




Interoffice Memorandum

September 30, 2020

TO: Mayor Jerry L. Demings
-AND-
Board of County Commissioners

THRU: Byron W. Brooks, County Administrator 

CONTACT: Terry Olson, Administrator
Arts and Cultural Affairs Office

SUBJECT: October 13, 2020 – Consent Agenda Item
Approval of Y21-602 I-4 Artist Agreement and approval to issue the respective Purchase Order.

In July 2019, SGL Constructors, on behalf of the I-4 Ultimate Art Endowment Committee, awarded Orange County, Florida a grant in the amount of \$225,000 to fund a creative and artistically rich art installation that will either capture the distinct character or culture of our community or visually enhance its public spaces.

A call to artists was sent out in August 2019 with an application due date of November 2019. Three finalists were selected by a panel consisting of the project manager, arts professionals, and community members. Final presentations were given in February 2019 and Studio JEFRE LLC was selected. After months of working with the Department of Transportation to ensure placement of the sculpture is sufficient, a final notice went out to all artist applicants in July 2020 notifying them that Studio JEFRE LLC had been awarded this project.

The County, through the Y21-602 I-4 Artist Agreement, will issue a purchase order in the amount of \$200,000 to Studio JEFRE LLC to create the sculpture. This budget is inclusive of all related expenses pertaining to the installation, including permitting, infrastructure, lighting, and fabrication of the art installation. The remaining \$25,000 has funded the stipends for the three final artists to create a specific proposal for this project and will fund maintenance of the sculpture and any other costs that may arise, such as hiring a surveyor.

As a result of COVID-19 related business interruptions, the I-4 Ultimate Art Endowment Committee granted an extension for the program milestones. The new deadline for the final art proposal to the I-4 Ultimate Art Endowment Committee is November 31, 2020, and the new deadline for the final installation is June 31, 2021.

This agreement was approved by the County Attorney's office.

ACTION REQUESTED: **Approval of Artwork Commission Agreement between Orange County and Studio JEFRE LLC to be delivered by June 2021 and approval to issue the respective Purchase Order in the amount of \$200,000 to Studio JEFRE LLC for the artwork.**

BCC Mtg. Date: October 13, 2020

**ARTWORK COMMISSION AGREEMENT
BETWEEN
ORANGE COUNTY
AND
Studio JEFRE LLC.**

THIS AGREEMENT ("Agreement") is made as of this 27th day of August, 2020, by and between Orange County, Florida, a charter county and political subdivision of the State of Florida, whose address is 201 S. Rosalind Avenue, Orlando, Florida, 32801 (hereinafter referred to as the COUNTY), and Studio **JEFRE LLC.**, a business entity authorized to do business in the State of Florida (hereinafter referred to as the ARTIST), whose Federal I.D. is 26-0498292.

RECITALS

WHEREAS, the COUNTY wishes to obtain artwork (the "Artwork") for I-4 Partners, located at the intersection of Grand National Dr. and Caravan Ct., Orlando, Florida 32819 (the "Site"), and

WHEREAS, the ARTIST is an artist that is willing to be responsible for providing such artwork, and

WHEREAS, an Artist Selection Panel of the Arts & Cultural Affairs Office, with members from the users of the facility, the builders of the facility and from the arts community selected ARTIST in an open application process, and

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions hereinafter set forth, the parties agree as follows:

The above recitals are true and correct, and form a material part of this Agreement.

1. **Term of Agreement.** The term of this Agreement shall commence on the 27th day of August, 2020, through 31st day of June , 2021, or until services are completed in compliance with Section 2.
2. **Services To Be Provided.** ARTIST will provide services as described in this section.
 - (A) ARTIST agrees to provide a personalized service of creating the Artwork in compliance with all terms and conditions of this section and Agreement.
 - (B) Terms and Conditions:

Art Work Title 1: *Family Tree*
Medium: *Stainless Steel*
Artwork Size: 8' x 30'
Description: Abstract figurative stacked sculptures
Approval of Sketches: August 12, 2020
Delivery: May, 2021
Final Acceptance: June, 2021
Delivery Address: Intersection of Grand National Dr. and Caravan Ct.
Orlando, FL 32819

