

PROFESSIONAL ARTIST SERVICES AGREEMENT

BETWEEN
MIAMI-DADE ART IN PUBLIC PLACES TRUST

AND

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

FOR

PHASE I – DESIGN SERVICES

&

PHASE II – FABRICATION & INSTALLATION SERVICES

FOR THE

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

ARTWORK PROJECT

THIS PROFESSIONAL ARTIST SERVICES AGREEMENT FOR PHASE – I DESIGN SERVICES AND PHASE II – FABRICATION & INSTALLATION SERVICES “Agreement”), is made and entered into this XXX day of XXXX, 2020, 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 TBD 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 Section 2-11.15 of the Code of Miami-Dade County from XXXXXXXXXXXXXXXXXXXX.project; and procedures duly adopted by the County; and

WHEREAS, the Artist was selected for the name of project at location or owner agency or development by the Trust through procedures duly adopted by the County under Trust Resolution No. APPT 20-##, approving a Contract with the Artist as set forth herein;

WHEREAS, both parties wish the integrity and clarity of the Artist's ideas in the proposed 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 the Architect of Record and Primary Design Architectural Firm of XXXXXXXXXXXX, contracted by XXXXXXXXXXXXXXXXXXXXXXXX, (the "**Project**").

Artist

"**Artist**" means XXXXXXXXXXXXXXXX (lead artist XXXXXXXXXXXXXXXX). An essential and irrevocable condition of this agreement is the direct involvement and responsibility of the Artist identified as "lead artist" for all creative and/or artistic related elements of the Work. Under no circumstances may such responsibility be assigned and/or transferred to any other party.

Construction Manager at Risk

"**Construction Manager at Risk**" refers to XXXXXXXXXXXXXXXX, Inc. a business entity selected and contracted by Agency/Developer, to implement the construction of the new project reference.

Construction Project Team

"**Team**" refers to the collaborative forces of the Architect, Construction Manager at Risk, owner agency/developer., and any of their related subcontractors.

Consultants

"**Consultants**" means design, engineering or other professional consultants contracted by the XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX and/or the Architect or the Construction Manager at Risk as part of the Project team 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. The Director may designate a member(s) of his staff for the purposes of working with the Artist on the Work. The authority of the Director described in this Contract will not be delegated to the designated staff person.

Phase II Services

"**Phase II Services**" means those services, in whole or in part, as described under Article I, Section 1.1 and Section 1.3 of this Agreement.

Schematic Design Documents, Design Development Documents and Construction Documents

“**Schematic Design Documents**,” “**Design Development Documents**” and “**Construction Documents**” means the Instruments of Service for the design resolution and the fabrication and installation of the Work as described in Article I of this Agreement.

Services

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

Site

“**Site**” means the **official physical address or working coordinates**

Trust

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

Work

“**Work**” means the Artist’s recommended Proposal in its approved format (Refer to Exhibit C), which concept includes **TO BE DEFINED. Brief description of working concept as approved by PAC & Trust and potential revision per preliminary discussion with artist in the contract negotiation’s phase**

Work Plan

“**Work Plan**” refers to an Artist’s outline and schedule of proposed activities in sequential order describing the means and methods proposed for completion of the Work in each of its phases (Design / Fabrication / Installation.)

ARTICLE I

SCOPE OF SERVICES

1.1 BASIC SERVICES - PHASE I Design

The Artist shall perform all services, including travel, and furnish all supplies, materials and equipment as necessary for the completion of the following specific tasks:

- 1.1.A) Schematic Design Documents - The Artist shall prepare a refined narrative (the "Artist's Work Plan") describing the Artist’s design intent, drawings, models, 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 Director to assess its feasibility and compliance with applicable statutes and ordinances; and a preliminary project budget (the “Budget”) outlining “Probable Construction Costs” for

the fabrication, delivery, site preparation and installation of the Work (Exhibit C). 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. The proposal shall be developed within a not-to-exceed budget of **\$TBD** which shall be inclusive of Services to be performed by the Artist, from Schematic Design and Design Development through fabrication and installation. Documentation for the Schematic Design Phase of work shall include a listing of potential entities/vendors to be engaged by the Artist and a preliminary breakdown of each proposed portion of their work.

- 1.1.B) Design Development Phase. The Artist shall perform Design Development services to include but not be limited to the following: development of sketch models, research of structural and fabrication engineering requirements for compliance with applicable codes and standards and other related functional attributes of the intended design (as may be applicable), research and determination of the types and sources of materials for the Work, development of prototypes, testing of mock-up(s) if needed for verification of compliance with wind and stress tolerance requirements (all in accordance with the Florida Building Code and other applicable codes and standards), development of a final presentation prototype for review by the Director. In addition to the above-referenced services, the Artist shall, prior to completion of the Design Development Phase, refine the Scope of the Work and complete a Budget Reconciliation Review and submit these written documents to the Director.

The Budget Reconciliation Review will include the drafting by the Artist of a Preliminary Working Budget detailing cost breakdowns for major components of the work, all in sufficient form as to allow the Director to verify fiscal feasibility of the Work as refined under the Design Development Phase. Cost allocations shall be projected to a target completion date of the Work to be mutually agreed upon by the Artist and the Director and the applicable Construction Project Team. The Preliminary Working Budget shall include the following allowance(s) as applicable and deemed necessary by the Director:

Permit fees – fees generated by applicable Authorities Having Jurisdiction or governmental agency responsible for issuing required building permits. The need for permitting shall be determined during the project's Design Development Phase.

