

City of Pompano Beach

AGREEMENT FOR COMMISSIONED ARTWORK

with

TYLER FUQUA CREATIONS, INC.

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AGREEMENT

THIS AGREEMENT, entered into this _____ day of _____, 2021, by and between:

CITY OF POMPANO BEACH, a municipal corporation organized in the state of Florida whose address is 100 West Atlantic Boulevard, Pompano Beach, Florida 33060 (hereinafter "CITY"),

and

TYLER FUQUA CREATIONS, INC., an independent contractor whose address is 24645 SE Brevi Lane, Eagle Creek, OR 97022 (hereinafter "ARTIST").

WHEREAS, on January 5, 2021, the CITY issued a Call To Artists, a copy of which is attached hereto and made a part hereof as Exhibit 1, which sought to commission an artist to design, fabricate and install a sculpture for display on land and ultimately submersion in the ocean for attachment to the Lady Luck in Shipwreck Park (the "Project");

WHEREAS, on May 20, 2021, the CITY's Public Art Committee reviewed the 107 responses received pursuant to the foregoing Call To Artists and selected Tyler Fuqua Creations, Inc. to design, fabricate and install a sculpture for the Project (the "Artwork");

WHEREAS, a copy of ARTIST's proposed Design Proposal for the Artwork is incorporated into the Scope of Services for the Project attached hereto and made a part hereof as Exhibit 2;

WHEREAS, in accordance with the terms and conditions set forth herein, ARTIST is able and prepared to provide the services and insurance described in the Call To Artists, the Scope of Services and this Agreement (collectively, the "Work");

WHEREAS, the CITY and ARTIST desire to enter into this Agreement setting forth the parties' mutual understandings and undertakings;

WHEREAS, the City Commission has determined entering into this Agreement with ARTIST is in the best interest of the public; and

NOW, THEREFORE, in consideration of the conditions, covenants and mutual promises herein contained, the CITY and ARTIST agree as follows.

ARTICLE 1 REPRESENTATIONS

A. Representations of CITY. CITY makes the following representations to ARTIST which CITY acknowledges ARTIST has relied upon in entering into this Agreement.

1. This Agreement is a valid, binding and permissible activity within the power and authority of the CITY and does not violate any CITY Code, Charter provision, rule, resolution, ordinance, policy or agreement of the CITY or constitute a default of any agreement or contract to which the CITY is a party.

2. The individuals executing the Agreement on behalf of the CITY are duly authorized to take such action, which action shall be, and is, binding upon the CITY.

3. ARTIST shall be entitled to rely upon the accuracy and completeness of any information or reports supplied by CITY or by others authorized by the CITY'S Public Art Program Manager.

B. Representations of ARTIST. ARTIST makes the following representations to CITY which CITY relies upon in entering into this Agreement.

1. ARTIST'S execution, delivery, consummation and performance under this Agreement will not violate or cause ARTIST to be in default of any covenants, rules and regulations (as applicable) or any other agreement to which ARTIST is a party or constitute a default thereunder or cause acceleration of any obligation of ARTIST thereunder.

2. The individual executing this Agreement and related documents on behalf of ARTIST is duly authorized to take such action which action shall be, and is, binding on ARTIST.

3. There are no legal actions, suits or proceedings pending or threatened against or affecting ARTIST that ARTIST is aware of which would have any material effect on ARTIST'S ability to perform its obligations under this Agreement.

4. ARTIST represents it has the ability, skill and resources to complete its responsibilities under this Agreement and that the Artwork shall be designed and fabricated to withstand the outdoor climate of South Florida for a minimum of one (1) year and permanent submersion in the Atlantic Ocean off Pompano Beach without maintenance. ARTIST further represents that the Lady Luck will be a suitable site for permanent submersion.

5. The CITY shall be entitled to rely upon the technical and leadership skills of ARTIST or by others authorized by ARTIST under this Agreement.

6. ARTIST represents and warrants it has and shall continue to maintain all licenses and approvals required to provide the services hereunder and that it shall at all times conduct its business activities in a reputable manner.

7. ARTIST represents that each person or entity to provide services hereunder is duly qualified to perform such services and is sufficiently experienced and skilled in the area(s) for which such person or entity will render services. ARTIST agrees that all Work under this Agreement shall be performed in a skillful and respectful manner, and that the quality of all such services shall equal or exceed prevailing industry standards for the provision of such services.

ARTICLE 2
SCOPE OF SERVICES

ARTIST shall perform all Work specified hereunder, inclusive of the Exhibits. Unless stated otherwise in this Agreement, the Work required of ARTIST includes all labor, materials and tasks, whether or not enumerated herein, that are such an inseparable part of the Scope of Services that exclusion thereof would render ARTIST's performance impractical, illogical, or unconscionable. ARTIST agrees to design and fabricate the Artwork in accordance with the provisions of the Call to Artists, the Scope of Services and this Agreement.

