

SAMPLE AGREEMENT FORMAT

Below is the standard agreement format for this Request for Proposals. This is a sample agreement only and is subject to revisions. PLEASE DO NOT COMPLETE.

AGREEMENT

THIS AGREEMENT is made this _____ day of _____, 2023 between the Boca Raton Airport Authority, a Florida independent special district (“BRAA”), whose address is 903 NW 35th Street, Boca Raton, Florida 33431, and _____ (“Artist”), whose address is _____.

WITNESSETH:

WHEREAS the BRAA has developed a visual art project in connection with the Boca Raton Airport 75th Anniversary Campaign and celebration known as the Boca Raton Airport Mural Project (“Project”); and

WHEREAS, the Project will be comprised of a visual art mural (“Artwork”) created by an individual artist which will be installed on a masonry security wall located on the southern half of the Boca Raton Airport, owned and operated by the BRAA; and

WHEREAS, the purpose of the Project is to convey Boca Raton Airport’s longstanding presence in the community and conceptualize the future of aviation in Boca Raton; and

WHEREAS, the BRAA issued a Call to Artists for an artist to create Artwork for the Project in conformance with the Project Selection Criteria; and

WHEREAS, at a public meeting, the BRAA Executive Director, acting on behalf of the BRAA Board, selected an Artist to create Artwork for the Project based on the Project Selection Criteria; and

WHEREAS, Artist’s Artwork proposal, a copy of which is attached hereto as Exhibit “A”; meets the Project Selection Criteria; and

WHEREAS, the BRAA and Artist desire to execute an agreement establishing the rights and responsibilities with respect to the Artwork, including installation, maintenance, and ownership.

NOW, THEREFORE, for the mutual covenants set forth in this Agreement and good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Recitals. The recitations set forth above are hereby incorporated into this Agreement as if fully set forth herein.

2. Artist's Representations, Warranties, and Responsibilities.

- a. Artist shall create the Artwork in the exact manner as it was approved by the BRAA, which is depicted in attached Exhibit "A".
- b. Artist shall complete the installation of the Artwork on or before July 10, 2023. Should inclement weather prevent the Artist from completing the Artwork on or before July 10, 2023, the BRAA may permit completion at a future date to be determined.
- c. The Artwork shall be installed by Artist at the site generally depicted in attached Exhibit "B". The BRAA shall determine the time and hours of day for completion and specific location at which the Artwork is to be installed.
- d. Artist shall furnish all services and labor necessary and as may be required in the performance of this Agreement. Artist shall be responsible for providing all materials and supplies necessary to complete the installation of the Artwork and cleanup of the Project area.
- e. Artist hereby represents to the BRAA, with full knowledge that the BRAA is relying upon these representations when entering into this Agreement, that Artist has the expertise, talent, experience, and manpower to perform the services pursuant to this Agreement.
- f. Artist represents and warrants that all work performed pursuant to this Agreement, including but not limited to the Artwork, is the sole work of the Artist, is an original creation, and does not infringe upon or violate any copyrights or other rights of any person, firm, or organization. Artist acknowledges and agrees to defend, indemnify and hold harmless the BRAA against any claims alleging that the Artwork infringes on the intellectual property rights of any third parties.
- g. Artist warrants the Artwork against all defects in workmanship and materials for a period not to exceed two (2) years from the date of Project completion ("Warranty Period") and shall repair or replace defective materials and workmanship at Artist's sole cost during the warranty period. To be valid, any warranty claim(s) submitted by the BRAA must be made in writing during the Warranty Period.
- h. All work performed under this Agreement shall be done in a professional manner.
- i. The Artwork shall be produced to the BRAA's sole satisfaction. The quality of the completed Artwork is a matter of prime importance and shall meet all applicable industry standards. The display of the Artwork shall be subject to the sole discretion of the BRAA.

j. The BRAA is responsible for establishing the Project's timeline.

3. Term of Agreement. This Agreement shall commence as of the date of execution and shall end two (2) years from the project completion.

4. Termination. The BRAA shall have the right to terminate this Agreement upon seven (7) days written notice to Artist when the BRAA determines, in its sole discretion, that it is in the best interest of the public or for the convenience of the BRAA, or if the Artist fails to install the Artwork that is specified in this Agreement, fails to complete installation of the Artwork within the time period required by this Agreement, or otherwise breaches this Agreement. The BRAA shall be liable only for payment required by this Agreement until the date of the termination. Artist shall only have the right to terminate this Agreement for special circumstances that prevent Artist from continuing to provide the work under this Agreement. If Artist terminates the Agreement, if required by the BRAA, the Artist shall return to the BRAA any funds received by Artist from the BRAA within ten (10) days of the date of termination. If this Agreement is terminated for any reason, Artist shall remove all of Artist's property from all BRAA facilities. The following provisions shall continue indefinitely and survive the cancellation, termination, expiration, lapse or suspension of this Agreement: the indemnity provision in Paragraph 2(f), Paragraph 2(g), Paragraph 7, and Paragraph 8.