- (C) ARTIST further agrees to provide a sketch of the work to COUNTY. After the final sketch is approved by COUNTY on or before August 27, 2020, fabricate, paint, deliver and install the finished Artwork to COUNTY on or before June 31, 2021.
- (D) In any public presentation or publication of this work the artist will acknowledge that it was commissioned by the Orange County Arts & Cultural Affairs Public Art Program in Orlando, Florida.
- (E) All required laws, regulations, codes and ordinances will be observed.
- (F) ARTIST will secure any and all required licenses, permits and similar legal authorizations at ARTIST's expense as may be necessary for the installation of the Artwork at the Site.
- (G) ARTIST will provide a detailed maintenance and preservation plan (the "Maintenance & Preservation Plan") including a description of all materials and products utilized in the Artwork and the required routine care and upkeep involved.
- (H) ARTIST will attend a public presentation of the art at a mutually agreed upon time within one month of the installation.
- (I) ARTIST will give a lecture on the artist's work and elements influencing its design and construction.
- (J) ARTIST shall arrange the transportation and installation of the Artwork in consultation with COUNTY. If ARTIST does not install the Artwork him or herself, ARTIST shall supervise and approve the installation.
- (K) ARTIST shall provide required insurance in amounts and limits specified in Section 10.
- (L) ARTIST shall provide a list of all subcontractors along with a copy of the agreement between the ARTIST and each subcontractor.

- (M) ARTIST shall provide photographic documentation of the Artwork.
- (N) ARTIST shall install the art on the site that the County has prepared.

3. **COUNTY's Obligations.**

- (A) COUNTY shall perform all obligations in strict compliance with all terms and conditions of this agreement.
- (B) COUNTY shall not permit any use of ARTIST's name or misuse of the Artwork which would discredit ARTIST's reputation as an artist or which would violate the spirit of the Artwork, should such use or misuse be within COUNTY's control.
- (C) COUNTY shall provide and install a plaque on or near the Artwork containing a credit to ARTIST and a copyright notice substantially in the following form: Copyright© JEFRE.
- (D) COUNTY shall provide timely and suitable access to the installation site.
- (E) COUNTY shall provide suitable barricades at COUNTY's expenses during installation, if necessary, in order to protect the Artwork and the general public.

4. **Design.** ARTIST submitted a design concept/schematic (the "Design Proposal") with an accompanying budget (the "Budget"), pursuant to a competition organized for the procurement of an artist to design and fabricate an artwork suitable for the current project, which Design was selected and approved by the COUNTY. The Design Proposal and Budget shall be attached to this Agreement as Exhibit 1 and Exhibit 2, respectively.

5. **Independent Contractor.** In performing the services herein specified, ARTIST is acting as an Independent Contractor, and neither ARTIST nor any of ARTIST's staff shall be considered employees of COUNTY.

6. **Compensation.** COUNTY will remunerate ARTIST for services as described in Section 2 for the amount not to exceed TWO HUNDRED THOUSAND DOLLARS (\$200,000). This amount shall represent the entire limit of compensation allowable under this Agreement.

- (A) If ARTIST incurs costs in excess of the amount listed here, ARTIST shall pay such excess from ARTIST's own funds unless ARTIST previously obtained approval for such costs from COUNTY (or such costs were the result of actions or inaction of COUNTY).
- (B) *Schedule.* A schedule for the payment is attached to the Agreement as Exhibit 3.

7. **Availability of Funds.** COUNTY's performance and obligation to pay under this Agreement is contingent upon an annual appropriation for its purpose by the Board of County Commissioners, or other specified funding source for this procurement.

8. **Risk of Loss.** ARTIST shall bear the risk of loss or damage to the Artwork until COUNTY's final acceptance of the Artwork under Section 10. ARTIST shall take such measures as are reasonably necessary to protect the Artwork from loss or damage. COUNTY shall bear the risk of loss or damage to the Artwork prior to final acceptance only if, during such time, the partially or wholly completed Artwork is in the custody, control or supervision of COUNTY or its agent(s) for the purposes of transporting, storing, installing or performing other services to the Artwork.