Surety bonds – Section shall be included if applicable to project scope and proposed phasing of the work / Otherwise DELETE

Insurance coverage in accordance with County requirements as described

in Section 4.13

Project Contingency of no less than 5% of the Firm Fixed Price noted under Section 2.1 to address unforeseen or unanticipated expenses arising while implementing the Work. The contingency fund shall remain unencumbered for the duration of the project. Any use of these funds is subject to the Director's prior approval. Upon substantial completion of the Work, remaining balance in the Contingency Allowance shall be dedicated to negotiating the purchase a work of art from the Artist's available inventory for accessioning in the Miami-Dade Art in Public Places Collection.

The Preliminary Working Budget shall not exceed the total construction budget amount described in 1.2.E below, unless approved by the Director in writing.

The Artist shall conduct research and recommend sources for materials and/or fabricators for the Work, all in sufficient form to allow the Director to verify compliance with applicable codes and standards, and related long-term maintenance requirements for each proposed design.

Preliminary Material Samples shall be furnished and be subject to the Director's approval prior to fabrication in an appropriate scale that allows the Director to properly assess the aesthetic and workmanship quality intended of the finished product. The Artist may be requested to submit up to two (2) samples for each proposed fabrication material and up to (1) sample for proposed technology-based elements of the Work, at no additional cost to the Trust, which materials will be retained by the Trust.

As part of the Design Development package the Artist shall develop a Maintenance Program Narrative. The Maintenance Program Narrative shall include a projected cost estimate for replacement parts of the Work (as may be applicable), allowances for the Artist's fee for maintenance (where applicable), and anticipated maintenance procedural requirements for no less than a ten (10) year period from completion of the Work to ensure the proper care and upkeep of the Work. The Artist shall make recommendations based on the latest resources and technologies available at the time that the Maintenance Program Narrative is drafted, with special attention to the logistics and fiscal constraints inherent in the facility where the artwork is to be located. Both parties hereto agree that the Maintenance Program Narrative shall constitute a "working" maintenance plan and may be modified upon request by the Director during the construction phase.

- 1.1.C) Fabrication and or Construction Documents and Administration. Upon completion of the Design Development Phase described above, and upon notice to proceed by the Director, the Artist shall finalize Fabrication and or Construction Documents for the Work and be engaged in related fabrication

and or construction administration activities to include but not be limited to the following: coordination with the Construction Project Team’s architectural/engineering consultants hired for purposes of completing verification of logistical requirements with respect to architectural, structural, electrical engineering considerations for the Site, and conducting site visits for coordination and planning with the Construction Project Team of construction phase of the Work. The Artist will submit to the Director a detailed Budget in the form outlined in 1.1.B. In addition, the Artist will submit a **Schedule** (“Project Schedule”) for fabrication and installation of the Work that is coordinated with the Construction Project Team’s updated and approved construction schedule. All costs associated with this phase of work are inclusive in the Artist’s Budget.

- 1.1.D) Construction Documents Format. All Work intended to be incorporated into the building shall include design documents by discipline as required by the Florida Building Code to procure a permit to construct the Work from the applicable Authorities Having Jurisdiction - Building Department (AHJ). The Artist shall provide three (3) original signed and sealed sets of architectural and engineering drawings, along with engineering calculations and other support documentation for the Work as may be applicable for the Artist to process the plan review by the AHJ. All architectural, engineered drawings, and calculations shall be signed and sealed by appropriately licensed Florida design professionals including architect (s) and or engineer(s). The Artist shall provide manufacturer’s product information, specifications, cut sheets, product warranty, material safety data sheets, etc. as may be appropriate to complete the submittals package and inform the Director with respect to the nature and quality of materials being proposed by the Artist for the Work.

1.2 PROCEDURE – PHASE I Design

The Artist shall solely determine/refine the artistic expression, size, material, texture, color, location and method of fabrication of the Work, all subject to review and acceptance by the Director for compliance with the Trust’s intent for the Project, any related project feasibility considerations as may be applicable, as provided below:

- 1.2A) Promptly after the approval by the Trust of the Conceptual Design Proposal, Work Plan, and preliminary project budget, the Artist shall meet with the Director and the Construction Project Team in order to coordinate the process and schedule milestones for the completion of critical tasks and delivery of submittals pursuant to the Services to be performed under this Agreement.
- 1.2B) The Artist shall coordinate the completion of the Services outlined in this Agreement with the schedule approved by

Director, and shall complete the Instruments of Services for Phase I – Design on or before (###) calendar days from the date of the Trust’s issuance of the artist’s first payment as described under Section 2.2.A.1.

- 1.2C) All required submittals shall be delivered to the Director in sufficient form to allow for review, comments, and acceptance of the material. Submittals may be delivered for preliminary review in an acceptable electronic format (PDF), and may be resubmitted by the Director in hard copy to the Trust upon their acceptance by the Director. All submittals are subject to review and comments by the Director, the Director’s designated staff, and the Construction Project Team.
- 1.2D) Timeframe for completing the review and acceptance of submittals is at the sole discretion of the Director. However, a reasonable time of 10 working days shall be anticipated for completion of each required review.
- 1.2E) The Artist shall, upon completion of the Services outlined in this Phase I portion of the Agreement and prior to final payment, submit to the Director a **Schedule** which **shall be coordinated with the Construction Project Team’s then current updated and approved construction schedule** and finalized **Budget of Probable Construction Costs** for the Work in sufficient form to negotiate an Addendum to the Phase II portion of this agreement to include Fabrication, Installation and/or Construction Management Services, which total aggregate amount **shall not exceed \$TBD (balance of Project Budget Allocation minus paid Design Portion)**
- 1.2F) The Artist shall, upon completion of the Services outlined in this Agreement and prior to final payment, submit proof to the Director of final releases of claims from each of its subconsultants, subcontractors, vendors, and material suppliers, or a Consent of Surety that satisfies the requirements of Section 10-35 Code, Miami-Dade County, Florida.