ARTICLE 3
CONTRACT ADMINISTRATOR

The CITY's Public Art Program Manager or his/her written designee shall serve as the CITY's Contract Administrator during the performance of services under this Agreement.

Tyler Fuqua shall serve as ARTIST's Contract Administrator during the performance of services under this Agreement.

ARTICLE 4
RESPONSIBILITIES OF ARTIST

1. ARTIST shall perform all services and furnish all supplies, personnel, materials and equipment for the design, execution, and fabrication of the Artwork; pay all necessary taxes, insurance, and consultants; purchase all supplies, materials, tools, equipment, lighting requirements and all other items incidental to designing and fabricating the Artwork.

2. ARTIST shall be responsible for the quality and timely completion of the Work and shall, without additional compensation, correct any errors, omissions, or other deficiencies in the Artwork identified by the Contract Administrator prior to CITY's written acceptance of the Artwork after Artist installs it at the land location ("Temporary Acceptance") and onto the Lady Luck after submersion in the Atlantic Ocean ("Final Acceptance"). The land location and the Lady Luck submerged ship are hereinafter collectively referred to as the "Site."

3. ARTIST shall perform the Work in accordance with standards of care, skill, training, diligence, and judgment provided by highly competent professionals who perform work of a similar nature and also develop and adhere to written protocols to ensure public resources are properly tracked and appropriated.

4. Before commencing any Work hereunder, ARTIST and any and all of ARTIST's subcontractors or other agents shall have complied with the background check procedures of Article 10 herein, a copy of the form for which is attached hereto and made a part hereof as Exhibit 3.

5. Upon the CITY's Temporary Acceptance of the Artwork, ARTIST shall provide CITY a fully-executed original Copyright Assignment of Artwork and a Catalogue Form, copies of the forms for which are respectively attached hereto and made a part hereof as Exhibit 4 and 5.

6. All Work performed by ARTIST hereunder shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing under this Agreement. ARTIST shall, at ARTIST's sole expense, secure the services of an appropriately licensed general contractor, subcontractor, engineer, and/or any other professional(s) necessary to obtain all licenses and approvals required to perform the Work under this Agreement.

7. ARTIST shall not issue any public information releases through any media, including social media, regarding the Work performed hereunder without prior written approval of the CITY's Contract Administrator.

8. Within one week after the City's Contract Administrator provides ARTIST photos or a video depicting the land location proposed by CITY for installation of the ARTWORK, ARTIST shall notify the CITY Contract Administrator in writing of any site condition that would render it unsuitable or it shall be deemed that ARTIST finds said land location suitable.

9. ARTIST is solely responsible for Artwork storage pending delivery to the Site and shall complete fabrication, transportation, and installation in conformity with the Design Proposal which has been approved by both the CITY's Public Art Committee and the City Commission.

10. After fabrication of the Artwork is completed and ARTIST has received any applicable permits, other jurisdictional approval(s), and written approval from the CITY's Contract Administrator, ARTIST shall deliver the Artwork to the Site(s). ARTIST shall coordinate access to the Site(s) for Artwork delivery with the CITY's Contract Administrator.

11. To the extent applicable, ARTIST shall cooperate with CITY's Contract Administrator or other agents as well as any third parties at the Site(s) to oversee installation of the Artwork. ARTIST agrees that the CITY's Contract Administrator shall have the authority to resolve any scheduling conflicts between the CITY and ARTIST and such resolution shall be binding on the parties.

12. ARTIST shall have an ongoing obligation to report in writing any discrepancy or defect at the Site(s) which hinders or impairs installation of the Artwork within three (3) calendar days of the time ARTIST knew or should have known of the defect, and shall cease installation of the Artwork until written notice from the CITY's Contract Administrator that installation should resume. ARTIST's failure to timely report any apparent discrepancy or defect in writing to the CITY shall waive any related objection ARTIST has to the installation and ARTIST shall be solely responsible for any expenses associated with remedying any discrepancy or defect that hinders or impairs installation or damages the Artwork.

13. ARTIST shall work in a manner and time so as not to interfere with any of the operations, construction, or maintenance of CITY or its agents. ARTIST shall, when working on the Site, keep the premises free from waste materials and rubbish. At the completion of the Artwork, ARTIST shall, at his sole expense, remove any waste materials, rubbish, tools, equipment, machinery, and surplus materials from the Site(s) attributable to ARTIST or the Artwork. The CITY's Contract Administrator may withhold final compensation until receipt of any necessary clean-up payment from ARTIST, deduct the clean-up charge from final payment to ARTIST, or charge the applicable cost of the cleanup to ARTIST.