9. ***Artist's Representations and Warranties.***

(A) *Warranties of Title.* ARTIST represents and warrants that:

- a) the Artwork is solely the result of the artistic effort of ARTIST;
- b) except as otherwise disclosed in writing to COUNTY, the Artwork is unique and original and does not infringe upon any copyright or the rights of any person;
- c) the Artwork (or duplicate thereof) has not been accepted for sale elsewhere;
- d) ARTIST has not sold, assigned, transferred, licensed, granted, encumbered or utilized the Artwork or any element thereof or any copyright related thereto which may affect or impair the rights granted pursuant to this Agreement;
- e) the Artwork is free and clear of any liens from any source whatsoever;
- f) all Artwork created or performed by ARTIST under this Agreement, whether created by ARTIST alone or in collaboration with others, shall be wholly original with ARTIST and shall not infringe upon or violate the rights of any third party;
- g) ARTIST has the full power to enter into and perform this Agreement and to make the grant of rights contained in this Agreement;
- h) all services performed hereunder shall be performed in accordance with all applicable laws, regulations, ordinances, etc. and with all necessary care, skill and diligence;
- i) These representations and warranties shall survive the termination or other extinction of this Agreement.

(B) *Warranties of Quality and Condition.*

- a) ARTIST represents and warrants that all work will be performed in accordance with professional "workmanlike" standards and free from defective or inferior materials and workmanship (including any defects consisting of "inherent vice," or qualities that cause or accelerate deterioration of the Artwork) for one year after the date of final acceptance by the COUNTY under Section 11.
- b) ARTIST represents and warrants that the Artwork and the materials used are not currently known to be harmful to public health and safety.
- c) ARTIST represents and warrants that reasonable maintenance of the Artwork will not require procedures substantially in excess of those described in the Maintenance & Preservation Plan submitted by ARTIST pursuant to Section 2(G).

- d) If within one year from date of final acceptance by COUNTY, COUNTY observes any breach of warranty that is curable by ARTIST, ARTIST shall, at the request of COUNTY, cure the breach promptly, satisfactorily and consistent with professional conservation standards, at no expense to COUNTY. The COUNTY shall give notice to ARTIST of such breach with reasonable promptness.
- e) If after one year of final acceptance by COUNTY, COUNTY observes any breach of warranty that is curable by ARTIST, the COUNTY shall contact ARTIST to make or supervise repairs or restorations at a reasonable fee during ARTIST's lifetime. ARTIST shall have the right of first refusal to make or supervise repairs or restorations. Should ARTIST be unavailable or unwilling to accept reasonable compensation under the industry standard, COUNTY may seek the services of a qualified restorative conservator and maintenance expert.
- f) If within one year from date of final acceptance by COUNTY, COUNTY observes a breach of warranty that is not curable by ARTIST, ARTIST is responsible for reimbursing COUNTY for damages, expenses and loss incurred by the COUNTY as a result of the breach. However, if ARTIST disclosed the risk of this breach in the Design Proposal and COUNTY accepted that it may occur, it shall not be deemed a breach.
- g) *Acceptable Standard of Display.* ARTIST represents and warrants that:
- i. General routine cleaning and repair of the Artwork and any associated working parts and/or equipment will maintain the Artwork within an acceptable standard of public display.
 - ii. Foreseeable exposure to the elements and general wear and tear will cause the Artwork to experience only minor repairable damages and will not cause the Artwork to fall below an acceptable standard of public display.
 - iii. With general routine cleaning and repair, and within the context of foreseeable exposure to the elements and general wear and tear, the Artwork will not experience irreparable conditions that do not fall within an acceptable standard of public display, including mold, rust, fracturing, staining, chipping, tearing, abrading and peeling.
 - iv. *Manufacturer's Warranties.* To the extent the Artwork incorporates products covered by a manufacturer's warranty, ARTIST shall provide copies of such warranties to COUNTY.