1.3 BASIC SERVICES – PHASE II Fabrication and Installation

It is anticipated that based on the satisfactory completion of Phase I Design Services and notice of acceptance by the Director, basic services for Phase II Fabrication and Installation may be negotiated by and between the Artist and the Director, including additional fee and costs as are deemed appropriate. Negotiations for Phase II Services may commence during performance of this Agreement or after the completion of the Services outlined herein, if mutually agreed upon in writing by the Artist and the Trust. The Phase II negotiated

services, if approved by the Trust, will be incorporated into this Agreement by form of an Amendment and/or Addendum as deemed appropriate by the Director. The following Basic Services may be contracted in whole or in part as a result of the Director's acceptance of the Phase I Design Services and may be negotiated at a later date:

- 1.3.A) Fabrication of the Work: when the Work is to be fabricated and installed by the Artist.
- 1.3.B) Construction Management Services: to include the on-site observation and monitoring of the progress, process, and quality of installation of the of the Work, when the Work is to be installed under the Construction Manager at Risk contract, and which involves the Artist's making periodic trips to the site to assist the Director and the Construction Project Team in verifying compliance with the Construction Documents and the Artistic Design Intent as developed for the Work.
- 1.3.C) Installation: of special items or of the Work when deemed by the Director as not able or desirable to be completed by any party other than the Artist and or the Artist's own forces.
- 1.3.D) Review and Approval: of Artist's design-related construction material samples, shop drawings and/or other third-party submissions for conformance with the Construction Documents and the Artist's Design Intent as developed for the Work.
- 1.3.E) Documentation & Reporting: to include providing the Director and the Construction Project Team with field reports documenting site activity observed with any recommendations necessary to assure conformance to Construction Documents and the Artist's Design Intent as developed for the Work.
- 1.3.F) Documentation of the Work. The Artist shall, upon installation of the Work and on or before submittal of a final request for payment, deliver to the Director a complete Project Closeout Package (EXHIBIT E), per current Closeout Documentation Guidelines, at minimum including the following documentation of the Work for the Trust:
 - 1.3.F.1) Two (2) USB storage devices (or other approved portable storage media) or digital file transfer containing a selection of images in both high and low resolution of the completed Work
 - 1.3.F.2) Two (2) sets of at least four (4) different 8" x 10" color

photographic prints that best represent the completed Work

1.3F3) Three (3) copies of each booklet, brochure, catalogue, print or invitation notice, if any, prepared by or at the direction and control of the Artist, pertaining to the Work performed under the terms of this Agreement; and

1.3F4) One (1) full set of "As-built" drawings as well as any and all construction, fabrication and installation specifications, drawings or other documentation pertaining to the Work.

1.3F5) One (1) Signage Package produced in collaboration with APP in compliance with applicable Project Closeout Guidelines and current signage standards for the Miami-Dade Art in Public Places Collection. Quantity, sizes, and placement of signage materials is to be determined in coordination with APP designated staff.

All documentation materials, whether of a physical and or an electronic nature, are subject to the Director's prior approval.

1.4 PROCEDURE – PHASE II Fabrication and Installation

Authorization to proceed with Phase II is contingent upon successful completion of Phase I – Design and on the XXXXX project generating the anticipated funding for this artwork commission. Additional terms and conditions for Phase II Work may be incorporated into this Agreement via Amendment or Addendum as deemed appropriate by the Director, and approved by the Trust, and as particularly described below:

1.4.A) Promptly after the execution of the Amendment or Addendum for Phase II Services, the Artist shall meet with the Director, the Construction Project Team, and any other party related to the project to coordinate the fabrication and installation process and schedule milestones for the completion of tasks pursuant to the Services to be performed under the Phase II Agreement.

1.4.B) The Artist shall coordinate the completion of the Services outlined in the Amendment or Addendum for Phase II portion of this agreement with the Construction Project Team's updated and approved construction schedule and shall update the Schedule for the Work in coordination with updates made by the Construction Project Team to the construction schedule for the Applicable Project Name. The Artist shall submit to the Director for approval each updated Schedule for the Work.

1.4.C) Immediately upon receipt of the Notice to Proceed for Phase II,

the Artist shall begin fabrication of the Work to be completed and installed within the timeframe set forth in the Schedule.

- 1.4.D) During the performance of Phase II Services, the Artist shall submit proof to the Director, of releases of claim (EXHIBIT B) for every progress payment made by the Artist to his/her fabricators, contractors, and or any other entity hired by the Artist for purposes of completing the Work. The Artist shall fully comply with this requirement prior to submittal of a final payment request for services outlined in Phase II Agreement.

ARTICLE II

COMPENSATION

2.1 FIRM FIXED PRICE

The Trust shall pay the Artist a Fixed Fee (the "**Artist's Fixed Fee**") for PHASE I- Design in the fixed fee amount of TBD DOLLARS and NO CENTS (\$TBD) (the "**Contract Amount**"). THE FIXED 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, CONSULTING FEES, AND/OR ANY RELATED OVERHEAD EXPENSES AND TRAVEL.