14. Title to the Artwork passes to CITY upon the CITY's Contract Administrator's Final Acceptance of same. Upon transfer of title, CITY shall be responsible for any and all subsequent damage to the Artwork except damage caused by ARTIST or any subcontractors or other agents of ARTIST. At any time prior to title transfer, all risk of destruction or damage to the Artwork, or any part thereof, from any cause whatsoever shall be borne by ARTIST. ARTIST shall, at ARTIST's sole expense, fully repair and restore the Artwork as to any destruction or damage that occurs before title has transferred from ARTIST to the CITY.

ARTICLE 5
RESPONSIBILITIES OF CITY

The CITY's Contract Administrator shall be responsible for enforcement of this Agreement. In the event any violation is reported, the CITY's Contract Administrator shall investigate same and report the findings to the City Manager who has sole discretion to take action and make recommendations as deemed necessary. The City Manager's actions and recommendations pursuant to this Article shall be final and binding on ARTIST.

ARTICLE 6
NON-ASSIGNABILITY AND SUBCONTRACTING

This Agreement is not assignable and ARTIST agrees it shall not sell, assign, transfer, merge or otherwise convey any of its interests, rights or obligations under this Agreement, in whole or in part, to any other person, corporation or entity.

Any attempt by ARTIST to assign or transfer any of its rights or obligations under this Agreement without first obtaining the CITY'S written approval shall result in CITY'S immediate cancellation of this Agreement. Specifically, no assignment of any right or obligation under this Agreement shall be binding on the CITY without the written consent of the City Commission of Pompano Beach.

In addition, this Agreement and the rights and obligations therein shall not be assignable or transferable by any process or proceeding in court, or by judgment, execution, proceedings in insolvency, bankruptcy or receivership, and in the event of ARTIST'S insolvency or bankruptcy, CITY may at its option terminate and cancel this Agreement without any notice of any kind whatsoever, in which event all rights of ARTIST hereunder shall immediately cease and terminate.

Nothing herein shall be construed to create any personal liability on the part of the CITY or its agent(s) nor shall it be construed as granting any rights or benefits hereunder to anyone other than CITY and ARTIST.

ARTICLE 7
TERM, RENEWAL AND TIME OF PERFORMANCE

1. Term and Renewal. This Agreement shall be for no more than a two (2) year term commencing two weeks after this Agreement is fully executed by both parties and ending upon the CITY's Final Acceptance, subject to earlier termination as provided herein. The CITY reserves the right to extend this Agreement for one (1) year provided both parties agree in writing to said extension. Renegotiation shall commence at least sixty (60) days prior to normal termination.

2. Fiscal Year. The continuation of this Agreement beyond the end of any CITY fiscal year shall be subject to both the appropriation and the availability of funds, in accordance with Chapter 129, Florida Statutes.

3. Notice to Proceed. ARTIST shall commence each phase of the Artwork within the time period stated in the CITY's written Notice to Proceed. All duties, obligations, and responsibilities of ARTIST required for each phase shall be completed by the deadline set forth in the Notice to Proceed. The Notice to Proceed is defined as a written document issued by the CITY's Contract Administrator which authorizes the ARTIST to begin a particular phase of the Work.

4. Delay. ARTIST shall notify CITY in writing whenever a delay is anticipated or experienced and set forth all facts and details related to the delay. The CITY's Contract Administrator may grant ARTIST an extension of time if he/she deems it appropriate in his/her sole discretion.

5. Time is of the Essence. Time is of the essence for all performance required under this Agreement.

ARTICLE 8 **DESIGN AND MODIFICATION**

ARTIST understands and agrees that he shall fabricate and install the Artwork in accordance with the specifications set forth in the Call to Artists and the Scope of Services.

Major modification shall mean more than a 25% overall change from the Design Proposal set forth in the Scope of Services and is prohibited without the formal written approval of the CITY's Public Art Committee and its City Commission. ARTIST understands and agrees that CITY's Contract Administrator has sole discretion to approve the modification "as is" or require a formal review and approval by both the CITY's Public Art Committee and its City Commission.

Minor modifications may be submitted and approved by the CITY's Contract Administrator only when necessary to facilitate the Work. ARTIST understands and agrees that the CITY's Contract Administrator has sole discretion to approve the modification "as is" and/or determine whether said modification is necessary to facilitate the Work.

ARTICLE 9 **INSPECTIONS BY CITY**

The CITY's Contract Administrator shall inspect the fabrication and installation of each Artwork at the five (5) intervals described below to ensure compliance with the Design Proposal.