The foregoing warranties are conditional, and shall be voided by the failure of COUNTY to maintain the Artwork in accordance with ARTIST's specifications and the applicable conservation standards. If COUNTY fails to maintain the Artwork in good condition, ARTIST, in addition to other rights or remedies ARTIST may have in equity or at law, shall have the right to disown the Artwork as ARTIST's creation and request that all credits be removed from the Artwork and reproductions thereof until the Artwork's condition is satisfactorily repaired.

10 **General Insurance.**

- (A) The ARTIST will provide General Liability Coverage for all operations including, but not limited to, Contractual, Products and Completed Operations, and Personal Injury. The general liability insurance policy shall be in an amount of at least Three- Million Dollars (\$3,000,000.00), and an automobile liability insurance policy in the amount of One-Million Dollars (\$1,000,000.00), to protect the County from liability, claims, damages, losses or expenses arising from or out of in any way connected with this Agreement. Said coverage shall list COUNTY as an additional insured and the insurance coverage shall contain a provision which forbids any cancellation, changes or material alterations in the coverage without providing 30 days written notice to the COUNTY.
- (B) ARTIST acknowledges that until final acceptance of the Artwork by COUNTY under Section 11, any injury to property or persons caused by the ARTIST's Artwork or any damage to, theft of, vandalism to, or acts of God affecting the ARTIST's Artwork are the sole responsibility of ARTIST, including, but not limited to, any loss occurring during the creation, storage, transportation or delivery of the Artist's Artwork, regardless of where such loss occurs.

11. **Ownership and Intellectual Property Rights.**

- (A) *Title.* Title to the Artwork shall pass to COUNTY upon COUNTY's written final acceptance and payment for the Artwork pursuant to Section 10. Artist shall provide COUNTY with a Transfer of Title in substantially the form attached hereto as Exhibit 4.
- (B) *Ownership of Documents.* One set of presentation materials prepared and submitted under this Agreement shall be retained by COUNTY for possible exhibition and to hold for permanent safekeeping.
- (C) *Copyright of Ownership.* ARTIST retains all rights under the Copyright Act of 1976, 17 U.S.C. § 101 et seq., as the sole author of the Artwork for the duration of the copyright.
- (D) *Reproduction Rights.*
 - a) In view of the intention that the final Artwork shall be unique, ARTIST shall not make any additional exact duplicate reproductions of the final Artwork, nor shall ARTIST grant permission to others to do so except with written permission of COUNTY. However, nothing shall prevent ARTIST from creating future Artworks in ARTIST's manner and style or artistic expression.
 - b) ARTIST grants to COUNTY and its assigns an irrevocable license to make two-dimensional reproductions of the Artwork for non-commercial purposes, including, but not limited to, reproductions used in brochures, media publicity and exhibition catalogs, or other similar publications provided that these rights are exercised in a tasteful and professional manner.
- (C) All reproductions by COUNTY shall contain a credit to ARTIST and a copyright notice in substantially the following form: Copyright© JEFRE.
- c) ARTIST shall use the ARTIST's best efforts in any public showing or resume

use of reproductions to give acknowledgement to COUNTY in substantially the following form: "an original Artwork commissioned by and in the public art collection of ORANGE COUNTY."

- e) If COUNTY wishes to make reproductions of the Artwork for commercial purposes, including, but not limited to, T-shirts, postcards and posters, the parties hereto shall execute a separate agreement to address the terms of the license granted by ARTIST and the royalty ARTIST shall receive.
- f) *Third Party Infringement.* COUNTY is not responsible for any third party infringement of ARTIST's copyright and not responsible for protecting the intellectual property rights of ARTIST.

12. *Artist's General Rights.*

- (A) ARTIST retains all rights under state and federal laws including §106A of the Copyright Act of 1976 and the Visual Artists Rights Act of 1990 (VARA), 17 U.S.C. § 106A.
- (B) COUNTY agrees that it will not intentionally alter, modify, change, destroy or damage the Artwork without first obtaining permission from ARTIST.
- (C) If any alteration or damage to the Artwork occurs, ARTIST shall have the right to disclaim authorship of the Artwork in addition to any remedies ARTIST may have in law or equity under this contract. Upon written request, COUNTY shall remove the identification plaque and all attributive references to ARTIST at its own expense within 60 days of receipt of the notice. No provision of this Agreement shall obligate COUNTY to alter or remove any such attributive reference printed or published prior to COUNTY's receipt of such notice. ARTIST may take such other action as ARTIST may choose in order to disavow the Artwork.