2.2 METHOD OF PAYMENT

2.2.A) Artist's Fixed Fee

The Trust shall pay the Artist the Fixed Fee for Design and Development Services for the Work in the following installments:

- 2.2.A1) (15%) TBD upon execution of this Agreement, completion of the Project Orientation Meeting, submittal of the Work Plan and Preliminary Project Budget, verification and approval by the Director, and invoice by the Artist.
- 2.2.A2) (20%) \$TBD upon Artist submittal to the Trust of a complete Schematic Design, verification and approval by the Director, and invoice by the Artist.
- 2.2.A3) (25%) \$TBD upon the date that the Artist submits to the Trust a substantially complete set of Design Documents, verification and approval by the Director, and invoice by the Artist.
- 2.2.A4) (20%) \$TBD upon the date that the Artist notifies to the Trust the completion of 60% Fabrication and or Construction

Documents, submittal of documentation for verification and approval by the Director, and invoice by the Artist.

22A5) (15%) \$TBD upon the date that the Artist notifies to the Trust that the Construction Document Phase of the Work is substantially complete, verification and acceptance by the Director, and invoice by the Artist.

22A6) (5%) \$TBD upon the date that the Artist delivers to the Trust a complete and permitable Construction Document Set (as set forth in Section 1.1.D), verification and acceptance by the Director, and invoice by the Artist.

2.2.B) Phase II – Fabrication & Installation

Disbursement of payments due to the Artist for Phase II – Fabrication & Installation Services shall be determined by the Director and the Artist upon completion and acceptance by the Director of Phase I – Design and incorporated herein as an Addendum (Phase II Payment Schedule Addendum), in accordance with applicable provisions set forth in this Agreement. The Artist’s Fee for Phase II shall be negotiated by the Artist and the Director subject to the finalized scope of services submitted by the Artist and approved by the Director and incorporated as an Addendum to this Agreement. The Director reserves the right to either itemize fees payable under Phase II or issue the Addendum based on a lump sum amount, which cumulative amount shall not exceed the Contract Amount stipulated under Section 1.2.E above. The Artist shall be responsible for procuring the services of a licensed subcontractor to procure all necessary permits, bonding and insurance as needed for any of the Work. The Director reserves the right to waive the requirement of a Performance and Payment Bond, when the value of the final artwork installation subcontract is \$200,000 or less.

Eligibility for payment shall be subject to verification by the Director that each stage has been completed in accordance with this Agreement.

ARTICLE III

TIME OF PERFORMANCE

3.1 DURATION

The Services to be required of the Artist as set forth in Article I, Scope of Services, shall commence upon the execution of this Agreement and shall be completed and installed in adherence with the Schedule for completion of the Work and in coordination with the construction schedule established and

maintained by the Construction Project Team for the **Applicable Project Name**. It is the Artist's explicit responsibility to monitor and coordinate all aspects of scheduling in conjunction with APP staff and the Construction Project Team. Discrepancies in scheduling that may result in Artist's claims for extension of time and/or additional compensation must be documented pursuant to Section 4.17 of this Agreement. Receipt by the Artist of a fully executed copy of this Agreement shall constitute the Notice to Proceed with the Work as outlined in this Agreement.

3.2 CONSTRUCTION DELAYS

In the event that the Artist completes fabrication or procurement of the Work in accordance with the above-referenced Schedule and is delayed from installing it on or before the time specified in the Schedule as a result of the construction of the Site not being sufficiently complete to reasonably permit installation of the Work therein, the Artist shall be reimbursed for reasonable storage costs and any additional compensation related to the delay, incurred for the period between the time specified in the Schedule for installation and the date upon which construction of the Site is sufficiently complete to reasonably permit installation of the Work. All Artist's delay claims seeking additional compensation must be documented to the Director's satisfaction pursuant to Section 4.17 of this Agreement.

3.3 EARLY COMPLETION OF THE ARTIST SERVICES

In the event that the Artist completes Services as set forth in Article I prior to the time specified in the Schedule for installation, and, as a result thereof, incurs storage costs, the Artist shall bear the full cost of such storage.

3.4 DELAY BY ARTIST

In the event the Artist causes a delay that impacts the construction schedule, the Artist shall have the duty to accelerate his services to mitigate the delay at no additional cost to the Trust. If the Artist is unable to mitigate the delay in an acceptable and effective manner, the Director may terminate this Agreement pursuant to Section 4.6.B of this Agreement.

ARTICLE IV

GENERAL CONDITIONS-PHASE I & II

4.1 OWNERSHIP OF INSTRUMENTS OF SERVICE

Upon completion of the Services, all design materials including but not limited to renderings, models, mock ups, plans, samples and other documentation as outlined under Section 1.3.F, developed by the Artist and delivered to the Director and/or the Trust for the purpose of this Agreement, shall become the property of the County. All material data and documentation as described herein shall be delivered to the Director prior to completion of the Agreement and final payment to the Artist. The Artist shall retain sole ownership of the

copyright to the Work. The Artist must have the Directors' prior written consent to use the Work for commercial exploitation purposes. The County reserves the right to appropriate use of all material data and documentation for public exhibition, publication, and or recordkeeping purposes of the Trust.

4.2 TIME EXTENSIONS

A reasonable extension of contract time, at no additional cost to the County, will be granted by the Director in the event there is a delay on the part of the Construction Project Team or should conditions beyond the Artist's control or Acts of God render performance of its 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". An Artist's claim for a compensable time extension shall follow the procedures outlined under Section 4.17 of this Agreement.