- 1st Inspection - 10% completion (beginning phases of Artwork fabrication)
- 2nd Inspection - 25% completion (Artwork fabrication is 25% complete)
- 3rd Inspection - 50% completion (Artwork shall be completed and ready for installation within 6 months after this Agreement is fully executed)
- 4th Inspection - 75% completion (Artwork installed at land location)
- 5th Inspection - 100% completion (Artwork installed on Lady Luck)

ARTIST shall notify the CITY's Contract Administrator in writing when each of the completion phases has been reached. ARTIST understands and agrees that the CITY's Contract Administrator has sole discretion to determine whether ARTIST has reached the requisite completion phase.

ARTICLE 10
COMPENSATION, RECORDKEEPING, INSPECTION,
AUDIT, BACKGROUND CHECK AND
PUBLIC RECORDS PROCEDURES

A. Compensation. For and in consideration of the mutual covenants and obligations herein as well as other good and valuable consideration received, ARTIST agrees to design, fabricate and install the Artwork in accordance with the Call to Artists, the Scope of Services and this Agreement. CITY agrees to pay ARTIST a maximum not-to-exceed total amount of Thirty-Five Thousand Dollars (\$35,000.00) for the Work payable in five (5) installments as follows:

- (1) \$7,000.00 (20%) within two weeks after the City Commission approves this Agreement;
- (2) \$7,000.00 when the fabrication of the Artwork is 50% complete;
- (3) \$7,000.00 within 10 business days of the CITY's Temporary Acceptance;
- (4) \$4,000.00 when the ARTIST begins coordination with the CITY's Contract Administrator and Shipwreck Park for the relocation, sinking and attachment of the Artwork to the Lady Luck; and
- (5) \$10,000.00 within 10 business days of the CITY's Final Acceptance.

1. All payment shall be made only for Work actually performed, completed and accepted by CITY pursuant to this Agreement and in accordance with the foregoing payment schedule which shall be accepted by the ARTIST as full compensation for all such Work. These maximum amounts do not constitute a limitation of any sort upon ARTIST's obligation to perform all Work required hereunder.

2. Notwithstanding any provision of this Agreement to the contrary, CITY may withhold, in whole or in part, payment to the extent necessary to protect itself from loss on account of inadequate, defective or otherwise unacceptable Artwork that has not been remedied or from loss due to fraud or reasonable evidence indicating fraud by the ARTIST. When the above reasons for withholding payment are removed or resolved in a manner satisfactory to the CITY's Contract Administrator, payment may be made to ARTIST. The amount withheld pursuant to this provision shall not be subject to payment of interest by CITY.

3. CITY shall pay ARTIST within thirty (30) calendar days of receipt of ARTIST's proper invoice after any required approvals. To be deemed proper, an invoice must comply with all requirements set forth in this Agreement and must be submitted pursuant to any instructions prescribed by the CITY's Contract Administrator. CITY shall have the right to withhold payment of the invoice based on ARTIST's failure to comply with any term, condition, or requirement of this Agreement. The parties hereto agree that any amounts so withheld shall not be subject to payment of any interest by CITY.

4. To be deemed proper, an invoice must comply with all requirements set forth in this Agreement and must be submitted pursuant to any instructions prescribed by the CITY's Contract Administrator. CITY shall have the right to withhold payment hereunder based on ARTIST's failure to comply with any term, condition, or requirement of this Agreement. The parties hereto agree that any amounts so withheld shall not be subject to payment of any interest by CITY.

B. Recordkeeping, Inspection and Audit Procedures. ARTIST shall be required to record, preserve and make available at all reasonable times for CITY'S local inspection, examination and audit, complete and accurate records for all activities and revenues generated under this Agreement for a period of five (5) years after its termination or as otherwise required by applicable law(s), including the required retention period of the Florida Public Records Act, Chapter 119, Florida Statutes, if applicable, or if the Florida Public Records Act is not applicable, for a minimum period of five (5) years after termination or expiration of this Agreement. However, if an audit has been initiated and audit findings have not been resolved, the records shall be retained until resolution of the audit findings.

ARTIST shall make available for CITY's inspection at reasonable times all time logs, financial records; federal/state tax returns; and any other documents attendant to ARTIST's Work hereunder.

C. Background Check Procedures. ARTIST and any of his subcontractors hereunder shall comply with the CITY'S Background Screening Policy as set forth in Exhibit 6. At least one week prior to ARTIST or any of his subcontractors providing services hereunder, ARTIST shall provide the CITY'S Contract Administrator a completed and fully-executed Release on all such persons so that CITY, at its sole cost, can conduct the background checks required hereunder. CITY reserves the right to refuse to permit ARTIST or any of his subcontractors to provide services under this Agreement based upon the grounds for disqualification set forth in the CITY's Background Screening Policy.

