defects consisting of "inherent vice" or qualities accelerating deterioration of the Artwork and that ARTIST correct any defects which appear within a period of two (2) years from Final Acceptance of the Artwork at the "_____" expense. 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 shall 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 the 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 by the COUNTY.

- 4.3 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.
- 4.4 ARTIST shall deliver the Artwork to the COUNTY free and clear of any liens from any source whatsoever.

ARTICLE 5 ARTIST'S RIGHTS AND WAIVER

- 5.1 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 his or her name from the Artwork. Any such request shall be provided to COUNTY in accordance with the requirements of Article 7.
- 5.2 ARTIST understands and agrees that 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.

- 5.3 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.
- 5.4 The COUNTY shall reasonably assure that the Artwork is properly maintained and protected, taking into account the recommendations of ARTIST.
- 5.5 ARTIST may be given the right of first refusal to perform repairs. If the parties cannot come to agreement for repair services, 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 expense in accordance with recognized principles of conservation.
- 5.6 In the event the Artwork cannot be successfully restored in accordance with Section 4.2, 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 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) days of written notice from the COUNTY. 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.
- 5.7 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 6 COPYRIGHT

- 6.1 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 Artist's 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.

- 6.2 ARTIST agrees that the Artwork provided under this Agreement complies with all applicable patent, trademark and copyright laws, rules, regulations, and codes. ARTIST further agrees that the Artwork will not use any protected patent, trademark or copyright unless ARTIST has obtained proper permission and all releases and other necessary documents.
- 6.3 If ARTIST uses any protected material, process or procedure, ARTIST shall disclose such patent, trademark or copyright in the construction drawings and technical specifications.
- 6.4 WARRANTY OF AUTHORIZATION AND NON-INFRINGEMENT. ARTIST warrants that the Artwork 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 7
NOTICES

Whenever either party desires to give notice to the other, it must be given by written notice, sent by registered or certified United States mail, with return receipt requested, addressed to the party for whom it is intended, at the place last specified, and the place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice, to-wit:

FOR COUNTY:

Director
Attn: _____, Director
Broward County Cultural Division
100 South Andrews Avenue
Fort Lauderdale, Florida 33301

FOR ARTIST:

Either party may change its information provided in Section 7 herein by providing written notices to the other party using the notices procedures in Section 7, "NOTICES" herein. The information in Section 2.3 and the Contract Administrator may also be changed at any time using the notices procedure in Section 7, "NOTICES" herein.

ARTICLE 8 INDEMNIFICATION AND INSURANCE

8.1 INDEMNIFICATION

ARTIST shall at all times hereafter indemnify, hold harmless and, at County Attorney's option, defend or pay for an attorney selected by County Attorney to defend COUNTY, its officers, agents, servants, and employees against any and all claims, losses, liabilities, and expenditures of any kind, including attorney fees, court costs, and expenses, caused by the 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. ARTIST shall at all times hereafter indemnify, hold harmless and, at County Attorney's option, defend or pay for an attorney selected by the County Attorney to defend COUNTY, its officers, servants, agents, and employees against any and all claims, losses, liabilities, and expenditures of any kind, including attorney fees, court costs, and expenses, resulting from the performance of work under this Agreement which infringes upon any patent, trademark, trade name, copyright or otherwise results in unfair trade practice. The provisions and obligations of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by Contract Administrator and 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.

8.2 [OPTION#1] INSURANCE

In the event that COUNTY requires ARTIST to provide insurance, ARTIST shall at all times during the term of this Agreement maintain in force those insurance policies as outlined in Exhibit "D," Certificate of Insurance, attached hereto.

Such certificate of insurance shall provide COUNTY with thirty (30) calendar days' prior written notice of any cancellation and/or non-renewal.

Coverage must reflect COUNTY in the name of "Broward County and Broward County Board of County Commissioners" as additional insured(s). The certificate holder address shall read "Broward County, Florida." The official title of the owner is Broward County Board of County Commissioners. 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. If any of the insurance coverages will expire prior to the completion of the work, copies of renewal policies shall be furnished at least thirty (30) days prior to the date of their expiration.

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.

8.2 [ALTERNATIVE OPTION #2] INSURANCE

ARTIST shall during the term of this Agreement, maintain in force those insurance policies as designated in the Exhibit " D," entitled "Certificate of Insurance" attached hereto. 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.

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.

The COUNTY's Risk Management Division, through its Director, its Assistant Director or Risk Insurance Requirements Manager may authorize 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.

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. If any of the insurance coverage will expire prior to the completion of the work, copies of renewal policies shall be furnished at least thirty (30) days prior to the date of their expiration.

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.

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 9 MISCELLANEOUS

9.1 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.

9.2 NONDISCRIMINATION

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 may be amended from time to time). 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.

9.3 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.

9.4 RISK OF LOSS

ARTIST shall bear the full risk of loss of or damage to the Artwork until the Artwork is installed and accepted by the COUNTY.

9.5 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) COUNTY business days after the finding by the court becomes final.

9.6 ENTIRE AGREEMENT.

This Agreement constitutes the entire understanding and agreement between the parties and may not be altered, changed, or modified except by a written instrument signed by all parties against whom enforcement would be sought.

9.7 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 9.7.