5. Compensation. The BRAA shall pay Artist a total amount not to exceed \$ _____. Payment to Artist by the BRAA shall be made as follows: a) 50% of the approved amount at time of Artist selection, an approved W9/Vendor registration, and fully executed Artist Agreement, and b) the remaining 50% of the approved amount within fifteen (15) days of the date of completion of the Artwork and acceptance by BRAA.

6. Independent Contractor. Artist, and anyone assisting or providing support to the Artist, shall be and shall remain an independent contractor and not an agent or employee of the BRAA.

7. Ownership of the Artwork, Waiver and Acknowledgement.

- a) The BRAA shall own all rights in the Artwork. Artist hereby waives (1) all proprietary rights to, and ownership of, the Artwork; (2) all claims that may arise under the Visual Artists Rights Act of 1990, 17 U.S.C., Sections 106A and 113(d) (also known as "VARA") and any other local, state, federal or international laws that convey rights of the same nature as pursuant to 17 U.S.C. 106A; and (3) all rights to replicate, distribute, or reproduce the Artwork.
- b) Artist acknowledges the BRAA's right to modify, remove, and/or maintain the Artwork, in any matter determined by the BRAA and in the BRAA's sole discretion. Artist acknowledges the BRAA is entitled to exhibit, publicize, broadcast, advertise, and otherwise use the likeness of the Artwork, in any non-commercial, non-profit manner the BRAA sees fit. Artist acknowledges that the BRAA shall have the right to use Artist's name, likeness and biographical information in connection with the display, reproduction, and/or distribution of materials related to the Artwork.

8. Indemnification. Artist shall be responsible for all damage to persons or property that occurs as a result of Artist's fault or negligence. Artist hereby agrees to defend, indemnify and hold harmless the BRAA and its agents, employees, and elected officials from any and all losses, claims, suits, actions and liability, including all litigation costs, which may arise from any acts or omissions of Artist during the performance of the work related to this Agreement. In the case the BRAA shall be made a party to any such litigation, the Artist shall defend, protect and hold the BRAA harmless and pay all costs and expenses and reasonable attorney's fees for the litigation, including appellate levels. This indemnity shall continue indefinitely and survive the cancellation, termination, expiration, lapse or suspension of this Agreement.

9. Assignment. The parties agree that the expertise and experience of Artist are material considerations for this Agreement. Therefore, Artist shall not assign or transfer any interest in this Agreement nor the performance of any of Artist's obligations hereunder.

10. No Third-Party Beneficiaries. This Agreement shall not be construed to confer rights or privileges or causes of action to any third party or entities not a party to this Agreement.

11. No Waiver of Sovereign Immunity. Nothing in the Agreement shall be construed to affect in any way the BRAA's rights, privileges, and immunities, including the monetary limitations of liability, as set forth in Section 768.28, Florida Statutes and nothing herein shall be construed as a waiver by the BRAA of its sovereign immunity protections.

12. Public Records. Artist shall comply with all applicable public records laws in regard to public records relating to this Agreement.

13. Notice. All notices required or permitted by this Agreement shall be delivered (a) by certified mail, postage prepaid, effective five days after mailing, or (b) by hand delivery, effective upon delivery, in either case addressed as follows:

As to BRAA:
Boca Raton Airport Authority
903 NW 35th Street,
Boca Raton, Florida 33431

Attn: Executive Director
Email: clara@bocaairport.com

As to Artist:

Artist's Name: _____

Artist's Address: _____

Artist's Phone No.: _____

Artist's E-mail Address: _____

14. Force Majeure. The BRAA shall not be responsible for its failure to make the premises available or to provide the facilities and services described herein, and the Artist shall not be responsible for completing the Artwork, where such performance is rendered impossible and impractical due to strikes, walk-outs, acts of God, inability to obtain labor, materials or services, government restrictions, enemy action, civil commotion, fire, unavoidable casualty, utility disruptions or blackouts, pandemics, or similar causes or any other causes beyond the control of BRAA.

15. Governing Law and Venue. Any dispute under this Agreement shall be determined under the laws of the State of Florida with venue in Palm Beach County, Florida. **BY ENTERING INTO THIS AGREEMENT, THE BRAA AND THE PROVIDER HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY LITIGATION RELATED TO THIS AGREEMENT.**

16. Entire Agreement. This Agreement constitutes the entire understanding between the parties, and as its effective date supersedes all prior or independent agreements between the parties covering the subject matter hereof. This Agreement may only be modified in writing by an instrument executed by the BRAA and Artist.

17. Severability. The invalidity, illegality, or unenforceability of any provision of this Agreement, or the occurrence of any event rendering any portion or provision of this Agreement void or voidable, shall in no way affect the validity or enforceability of any other portion or provision of the Agreement. Any void or voidable provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void. The parties further agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision provided, however, no severance or reformation shall have the effect of creating an interest in real property for the Artist.

[Remainder of the page left blank]

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the day and year first written above.

BOCA RATON AIRPORT AUTHORITY

By: _____

Name: _____

Title: _____

Date: _____

CONTRACTOR

By: _____

Name: _____

Title: _____

Date: _____

Approved as to Form and Legal Sufficiency

By: _____

Name: _____