D. Public Records. The City of Pompano Beach is a public agency subject to Chapter 119, Florida Statutes. The ARTIST shall comply with Florida's Public Records Law, as amended. Specifically, the ARTIST shall:

1. Keep and maintain public records required by the CITY in order to perform the service.
2. Upon request from the CITY'S custodian of public records, provide the CITY with a copy of requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement's term and following completion of the Agreement if the ARTIST does not transfer the records to the CITY.
4. Upon completion of the Agreement, transfer, at no cost to the CITY, all public records in possession of the ARTIST, or keep and maintain public records required by the CITY to perform the service. If the ARTIST transfers all public records to the CITY upon completion of the Agreement, the ARTIST shall destroy any duplicate public records that are exempt or

confidential and exempt from public records disclosure requirements. If the ARTIST keeps and maintains public records upon completion of the Agreement, the ARTIST shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CITY, upon request from the CITY'S custodian of public records in a format that is compatible with the information technology systems of the CITY.

Failure of the ARTIST to provide the above described public records to the CITY within a reasonable time may subject ARTIST to penalties under 119.10, Florida Statutes, as amended.

**PUBLIC RECORDS CUSTODIAN IF
THE ARTIST HAS QUESTIONS
REGARDING THE APPLICATION OF
CHAPTER 119, FLORIDA STATUTES,
TO THE ARTIST'S DUTY TO PROVIDE
PUBLIC RECORDS RELATING TO
THIS AGREEMENT, CONTACT THE
CUSTODIAN OF PUBLIC RECORDS
AT:**

**CITY CLERK
100 W. Atlantic Blvd., Suite 253
Pompano Beach, Florida 33060
(954) 786-4611
RecordsCustodian@copbfl.com**

**ARTICLE 11
NOTICES AND DEMANDS**

Whenever it is provided herein that notice, demand, request, or other communication shall or may be given to, or served upon, either of the parties by the other, it must be in writing, sent by certified United States mail with return receipt requested, addressed to the party to whom it is intended at the places designated below until changed by written notice in compliance with the provisions of this Article. For the present, the parties designate the following respective places for giving of notice, to-wit:

For CITY
City Manager
P.O. Drawer 1300
Pompano Beach, Florida 33060
Greg.Harrison@copbfl.com
954-786-4601 office
954-786-4504 fax

With a copy to:
Laura Atria, Public Art Program Manager
50 West Atlantic Boulevard
Pompano Beach, Florida 33060
Laura.Atria@copbfl.com
954-545-7800, ext. 3813 office
954-786-4666 fax

For ARTIST

Tyler FuQua
24645 SE Brevi Lane
Eagle Creek, OR 97022
TyFu@me.com
503-708-9956 phone

ARTICLE 12
GOVERNING LAW AND VENUE

This Agreement shall be governed by the laws of the State of Florida, both as to interpretation and performance. CITY and ARTIST submit to the jurisdiction of Florida courts and federal courts located in Florida. The parties agree that proper venue for any suit at law or in equity attendant to this Agreement shall be instituted and maintained only in courts of competent jurisdiction in Broward County, Florida.

No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and in addition to every other remedy given herein, now or hereafter existing at law or in equity or by statute or otherwise.

ARTICLE 13
INDEPENDENT CONTRACTOR

It is expressly understood between the parties that ARTIST'S relationship to CITY hereunder is that of an independent contractor and that this Agreement shall not constitute or make the parties a partnership or joint venture. ARTIST shall have no authority to employ any person as an employee or agent on behalf of CITY for any purpose.

Neither ARTIST nor any person or entity engaging in any Work hereunder shall be deemed an employee or agent of CITY nor shall they represent themselves to others as an employee or agent of CITY. Should any person indicate by written or verbal communication that they believe ARTIST or any his agents, employees or subcontractors are employees or agents of the CITY, ARTIST shall use its best efforts to correct said mistaken belief both verbally and in writing.

ARTIST, its employees, subcontractors or any other agents of ARTIST providing services hereunder shall be deemed independent contractors for all purposes and shall not in any manner be deemed employees of the CITY. As such, any contractors, sub-contractors or other agents of ARTIST providing services hereunder shall not be subject to any withholding for tax, Social Security or other purposes by CITY, nor shall such person be entitled to sick leave, pension benefits, vacation, medical benefits, life insurance, workers or unemployment compensation or the like from the CITY.