4.3 WARRANTIES

4.3.A) 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 by the Artist and accepted by the Trust, the Work shall be unique and an edition of one. The Artist shall not reproduce in any scale this Work and or a substantially similar Work without the Director's explicit written consent. The Warranty of Title (Refer to Exhibit D) shall be furnished as part of the closing documentation required prior to issuance of final payment.

4.3.B) Standard Warranties

4.3.B.1) Artist warrants to the County the Artwork to be free from defective or inferior materials and workmanship for two (2) years after the date of final written acceptance by the County, including any defects or qualities causing or accelerating deterioration. If within two (2) years the County finds the Artwork in need of repair, such repairs will be made at no expense to the County promptly and satisfactorily.

4.3.B.2) If Artist fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice from County, the County shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Artist's expense.

4.3.B.3) Artist with respect to all warranties, express or implied, shall:

- a. Obtain all warranties that would be given in normal commercial practice;
- b. Require all warranties to be executed, in writing, for the benefit of the County, as directed by the Director; and
- c. Enforce all warranties for the benefit of the County, as directed by Director.

4.4 ASSIGNMENT, TRANSFER OR SUBCONTRACTING

A material element of this Agreement is the personal skill, judgment and creativity of the lead 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.

4.5 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. Any employee of the County shall not supervise the Artist, nor shall the Artist exercise supervision over any employee or officials of the County. There are no third party beneficiaries to this Agreement.

4.6 TERMINATION AND SUSPENSION OF SERVICES

The services to be performed under this Agreement may be terminated by either party, subject to written notice submitted thirty (30) days from termination, provided that attempts to reconcile the reason for termination have been undertaken but failed. The notice shall specify whether the termination is for convenience or cause.

4.6.A) Termination for Convenience

- 4.6A1) If termination for convenience by the Trust, the Artist shall have 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
- 4.6A2) If termination for convenience by the Artist, 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. The Trust shall revert title of the Work to the Artist and return

any material data and or work in progress to the extent that such return does not impact County property.

4.6.B.) **Termination for Cause**

If either party to this Agreement shall willfully or negligently fail to fulfill in a timely and proper manner, or otherwise violate, any of the covenants, agreements or stipulations material to this Agreement, the other party shall thereupon have the right to terminate this Agreement by giving written notice to the defaulting party of its intent to terminate specifying the grounds for termination. The defaulting party shall have thirty (30) days after receipt of the notice to cure the default. If it is not cured, then this Agreement shall terminate.

4.6.B.1) If default by the Trust, the Trust shall promptly compensate the Artist for all services properly performed by the Artist prior to termination.

4.6.B.2) If default by the Artist, all finished and unfinished drawings, sketches, photographs, maquettes, prototypes, or other work products prepared and submitted by the Artist under this Agreement shall at the Trust's option become its property, provided that no right to fabricate and or execute the Work shall pass to the Trust. The Trust shall promptly compensate the Artist for all services performed satisfactorily by the Artist prior to termination.

4.6.B.3) Notwithstanding any of these conditions, the Artist shall not be relieved of liability to the Trust for damages sustained by the Trust by virtue of any breach of this Agreement by the Artist, and the Trust may reasonably withhold payments to the Artist until such time as the exact amount of such damages due the Trust from the Artist are determined.

4.6.C.) **Suspension of Services**

The Director may at any time suspend this Agreement for a period not exceeding one hundred twenty (120) days or such further period to which the parties may agree, by giving written notice to the Artist of such suspension, which all shall become effective upon receipt by the Artist of the written suspension notice. An equitable adjustment shall be made in the time of performance of the Services, and the Agreement shall be modified accordingly, if the suspension results in an increase in the time required for performance of the Services and compensation payable to the Artist under Article II shall be modified in accordance with costs, if any, as demonstrated and documented pursuant to Section 4.17 by the Artist to result directly from such suspension.

4.7 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.

4.8 CODE COMPLIANCE

All work shall be done in compliance with current Florida Building Code. The approval of the structural acceptability of the artwork shall be determined in consultation with the governing Authorities Having Jurisdiction (AHJ) officials to assure compatibility with all applicable statutes and regulations.

4.9 EQUAL EMPLOYMENT OPPORTUNITY AND NON-DISCRIMINATION

In connection with the execution of this Agreement, the Artist shall not discriminate against employees or applicants for employment because of race, religion, color, age, sex, ancestry, marital status, physical handicap, place of birth, sexual orientation, or national origin. The Artist shall take affirmative actions to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, age, ancestry, marital status, physical handicap, place of birth, sexual orientation, or national origin. Such actions shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment, or recruitment advertising; and selection for training, including apprenticeship.

4.10 ON SITE SUPERVISION

The Artist will be personally involved in all phases of the Work's development, fabrication and installation. The Artist shall be on site periodically during the time that the Work is being installed as required to ensure that the Work is being installed in accordance with the Artist's Design Intent.

4.11 FINAL ACCEPTANCE

When the Artist's Services have been completed, the Artist shall so advise the Director in writing. Within thirty (30) days of receipt of such notice the Director shall give the Artist notice in writing of any services that have yet to be satisfactorily completed ("Punch List".) Upon completion of such Punch List services, the Artist shall notify the Director, and within thirty (30) days of receipt of such notice, the Director shall give the Artist written notice of final acceptance or notice of the specified unfinished Punch List services. Final acceptance shall not constitute a waiver or abandonment of any rights or remedies available to the Trust under any other section of this Agreement.

