

# PROFESSIONAL ARTIST SERVICES AGREEMENT

BETWEEN  
MIAMI-DADE ART IN PUBLIC PLACES TRUST  
AND  
**ARTIST**  
FOR  
PROPOSAL DEVELOPMENT SERVICES

THIS PROFESSIONAL ARTIST SERVICES AGREEMENT FOR PROPOSAL DEVELOPMENT SERVICES, is made and entered into this **DATE that the reso was approved**, by and between the Miami-Dade County Art in Public Places Trust, a citizen board appointed by the Miami-Dade Board of County Commissioners and hereinafter referred to as the "**Trust**", and **ARTIST** hereinafter referred to as the "**Artist**".

WITNESSETH:

WHEREAS, the County is implementing a public art program as set forth in Section 2-11.15 of the Code of Miami-Dade County, allocating certain funds for the acquisition of art works for public places and authorizing the Art in Public Places Trust to approve the selection of artists and make payments for the design, fabrication and installation of works of art; and

WHEREAS, funds for art have been allocated in accordance with Ordinance 94-12 from the Code of Miami-Dade County; and procedures duly adopted by the County; and **PROJECT NAME for DEPT; and procedures duly adopted by the County; and**

WHEREAS, the Artist was selected by the Trust through procedures duly adopted by the County under **Trust Resolution No. APPT RESOLUTION**, approving a Proposal Contract with the Artist as set forth herein; and

WHEREAS, both parties wish the integrity and clarity of the Artist's ideas in the work of art to be maintained;

NOW THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties agree as follows:

## DEFINITIONS

### WORDS AND TERMS

The words and terms as used in this Agreement shall have the following meanings unless some other meaning is plainly and clearly set forth.

#### Architect

"**Architect**" means design professional team selected by the Client

#### Artist

"**Artist**" means **ARTIST**

Client

“**Client**” means the **CLIENT** and its designated project management staff with whom the Artist will collaborate in the development of his/her proposal

Consultants

“**Consultants**” means design, engineering or other professional consultants contracted by the Client and or its designee with which the "Artist" may be required to interact for purposes of completing the "Services" as described in this Agreement

County

“**County**” means Miami-Dade County, Florida

Director

“**Director**” means the Director of the Miami-Dade County Department of Cultural Affairs

Construction Manager

“**Construction Manager**” means a Florida certified general contractor contracted by the Client to perform pre-construction and construction services on the project site with which the "Artist" may be required to interact for purposes of completing the "Services" as described in this Agreement

Proposal

“**Proposal**” means the artwork suggested by the Artist and its visual/written documentation for the **PROJECT NAME at PortMiami**

Services

“**Services**” means the Scope of Services described in Article I of this Agreement

Subcontractor

“**Subcontractor**” means any entity retained by the Artist for activities other than the creative and artistic portions of the work

Trust

“**Trust**” means Miami-Dade Art in Public Places Trust

ARTICLE I

**SCOPE OF SERVICES**

**1.1 GENERAL**

The Artist shall develop and submit to the Trust a Proposal for a work of art (the "Work") for the **PROJECT** (the "**Project**") located at **SITE** (the "**Site**").

**1.2 PROPOSAL FORMAT**

The Proposal shall be submitted in both electronic format (PDF or PowerPoint file) and hard copy and shall be in the following form:

1.2.A) A Proposal Narrative (the "**Artist's Proposal Statement**") describing the Artist's Design Intent and drawings, graphic or other visual representation of the Work, together with such other data and graphic material as is necessary to portray the Site preparation and permit the County to assess its feasibility and compliance with applicable statutes and ordinances; and

1.2.B) A Preliminary Project Budget (the "**Budget**") outlining "Probable Construction Costs" for the fabrication, delivery, site preparation and installation of the Work. The Budget will include applicable headings for all work to be performed by the Artist and any work to be subcontracted by the Artist, as well as any specialty items such as mock-up samples and models anticipated by the Artist to be part of the costs to fabricate and install the Work.

**1.3 PROCEDURE**

The Artist shall determine the artistic expression, size, material, texture, color, location and method of fabrication of the Work, all subject to review and acceptance by the Trust, as provided below.

1.3.A) Promptly after the execution of this Agreement the Artist shall meet with the Miami-Dade Art in Public Places (APP) Project Management Team and the Client Design Team in order to receive from them a full review of the planning process involving the design of the Project, a full review and discussion of all plans developed for the Site and complete background information regarding all considerations affecting the plans for the Area (the "Project Orientation Meeting").

1.3.B) The Artist shall submit the completed Proposal to the Trust on the date designated for the Proposal Presentation Meeting. The artist will be promptly notified in writing of this date, which will be within 4-5 weeks from the date of the Project Orientation Meeting.

- 1.3.C) On or before the expiration of 30 days after the original submission to the Trust by the Artist of the Proposal, the Trust shall notify the Artist whether it has approved the Proposal.
- 1.3.D) If the Trust determines that the Proposal is not acceptable, it shall provide the Artist a statement in writing of the reasons for such determination. In such event, the Trust may at its option either terminate this Agreement as provided in Article III, Section 3.6 below or afford the Artist an opportunity to submit a new Proposal for the Work within a reasonable period of time specified by the Trust, and the Trust shall notify the Artist within 30 days after any such second submission of its determination as to the acceptability of such Proposal; if it determines that the Work as so proposed is not acceptable, it shall provide to the Artist a statement in writing of the reasons for such determination, and this Agreement shall terminate as provided under Article III, Section 3.6 below.
- 1.3.E) The Artist shall attempt to negotiate an agreement for Additional Services for the Work upon notification to the Artist by the Trust that the Proposal has been approved.