ARTICLE 14
ATTORNEY FEES AND COSTS

In the event of any litigation involving the terms and conditions of this Agreement, it is understood and agreed that the prevailing party in such litigation shall be entitled to recover from the non-prevailing party reasonable attorney and paraprofessional fees as well as all out-of-pocket

costs and expenses incurred thereby by the prevailing party in such litigation through all appellate levels. The provisions of this Article shall survive termination of this Agreement.

ARTICLE 15
ARTIST'S INDEMNIFICATION OF CITY

1. ARTIST shall at all times indemnify, hold harmless and defend the CITY and its agents hereunder from and against any and all claims, demands, suit, damages, attorneys' fees, fines, penalties, defense costs or liabilities arising directly or indirectly out of or in connection with ARTIST'S actions, negligence, misconduct or provision of Work hereunder except that ARTIST shall not be liable under this Article for damages arising out of injury to persons or property arising from the negligence, gross negligence or willful misconduct of CITY or any of its officers, employees or authorized agents. ARTIST agrees to investigate, handle, respond to, provide defense for, and defend any such claims at its sole expense and to bear all other costs and expenses related thereto, even if the claim(s) is/are groundless, false or fraudulent. The foregoing indemnification shall not be operative as to any claims by ARTIST for any causes of action ARTIST has or may have for breaches or defaults by CITY under this Agreement.

2. ARTIST acknowledges and agrees that CITY would not enter into this Agreement without this indemnification of CITY by ARTIST. The parties agree that one percent (1%) of the total compensation paid to ARTIST hereunder shall constitute specific consideration to ARTIST for the indemnification provided under this Article. The provisions and obligations of this Article shall survive expiration or early termination of this Agreement. To the extent considered necessary by the CITY's legal counsel, in his or her reasonable discretion, any sums due ARTIST hereunder may be retained by CITY until all claims subject to this indemnification obligation have been resolved. Any sums so withheld shall not be subject to the payment of interest by CITY.

3. ARTIST acknowledges and agrees that CITY assumes no responsibility whatsoever for any personal property, stock or inventory of ARTIST placed at the Site(s) and that ARTIST is solely responsible for insuring same against damage or loss of any nature or kind. ARTIST further agrees that CITY is hereby expressly released and discharged from any and all liability for any loss, injury or damage to persons or property which may be sustained by reason of ARTIST'S presence at the Site(s) or the performance of Work hereunder.

4. ARTIST expressly agrees that these indemnification provisions are intended to be as broad and inclusive as permitted by laws of the State of Florida, and that if any portion thereof is held invalid, it is agreed that the balance shall notwithstanding, continue in full force and effect.

ARTICLE 16
GOVERNMENTAL IMMUNITY

Each party agrees to be fully responsible for the acts and omissions of its agents to the extent permitted by law. Nothing herein constitutes or shall be construed as consent to be sued by third parties in any matter arising out of this Agreement or any other contract.

CITY is a political subdivision of the State of Florida and nothing contained in this Agreement is intended to serve as a waiver of CITY's sovereign immunity as provided by §768.28, Florida Statutes.

ARTICLE 17
PUBLIC ENTITY CRIMES ACT

Through execution of this Agreement and in accordance with § 287.133, Florida Statutes, ARTIST certifies that it is not listed on the convicted vendors list maintained by the State of Florida, Department of General Services.

ARTICLE 18
INSURANCE

ARTIST shall maintain insurance in the amounts and subject to all conditions set forth in Exhibit 6. ARTIST shall not commence operations under this Agreement until certification or proof of insurance detailing terms and provisions of coverage has been received and approved by the CITY'S Risk Manager. In addition, the CITY shall be named as an additional insured on the Certificate of Insurance.

ARTICLE 19
DEFAULT AND DISPUTE RESOLUTION

1. If either party claims the other is in default of this Agreement, the parties may, but are not required to, timely schedule a conference or meeting and make every reasonable effort to reach an amicable resolution. Both parties shall be entitled to have representatives present at any such meeting or conference.

2. If there is a default of any covenant or obligation under this Agreement, the defaulting party shall be given ten (10) calendar days to cure said default after written notice to the other in accordance with Article 11 herein.

3. If the party receiving written notice of default provides written notice denying same within ten (10) calendar days of receipt or the alleged default has not been remedied within ten (10) calendar days after receipt of written notice and is continuing, either party may appeal in writing to the City Manager for the CITY .

Upon receipt of said written appeal or demand, the City Manager for the CITY may request additional information relating to the dispute from either or both parties which shall be provided within a reasonable time. Upon the City Manager's receipt and timely review of the disputed matter, the City Manager may make a written decision regarding the alleged default as he/she deems appropriate under the circumstances. If the City Manager's decision is not implemented within the deadline set forth in his/her written decision, it shall be lawful for either party to terminate this Agreement in addition to any other remedies provided by law.