13. *Alterations of Site or Removal of Artwork.*

- (A) COUNTY shall notify ARTIST of any proposed significant alteration of the site that would affect the intended character and appearance of the Artwork. COUNTY shall make a good faith effort to consult with ARTIST in the planning and execution of any such alteration. COUNTY shall make a reasonable effort to maintain the integrity of the Artwork.
- (B) COUNTY agrees not to arbitrarily remove or relocate the Artwork without first making a good faith effort to contact ARTIST. ARTIST shall not unreasonably withhold approval of removal or relocation of the Artwork. Should ARTIST agree to such removal or relocation, ARTIST shall provide COUNTY with written handling instructions. In the event that ARTIST is deceased or unable to otherwise give the ARTIST's consent, the current owner of the copyright of the

Artwork shall not unreasonably withhold permission, keeping in mind the intentions of ARTIST at the time of commission and fabrication.

14. **Indemnification.** If there are any claims for damages attributable to the negligence, errors or omissions of ARTIST, its agents or employees while providing the services called for herein, it is understood and agreed that ARTIST shall indemnify and hold harmless COUNTY from any and all losses, costs, liability, damages and expenses arising out of such claims or litigation asserted as a result hereof. However, ARTIST shall not be responsible for negligent acts or omissions of COUNTY, its agents or employees, or of third parties which result in bodily injury to persons or property.
15. **Termination.**
- (A) Either party may terminate this Agreement without cause by giving the other party at least ten (10) days prior written notice. In the event Artist terminates this Agreement without cause, Artist agrees to reimburse County for all funds received by Artist under this Agreement.
- (B) Either party may terminate this Agreement upon breach by the other party of any material provision of this Agreement, provided such breach continues for fifteen (15) days after receipt by the breaching party of written notice of such breach from the non-breaching party.
16. **Entire Agreement Modification.** This Agreement contains the entire understanding of the parties with respect to the subject matter hereof and supersedes all prior agreements, oral or written, and all other communications between the parties relating to such subject matter. This Agreement may not be amended or modified except by mutual written agreement of the authorized parties to this Agreement.
17. **Governing Law.** This Agreement shall be construed in accordance with the laws of the State of Florida. The venue for any litigation involving this contract shall be the Ninth Circuit Court in and for Orange County, Florida.
18. **Notices.** All notices hereunder by either party to the other shall be in writing, delivered personally, by certified or registered mail, return receipt requested, or by overnight courier, and shall be deemed to have been duly given when delivered personally or when deposited in the United States mail, postage prepaid, addressed as follows:

As to COUNTY:

Terry Olson, Administrator
Arts & Cultural Affairs Office
Orange County Government
450 E. South Street, Suite 345
Orlando, FL 32801
(407) 836-5546

(407) 836-5554 (fax)
Terry.Olson@ocfl.net

With copy to :

Orange County Administrator
P.O. Box 1393
Orlando, Florida 32802

As to ARTIST:

Jefre Manuel
9838 Poplar Place
Orlando, FL 32827
J@Jefre.org

or to such other persons or places as either party may from time to time designate by written notice to the other.

19. **Assignment.** ARTIST shall not assign or transfer, in whole or in part, this Agreement or any of ARTIST's rights, duties or obligations under this Agreement without the prior written consent of COUNTY.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

ORANGE COUNTY, FLORIDA
Board of County Commissioners

By: Carrie Woodell
Carrie Woodell, MPA, CFCM,
CPPO, C.P.M., CPPB , APP
Manager, Procurement Division