9.8 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 may be amended from time to time), 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 may be amended from time to time, 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.

9.9 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. The parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement.

9.10 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 Artwork 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 his 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.

9.11 CONTINGENCY FEE

To the extent required by the funding source for this Agreement, 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.

9.12 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.

9.13 COMPLIANCE WITH LAWS

ARTIST shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations (as may be amended from time to time) in performing its duties, responsibilities, and obligations pursuant to this Agreement.

9.14 JOINT PREPARATION

Each party and its counsel have participated fully in the review and revision of this Agreement and acknowledge 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. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

9.15 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 9 of this Agreement shall prevail and be given effect.

9.16 AMENDMENTS

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 compensation, and 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.

9.17 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.

9.18 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 Payment), "C" (Cataloging Form), and "D" (Certificate of Insurance), are attached hereto, 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.

9.19 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.

9.20 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.

9.21 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.

9.22 TERMINATION

9.22.1 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 by the Board or County Administrator 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.

- 9.22.2 This Agreement may be terminated for cause by COUNTY by for reasons including, but not limited to, ARTIST's repeated (whether negligent or intentional) submission for payment of false or incorrect bills or invoices, 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.
- 9.22.3 Notice of termination shall be provided in accordance with the "NOTICES" section of this Agreement except that notice of termination by Contract Administrator which Contract Administrator deems necessary to protect the public health, safety, or welfare may be verbal notice which shall be promptly confirmed in writing in accordance with the "NOTICES" section in Article 7 of this Agreement.
- 9.22.4 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.
- 9.22.5 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" in Section 9.23.
- 9.22.6 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.

9.23 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.

9.24 SURVIVAL

The following provisions shall survive the expiration or earlier termination of this Agreement: Article 4, "Warranties/Standards"; Article 5, "Artist's Rights and Waiver"; Article 6, "Copyright"; Section 8.1 relating to "Indemnification"; Section 9.1, "Jurisdiction, Venue, Waiver of Jury Trial"; and Section 9.19, "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): Article 7, "Notices," and Section 9.7, "Audit Right and Retention of Records."

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

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

COUNTY

WITNESSES:

BROWARD COUNTY, through the
Broward County Administrator

Signature

By _____
County Administrator

Print/Type Name

_____ day of _____, 2011

Signature

Approved as to form by
Office of County Attorney
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
2012ArtPurchase-form -[10-04-11]
10/04/11
#11-110.12

AGREEMENT BETWEEN BROWARD COUNTY AND _____ ARTIST FOR
PURCHASE OF ARTWORK

ARTIST

WITNESSES:

<<<ARTIST>>>

Signature
Print Name:_____

By _____
Authorized Signature ARTIST>>
_____ day of _____, 20____

Signature
Print Name:_____

IF CORPORATION ADD

ATTEST:

Corporate Secretary or authorized
person

(SEAL)

**EXHIBIT A
SCOPE OF SERVICES**

**_____PROJECT
PURPOSE: LOCATION OF ARTWORK:
ARTWORK QUALITIES:.**

**ADMINISTRATIVE COORDINATION:
DESIGN COORDINATION:
INSTALLATION COORDINATION:**

DELIVERABLES: The ARTIST shall provide the following deliverables:

1. **Preliminary Design Development**
2. **Final Design Development**
3. **Fabrication and Installation**
ARTIST shall perform site visits at the following installation stages:
4. **Final Conservation Documents**

**TIMELINE FOR COMPLETION:
PERMITS:
DUANE HANSON ALLIED ARTIST:**

**DOCUMENTATION:
EDUCATIONAL OUTREACH AND COMMUNITY PROCESS:
COMPLETION AND INSPECTION:**

EXHIBIT B

**COMPENSATION AND SCHEDULE OF PAYMENT
_____ PROJECT**

Compensation to ARTIST shall be paid in _____(____) milestone payments, upon satisfactory completion of each stage as determined by CONTRACT ADMINISTRATOR in his/her sole discretion, for an amount not to exceed \$ _____.

Each invoice shall include a written Report utilizing the COUNTY's standard Vendor Invoice form provided by the CONTRACT ADMINISTRATOR, with a narrative discussion of all activities in progress during the report period as described below, and photo documentation where appropriate or requested, based upon the stated Scope of Services and payment description.

In the event that the anticipated order of work is changed, ARTIST may bill for a specified payment or for a partial payment, upon prior approval in writing by CONTRACT ADMINISTRATOR, 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:

-

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

EXHIBIT C Catalog # _____

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

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

I. Artist (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. Telephone: Business:

Home:

FAX:

F. One paragraph biography of artist:

II. Work of Art (Artwork)

A. Title:

EXHIBIT C Catalog # _____

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 information (address, telephone, fax, e-mail):

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

H. Artist's statement:

EXHIBIT C Catalog # _____

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, telephone, 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, telephone, fax, e-mail, website):

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

C. Date of Installation:

V. External Factors

A. Describe physical positioning of the Artwork:

EXHIBIT C Catalog # _____

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:

ARTIST: _____, ARTIST

Authorized Signature for Artist
_____, ARTIST

Date

EXHIBIT D

CERTIFICATE OF INSURANCE

[The approved Certificate of Insurance or the approved Waiver of Insurance as approved by COUNTY's Risk Management Division is attached.]

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