ARTICLE 20
TERMINATION

A. Termination for Cause. Breach or default of any of the covenants, duties, or terms of this Agreement shall be cause for termination of this Agreement. In the event of a breach or default, the defaulting party shall be given written notice which describes in reasonable detail the alleged

breach or default and ten (10) calendar days to cure same, and either party may avail itself of the informal Default and Dispute Resolution Procedures set forth in Article 11 above or seek other remedies as provided hereunder or by law.

B. Termination for Convenience of City. Upon thirty (30) calendar days written notice delivered by certified mail, return receipt requested, to ARTIST, CITY may without cause and without prejudice to any other right or remedy, terminate this Agreement for convenience whenever it determines that such termination is in the best interest of the CITY. If the Agreement is terminated for the CITY's convenience, the notice of termination to ARTIST shall state so and also define the extent of the termination. Upon receipt of such notice, ARTIST shall use commercially reasonable efforts to discontinue all services hereunder to the extent indicated on the notice of termination. CITY shall be responsible to pay ARTIST any monies to which ARTIST is entitled for the WORK satisfactorily completed through the date of termination. ARTIST acknowledges that ARTIST has received good, valuable and sufficient consideration from CITY, the receipt and adequacy of which are, hereby acknowledged by ARTIST, for CITY's right to terminate this Agreement for convenience and ARTIST hereby waives any and all rights to challenge the adequacy of such consideration or the validity of CITY's right to terminate for convenience.

ARTICLE 21

NO DISCRIMINATION AND AMERICAN WITH DISABILITIES ACT

A. No Discrimination. In the performance of this Agreement, ARTIST and its agents shall not discriminate against any apprentice or person because of race, age, color, religion, sex, gender identity or expression, national origin, age, disability, familial status, marital status or sexual orientation, political affiliation or any other factor which cannot lawfully or appropriately be used as basis for service delivery.

B. American with Disabilities Act ("ADA"). ARTIST shall affirmatively comply with all applicable provisions of the ADA, including Titles I and II regarding nondiscrimination on the basis of disability and all applicable regulations, guidelines, and standards. ARTIST shall also comply with Title I of the ADA regarding nondiscrimination on the basis of disability in employment and further shall not discriminate against any employee or applicant for employment because of race, age, religion, color, gender, sexual orientation, national origin, marital status, political affiliation, or physical or mental disability.

C. ARTIST's compliance with the foregoing non-discrimination provisions are express conditions hereof and any failure by ARTIST to so comply shall be a breach of this Agreement and the CITY may exercise any right as provided herein or otherwise provided by law.

ARTICLE 22

NO CONTINGENT FEE

ARTIST warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for ARTIST, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for ARTIST any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

In the event of ARTIST'S breach or violation of this provision, the CITY shall have the right to terminate this Agreement without liability and, at CITY'S sole discretion, to recover the full amount of such fee, commission, percentage, gift or consideration.

ARTICLE 23
FORCE MAJEURE

Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, war, civil disorder, sabotage, accident, flood, acts of God or by any reason of any other matter or condition beyond the control of either party which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall economic hardship or lack of funds be considered an event of Force Majeure.

If CITY or ARTIST are unable to perform, or are delayed in their performance of any obligations under this Agreement by reason of any event of Force Majeure, such inability or delay shall be excused at any time during which compliance therewith is prevented by such event and during such period thereafter as may be reasonably necessary for either party to correct the adverse effect of such event of force majeure.

In order to be entitled to the benefit of this Article, a party claiming an event of force majeure shall be required to give prompt written notice to the other party specifying in detail the event of force majeure and also diligently proceed to correct the adverse effect of any force majeure. The parties agree that, as to this Article, time is of the essence.

ARTICLE 24
WAIVER AND MODIFICATION

Failure to insist upon strict compliance with any terms, covenants or conditions of this Agreement shall not be deemed a waiver of such, nor shall any waiver or relinquishment of such right or power at any time be taken to be a waiver of any other breach. Further, the acceptance of a single or repeated payment(s) by CITY after it falls due or after knowledge of any breach by ARTIST shall not be construed as a waiver of any of the CITY's rights hereunder.

CITY and ARTIST may request changes to modify certain provisions of this Agreement, including increasing or decreasing the scope of services to be provided. However, unless otherwise provided for herein, any such changes must be contained in a written amendment executed by both parties with the same formality of this Agreement.