4.12 RISK OF LOSS

The Artist shall bear the full risk of loss of or damage to the Work until the Services have been completed and the Work installed and accepted by the Director. The Artist shall take such measures and precautions as are necessary to protect the Work from loss or damage.

4.13 INSURANCE

Prior to commencement of Phase II – Fabrication and Installation services, the Artist shall furnish or cause its Contractor to furnish to Miami-Dade County, c/o Art in Public Places, 111 NW 1st Street, 6th Floor, Miami, Florida 33128-1982, Certificate(s) of Insurance which indicate that insurance coverage has been obtained which meets the requirements as outlined below:

- A) Worker's Compensation Insurance for all employees as required by Florida Statute 440.
- B) Commercial General Liability Insurance on a comprehensive basis in an amount not less than \$300,000 combined single limit per occurrence for bodily injury and property damage. **Miami-Dade County and the Miami-Dade Art in Public Places Trust** must be shown as an additional insured with respect to this coverage.
- C) Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the work, in an amount not less than \$300,000 combined single limit per occurrence for bodily injury and property damage.

All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:

The company must be rated no less than "B" as to management, and no less than "Class V" as to financial strength, by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division.

or

The company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida" issued by the State of Florida Department of Insurance and are members of the Florida Guaranty Fund.

Certificates will indicate that no modification or change in insurance shall be made without (30) days written advance notice to the Certificate Holder.

4.14 INDEMNIFICATION

4.14 (A) Indemnification of County

Except as specified in subparagraph 4.14 (B) below, the terms of which shall govern and control, the Artist shall defend, indemnify and hold the County and its officers, employees, agents and instrumentalities harmless from any and all liability, losses and damages, including reasonable attorney's fees and costs of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits or causes of actions or proceedings of any kind of nature arising out of, relating to or resulting from the negligent performance or willful misconduct of the Artist or its employees, agents, servants, partners, principals or subcontractors. The Artist shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or action of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments and reasonable attorneys' fees which may issue thereon. The Artist expressly understands and agrees that any insurance protection required by this agreement or otherwise provided by the Artist shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided.

4.14 (B) Indemnification of Artist

After Trust final Acceptance of the Work, the County does hereby agree to indemnify and hold harmless the Artist to the extent and within the limitations of Section 768.28 Fla. Stat., subject to the provisions of that Statute whereby the County shall not be held liable to pay a personal injury or property damage claim or judgment by any one person which exceeds the sum of \$200,000, or any claim or judgments or portions thereof, which, when totaled with all other occurrence, exceeds the sum of \$300,000 from any and all personal injury or property damage claims, liabilities, losses and causes of action which may arise solely as a result of the negligence of the County. However, nothing herein shall be deemed to indemnify the Artist from any liability or claim arising out of the negligent performance or failure of performance of the Artist or any unrelated third party.

4.15 LISTING OF FIRST-TIER SUBCONTRACTORS & MATERIAL SUPPLIERS

Prior to ordering any material supplies or commencing fabrication of the Work, the Artist shall provide the Director a listing of all contractors the Artist intends to hire for purposes of completing the Services of this Agreement and any material supplier sources the Artist intends to utilize for major components of the Work. "Major Components" shall mean single source material purchases that represent twenty percent (20%) or more of the total estimated construction material costs for the Work as identified in the Artist's Statement of Probable Construction Cost. The Artist shall identify the type of work each first-tier subcontractor is to perform and the estimated value thereof. Upon submittal of the list by the Artist and approval by the Director, the Artist shall not thereafter make any change to the approved list without prior written approval by the Director.

4.16 CHANGES/ADDITIONAL SERVICES

The Artist and the Trust may, from time to time, agree on changes in the nature of or in the time of Services. Such agreement shall be in writing and signed by both parties. The Director can act without further approval by the Trust if the cost and risk to the Trust are not affected. The Director shall act without approval of the Trust to modify the Compensation Schedule provided that the total payments on the project do not exceed the stipulated amount under Section 2.1 and the Director receives a signed acceptance from the Artist of the modified Payment Schedule. Any Services requested of the Artist by the Trust outside those outlined in the terms of this Agreement, or changes requested by the Trust to the Work or the timetable for completion which materially expands the scope of work are considered Additional Services. The Trust and Artist agree to mutually assess any Additional Services and equitably adjust the amount of compensation accordingly. The Trust retains the right for equitable credit, to be consistent with the terms and conditions as described herein, for changes in the Work which result in a reduction of the scope of work as outlined in this Agreement.

4.17 CLAIMS FOR ADDITIONAL COMPENSATION

- 4.17.A) No claims for additional compensation, time extension or for any other relief under the Agreement shall be recognized, processed, or treated in any manner unless the same is presented in accordance with this Article. Failure to present and process any claim in accordance with this Article shall be conclusively deemed a waiver, abandonment or relinquishment of any such claim, it being expressly understood and agreed that the timely presentation of claims, in sufficient detail to allow proper investigation and prompt resolution thereof, is essential to the administration of this Agreement.
- 4.17.B) Each and every claim shall be made in writing and delivered to the Director as soon as reasonably practicable after the event, occurrence or non-occurrence which gives rise to such claim, however, in no event later than 10 days after the event or occurrence. Verbal, telephone or facsimile notice shall be given in those instances where delay in presenting the claim would result in the conditions causing the claim to change, thereby requiring an immediate need to examine the job site or other conditions to ascertain the nature of the claim before the condition(s) disappear or become unobservable. Any such oral or facsimile notice shall be followed, at the earliest practicable time, but in no event more than 10 days after the event causing the claim, by written confirmation of the claim information
- 4.17.C) Each and every claim shall state:

- 4.17.C.1. The date of the event or occurrence giving rise to the claim. In the case of a claim arising from a claimed nonperformance, the date when it is claimed that performance should have occurred shall be stated.
- 4.17.C.2. The exact nature of the claim, including sufficient detail to identify the basis for the claim, including by way of example only, such detail as job site location, affected trades, contract clauses relied upon, schedule references, correspondence or any other details reasonably necessary to state the claim
- 4.17.C.3. The claim shall clearly state whether additional monies are part of the claim. If known, the dollar value associated with the claim shall be stated. If unknown, the notice shall indicate the types of expenses, costs or other monetary items that are reasonably expected to be part of the claim amount.
- 4.17.C.4. The claimed items of additional compensation shall be properly documented and supported with copies of invoices, time sheets, rental agreements, crew sheets and the like.
- 4.17.C.5. Any claim for additional monies that also involves a request for an Agreement time extension shall be submitted together with the amount of time being requested and the supporting data including applicable scheduling references supporting the claim.
- 4.17.C.6. No reservation of rights will be effective to preserve any claims that are not fully documented and submitted in accordance with requirements of this Agreement. Failure of the Artist to make a specific reservation of rights regarding any such disputed amounts within the Request for Partial Payment or the Request for Final Payment shall be construed as a waiver, abandonment and relinquishment of all claims for additional monies resulting from the claim
- 4.17.D) The currently approved schedule(s) for the Work shall be the basis for interpreting any and all time-associated provisions of the Agreement including proposed time extensions. Proposed time extensions must include a time impact analysis (TIA), clearly showing the impact on the current schedule, and conclusively

proving the validity of the proposed extension

- 4.17.E) Director and or his designee shall be allowed full and complete access to all personnel, documents, work sites or other information reasonably necessary to investigate any claim. Within 60 days after a claim has been received, the claim shall either be recognized or if the claim is not recognized within 60 days it shall be deemed denied. If the claim is recognized, the parties shall attempt to negotiate a satisfactory settlement of the claim, which settlement shall be included in a subsequent amendment and or addendum to this Agreement to be approved by the Trust. If the parties fail to reach an agreement on a recognized claim, the Trust shall pay to the Artist the amount of money it deems reasonable to compensate the Artist for the recognized claim.
- 4.17.F) The Artist shall not cease work on account of any denied claim or any recognized claim upon which an agreement cannot be reached.
- 4.17.G) With regard to any and all claims for additional compensation resulting from delays to the Work, the Artist assumes all risk for the following items, none of which shall be the subject of any claim and none of which shall be compensated for except as they may have been included in the compensation for indirect costs.
- (1) Home office expenses or any direct costs incurred
 - (2) Loss of anticipated profits on this or any other project
 - (3) Loss of bonding capacity or capability
 - (4) Losses due to other projects not bid on
 - (5) Loss of business opportunities.
 - (6) Loss of productivity on this or any other project
 - (7) Loss of interest income on funds not paid
 - (8) Costs to prepare, negotiate or prosecute claims
 - (9) Costs spent to achieve compliance with applicable laws and ordinances

4.18 RIGHT OF DECISION

All Services shall be performed by the Artist at the sole direction of and to the reasonable satisfaction of the Director who shall decide all claims, questions or disputes concerning the prosecution and fulfillment of the Services hereunder, and the character, quality, amount and value thereof, and the Director's decisions thereon shall be conclusive and binding upon the parties hereto unless such determination is clearly arbitrary or unreasonable. All decisions of the Director shall be written and transmitted, pursuant to Section 4.19 to the Artist. In the event that the Artist does not concur in the judgments of the Director, the Artist shall present his/her written objections to the Chief of

Community Services Officer in the Office of the Mayor within thirty (30) days from the date of the Artist's receipt of such written decision. The Director and the Artist shall abide by the decision of the Chief of Community Services Officer.

4.19 NOTICES

All communications relating to the day-to-day activities shall be exchanged between the Artist, or his authorized representative, and the Director or authorized representative of the Trust. Such authorized representatives shall be designated in writing promptly upon commencement of the Services. Any notices, reports, or other written communications from the Artist to the Trust shall be considered delivered when posted or delivered in person to the Director. Any notices, reports, or other communications from the Trust to the Artist shall be considered delivered when posted to the Artist at the last address left on file with the Trust, or delivered in person to said Artist or his authorized representative. Until changed by notice in writing, all such notices and communications shall be addressed as follows:

<u>If to the Trust:</u>	<u>If to the Artist:</u>
Michael Spring, Director	TBD
Miami-Dade Dept. of Cultural Affairs	TBD
111 NW 1 Street 6 th Floor	TBD
Miami, FL 33128	TBD
E-mail: Romeu@miamidade.gov	TBD

4.20 SURVIVING COVENANTS

The covenants and obligations set forth in this Article IV, Section 4.20 shall survive the completion of installation of the Work and shall continue for a period ending on the twentieth anniversary of the Artist's death.

- 4.20.A) Maintenance of the Work. The Trust recognizes that although normal maintenance of the Work will involve simple and relatively inexpensive procedures, such maintenance on a regular basis is essential to the integrity and authenticity of the Work. The Trust shall assure such regular maintenance according to the written specifications of the Artist, and shall protect and maintain the Work against the ravages of time, vandalism and the elements, and to the extent practicable shall make all significant repairs and restorations of the Work in accordance with Section 4.20(E) below.