Date: 10/14/2020

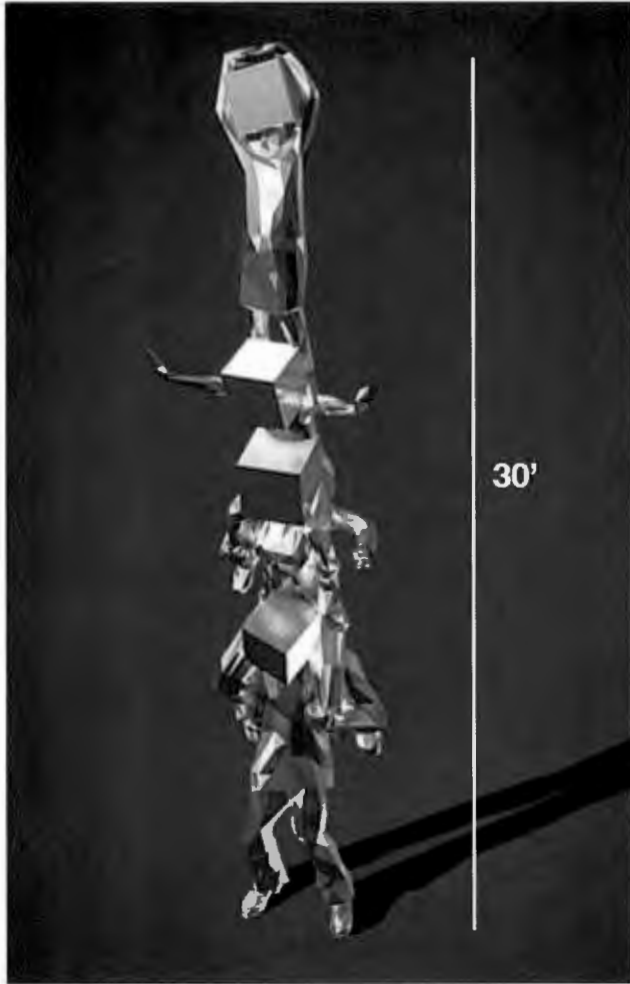
ARTIST

By: [Signature]
Studio JEFRE, LLC

Date: 8.28.2020

12
EXHIBIT 1

DESIGN PROPOSAL



10'

EXHIBIT 2BUDGET

1. Final Design/Engineering/Shop Drawings	\$15,000.00
2. Materials (Stainless Steel 316)	\$43,000.00
3. Stainless Steel Armature	\$20,000.00
4. Welding/Bevel/Grind/Sand Blast	\$50,000.00
5. Assembly & Fabrication	\$20,000.00
6. Crating/Shipping	\$8,000.00
7. Footer	\$6,000.00
8. Electrical Fixtures	\$3,000.00
9. Installation	\$5,000.00
10. Artist Fee/Contingency (15%)	<u>\$30,00.00</u>
Total	\$200,000.00

EXHIBIT 3

PAYMENT SCHEDULED UPON COMPLETION OF INDIVIDUAL ITEMS,
AS SPECIFIED IN EXHIBIT 2 BUDGET.

1. 20% DownPayment (Final Design/Engineering/Shop Drawings)	\$50,000.00
2. 20% Deposit Materials	\$50,000.00
3. 40% Deposit Fabrication	\$80,000.00
4. 15% Deposit Shipping/Installation	\$10,000.00
5. 5% Final Payment	\$10,000.00

Total Amount \$200,000.00 USD

Fabrication: 4 –5 Months
(Does not include delivery and Installation)

EXHIBIT 4

TRANSFER OF TITLE

STATE OF FLORIDA

COUNTY OF ORANGE

TRANSFER OF TITLE

FOR VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, the undersigned ARTIST located at the address noted below does hereby sell, transfer and convey to the Agency, located in Orlando, Florida, its assigns and successors, all right, title and interest in the ownership of the Artwork commissioned by in the Artwork Commission Agreement between Orange County and Studio Jefre LLC. and as described therein.

Title 1: Family Tree

Location: The Intersection of Grand National Dr. and Caravan Ct., Orlando, Florida 32819

IN WITNESS WHEREOF, Artist has executed this written transfer of title on this the 13th day of August, 2020.

JEFRE

Witness

Artist

Sworn to and subscribed
before me on this ___ day

9838 Poplar Place
Orlando, Florida 32827

of _____, 20__

Address
26-0498292

NOTARY PUBLIC
My Commission Expires: _____
(NOTARY SEAL)

Social Security Number