## ARTICLE II

### COMPENSATION

#### 2.1 FIRM FIXED PRICE

The Trust shall pay the Artist a Not-to-Exceed Fee (the "**Artist's Proposal Fee**") in the amount of **WRITTEN AMOUNT** AND NO CENTS (\$**NUMERIC AMOUNT**) for the preparation of a Conceptual Design Proposal for the Project. THE NOT-TO-EXCEED ARTIST'S FEE SHALL CONSTITUTE FULL COMPENSATION FOR ALL SERVICES AND MATERIALS TO BE PERFORMED AND FURNISHED BY THE ARTIST UNDER THIS AGREEMENT, INCLUDING THE ARTIST'S FEE, ANY SUBCONTRACTED WORK, TRAVEL EXPENSES, AND/OR ANY RELATED OVERHEAD EXPENSES. The Artist's Proposal Fee includes one (1) working meeting for purposes of conducting site visit and/or meeting with the Project's Design Team and the County as may be deemed appropriate to complete the Services outlined in this agreement, and one (1) meeting to present the design proposal to the Professional Advisory Committee panel for review (the "Proposal Presentation Meeting").

## **2.2 METHOD OF PAYMENT**

### **2.2.A) Artist's Proposal Fee**

The Trust shall pay the Artist the Not-to-Exceed Fee in preparation of the Conceptual Design Proposal for the Project in one lump sum of \$NUMERIC AMOUNT upon completion of the services, receipt of the artist's invoice, and verification and approval by the Director.

## ARTICLE III

### **GENERAL CONDITIONS**

#### **3.1 OWNERSHIP OF INSTRUMENTS OF SERVICE**

Upon completion of the Services, all designs and other data, including the model, developed by the Artist and delivered to the Trust for the purpose of this Agreement, shall become the property of the County. All data as described herein shall be delivered to the Director prior to completion of the Agreement and final payment to the Artist. The County does not intend to own the copyright of the Work.

#### **3.2 TIME EXTENSIONS**

A reasonable extension of contract time will be granted by the Trust in the event there is a delay on the part of the County in fulfilling its part of the Agreement or should conditions beyond the Artist's control or Acts of God render performance of his/her duties impossible. Where such conditions arise, the Artist shall so notify the Director in writing with an explanation describing the circumstances that do not permit him/her to complete the services as described in this Agreement in the time allotted. In such event, the parties hereto understand and agree that the Director shall be the sole judge of what constitutes "beyond the Artist's Control".

#### **3.3 WARRANTY OF ORIGINALITY**

The Artist warrants that the tangible objects it delivers to the County in the performance of this Agreement shall be the result of the artistic efforts of the Artist and that, unless otherwise stipulated, the Work shall be unique and an edition of one.

#### **3.4 ASSIGNMENT, TRANSFER OR SUBCONTRACTING**

A material element of this Agreement is the personal skill, judgement and creativity of the Artist. Therefore, the Artist shall not assign, transfer or subcontract the creative and artistic portions of the Work to another party without the prior written approval of the Director.

**3.5 INDEPENDENT CONTRACTOR**

The Artist is an independent contractor and nothing in this Agreement shall be construed as constituting the Artist an employee, agent or representative of the County. The Artist shall not be supervised by any employee of the County, nor shall the Artist exercise supervision over any employee or officials of the County.

**3.6 TERMINATION FOR CONVENIENCE**

Performance by either party under this Agreement may be terminated for the convenience of either party at any time upon furnishing sixty (60) days written notice to the other party. In the event of termination for convenience of either party, the Artist shall at his/her discretion have the right to either:

3.6.A) an equitable adjustment in the fee (without allowance for an anticipated profit on unperformed services) in which event the Trust shall have the right at its discretion to possession and transfer of title to the sketches, design, and models already produced and submitted or produced for submission by the Artist under this Agreement prior to the date of termination, provided that no right to fabricate or execute the Work shall pass to the Trust; or

3.6.B) the possession of all sketches, designs, models or other documents or materials produced and submitted or produced for submission to the Trust in the course of the Artist's performance under this Agreement prior to termination, in which case the Artist shall remit to the Trust a sum equal to all payments (if any) made to the Artist pursuant to this Agreement prior to termination.

**3.7 CONFLICT OF INTEREST**

The Artist covenants that he/she presently has not interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of Services under this Agreement. The Artist further covenants that in the performance of this Agreement, no person having such interest shall be employed by the Artist.

**3.8 PUBLICITY AND NEWS RELEASES**

The Artist shall not during the performance of this Agreement disseminate publicity or news releases regarding this project or the Services without prior written approval of the Director.

(THIS AREA LEFT BLANK INTENTIONALLY)

**3.9 ENTIRETY OF AGREEMENT**

This writing embodies the entire agreement and understanding between the parties hereto, and there are no other agreements and understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby. No alteration, change, or modification of the terms of the Agreement shall be valid unless made in writing and signed by both parties hereto and approved by appropriate action of the Trust. This Agreement, regardless of where executed, shall be governed by and consulted according to the laws of the State of Florida.

IN WITNESS WHEREOF the parties hereto have executed these presents this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

ATTEST:  
LUIS G. MONTALDO, CLERK AD INTERIM  
CIRCUIT AND COUNTY COURTS

MIAMI-DADE COUNTY, FLORIDA  
BY ITS ART IN PUBLIC PLACES TRUST

BY: \_\_\_\_\_  
DEPUTY CLERK

ATTEST:

BY: \_\_\_\_\_  
ARTIST

\_\_\_\_\_  
WITNESS

Approved as to form and legal sufficiency: \_\_\_\_\_

\_\_\_\_\_  
Michael Spring, Director  
Department of Cultural Affairs

Attachment: Trust Resolution APPT No. 20-##