- 4.20.B) Notice. The Artist, in coordination with the Trust, shall at his/her expense prepare and install at the Site, pursuant to the written instructions and subsequent approval of the Artist, a public notice in compliance with current Trust-approved signage guidelines including the Artists' name and title of the Work, and shall maintain such notice

in good repair against the ravages of time, vandalism and the elements.

- 4.20.C) Permanent Record. Issuance of Final Payment for the Work shall indicate to the Artist the official acceptance and adoption of provisions of this Article IV, Section 4.20 by the Miami-Dade Art in Public Places Trust. The Trust shall ensure that the County maintains in an appropriate place a permanent record of this Agreement, such resolution and the location and history of the Work.
- 4.20.D) Alteration of the Site or of the Work. It is an inherent nature of any site to be vulnerable to physical alterations of varying degrees that may arise out of a functional need consistent with its intended design and usage and/or the operational requirements of the Site. Respectively, the integrity and authenticity of the Work may become compromised by an alteration of the Site if the Work is an integral component of the Site. It is with the express understanding above that the Artist hereby agrees to waive all rights to monetary compensation for any acts arising out of operational requirements which may cause alterations to the Site and/or the Work.

The Trust shall notify the Artist of any proposed alteration of the Work or of the Site that would affect the intended character and appearance of the Work, and shall consult with the Artist in the planning of any such alteration. If any such alteration of the Site or of the Work is made without the express written approval of the Artist, the Artist may elect, upon a minimum forty-eight (48) hours written notice to the Director, to enter upon the Site and at the expense of the Trust remove or obliterate the public notice referred to in Section 4.20(B) above, as well as any signature or other emblem identifying the Artist with the Work, and may take such other action as he/she may choose in order to disavow the Work.

- 4.20.E) Repairs & Restorations of the Work. The Trust shall have the right to determine when and if repairs and restorations to the Work will be made. During the Artist's lifetime, the Artist shall have the right to approve all repairs and restorations of a significant nature. If the Artist fails or refuses to approve any repair or restoration, the Trust shall have the right to make such repair or restoration. To the extent practical, the Artist shall be given the opportunity to make or personally supervise significant repairs and restorations and the Artist may, at the discretion of the Trust, be paid a reasonable fee for any such service, provided that both parties prior to the execution of such services mutually agree upon the fee in writing.

- 4.20.F) Changes of Address. The Artist shall notify the Trust of changes of address, telephone number, and email, and his/her failure to do so, if such failure prevents the Trust from locating him/her, shall be deemed a waiver by the Artist of his/her rights to enforce those provisions of this Agreement that require the express approval of the Artist.
- 4.20.G) Copyright Transfer. The Artist shall notify the Trust of a transfer in the ownership of the copyright and provide name, title, current address, telephone number, and email to the Trust in such event. Any transfer of copyright must carry with it the requirement of Directors' prior written consent to use the Work for commercial exploitation purposes and the County's right to appropriate use of all material data and documentation for public exhibition, publication, and or recordkeeping purposes of the Trust.

4.21 MISCELLANEOUS CONDITIONS

- 4.21.A) Project Coordination. The Artist and/or his subcontractor(s) will conduct their operations in coordination with the Construction Project Team so as to minimize any impact on the progress of other work by others. The Artist and/or his subcontractor(s) may be required from time to time to attend site coordination meetings and provide the Director upon request updated schedules for the Work.
- 4.21.B) Notice of Potential Project Delays and or Claims for Additional Compensation. The Artist shall notify the Director in writing of any potential claims for construction delays and/or for additional compensation which may arise within the scope of this Agreement pursuant to the conditions set forth in Section 4.17. Failure to do so shall constitute a waiver of the claim.
- 4.21.C) Site Inspections/Site Conditions/Staging Requirements. Prior to mobilization, the Artist and/or his subcontractor(s) shall visit and inspect the Site. Subsequent to such inspection and throughout the course of the Work the Artist shall notify the Director of any storage, access, power, water and other requirements for proper installation of the Work that are not to be provided by the Artist.. The Artist shall notify the Director in writing of any adverse Site conditions that may impede or otherwise impact the smooth and normal progress of the Work and which require resolution before proceeding with any portion of the Work. The Artist shall promptly report to the Director any condition pertaining to defective, unsuitable or unacceptable Site conditions, including but not limited to Site obstructions or damages impacting the Work. The Artist shall provide such notice within a reasonable amount of time so as to allow the

Director to properly coordinate with the field and not create any delays to the construction schedule.

421.D) Job Safety. The Artist and/or his subcontractor(s) are responsible for compliance with OSHA and/or other Federal, State or County safety requirements and shall ensure said compliance is maintained throughout the duration of the Work.

421.E) Restricted "Off" Work Hours. Where applicable, the Artist and/or his subcontractor(s) shall observe and comply with any Restricted "Off" Work Hours requirements. Artist shall submit to the Director in writing any request(s) to perform work other than during "normal work hours" and said request shall be subject to approval by the Construction Management Team.

(THIS SPACE IS INTENTIONALLY LEFT BLANK)

4.22 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 formal action of the Trust. This Agreement, regardless of where executed, shall be governed by and construed 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-##

EXHIBIT A - *Catalogue Work Sheet & Maintenance Plan*

EXHIBIT B – *Releases of Claim for Artists & Subs*

EXHIBIT C – *Artist’s Project Proposal*

EXHIBIT D – *AFFIDAVIT for Joint Artists Copyright*
(if needed)

EXHIBIT E – *Close-out Package Checklist*