ARTICLE 25
RELATIONSHIP BETWEEN THE PARTIES

ARTIST is being contracted by CITY for the purposes and to the extent set forth in this Agreement and, as such, shall be free to dispose of such other portion of ARTIST time and skill as does not interfere with ARTIST'S obligations hereunder.

ARTICLE 26
SEVERABILITY

Should any provision of this Agreement or the application of such provisions be rendered or declared invalid by a court action or by reason of any existing or subsequently enacted legislation, the remaining parts or provisions of this Agreement shall remain in full force and effect.

ARTICLE 27
APPROVALS

Whenever CITY approval(s) shall be required for any action under this Agreement, said approval(s) shall not be unreasonably withheld.

ARTICLE 28
ABSENCE OF CONFLICTS OF INTEREST

ARTIST represents it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with its performance hereunder. ARTIST further represents no person having any interest shall be employed or engaged by it for said performance.

ARTICLE 29
MISCELLANEOUS TERMS AND CONDITIONS

1. In case there is conflict between the terms of the Call To Artists, the Design Proposal and this Agreement, the terms of this Agreement shall prevail.

2. The sculpture designed, fabricated and installed by ARTIST hereunder shall be permanent Artwork created solely for the CITY. Pursuant to the Copyright Assignment attached as Exhibit 4, CITY has exclusive property rights to the Artwork created hereunder. In addition, ARTIST understands and agrees that CITY has the right to de-access the Artwork five (5) years after CITY accepts same as 100% complete at Final Acceptance.

3. ARTIST understands and agrees the Artwork created hereunder shall be fabricated and installed to withstand the outdoor climate of South Florida for a minimum of one (1) year after CITY's Temporary Acceptance of same. Further, ARTIST understands and agrees that CITY is entitled to rely upon the foregoing durability provision such that if any part(s) of the Artwork substantially deteriorates or is otherwise found to be defective, as determined solely by the CITY's Contract Administrator, ARTIST shall be responsible to repair or replace same at ARTIST's sole cost. However, CITY (not ARTIST) shall be solely responsible to bear all costs associated with the repair of any damage to the Artwork caused by vandalism after CITY's Temporary or Final Acceptance.

4. ARTIST may be given the right of first refusal to perform repairs or restoration. If the parties cannot agree on repair services or ARTIST is unable or unwilling to perform any necessary repairs on terms acceptable to CITY, or CITY cannot locate ARTIST, CITY may have such work performed at CITY's own expense in accordance with recognized principles of repair, restoration or conservation.

5. CITY and ARTIST agree that there are no third party beneficiaries to this Agreement.

6. Conflicts. ARTIST agrees that neither it nor its employees will have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with ARTIST's loyal and conscientious exercise of the judgment and care required to perform under this Agreement. ARTIST further agrees that during the term of this Agreement, neither ARTIST nor any of its agents providing services hereunder shall serve as an expert witness against CITY in any legal or administrative proceeding in which he, she, or ARTIST is not a party, unless compelled by court process. Further, such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of CITY in connection with any such pending or threatened legal or administrative proceeding unless compelled by court process. The limitations of this section shall not preclude ARTIST or any person from in any way representing themselves, including giving expert testimony in support thereof, in any administrative or legal proceeding. ARTIST agrees that any written agreements ARTIST has with any person or entity performing under this Agreement shall contain substantively identical language to ensure that said persons or entities meet the obligations contained in this paragraph.

7. Joint Preparation. This Agreement has been jointly prepared by the parties hereto and shall not be construed more strictly against either party.

8. Truth-In-Negotiation Representation. ARTIST's compensation under this Agreement is based upon representations supplied to CITY by ARTIST. ARTIST certifies that the information supplied is accurate, complete, and current at the time of contracting. CITY shall be entitled to recover any damages it incurs to the extent such representation is untrue.

9. Rights In Documents And Work. Any and all reports, photographs, surveys, and other data and documents provided or created in connection with this Agreement shall be and remain the property of CITY. In the event of termination or expiration of this Agreement, any reports, photographs, surveys, and other data and documents prepared by ARTIST, whether finished or unfinished, shall become the property of the CITY and shall be delivered by ARTIST to the CITY's Contract Administrator within seven (7) days of termination or expiration of this Agreement by either party.

10. ARTIST may be given the right of first refusal to perform repairs or restoration. If the parties cannot agree on repair services or ARTIST is unable or unwilling to perform any necessary repairs on terms acceptable to CITY, or CITY cannot locate ARTIST, CITY may have such work performed at CITY's own expense in accordance with recognized principles of repair, restoration or conservation.

ARTICLE 30
BINDING EFFECT

The benefits and obligations imposed pursuant to this Agreement shall be binding and enforceable by and against the parties hereto.

ARTICLE 31
WARRANTIES AND STANDARDS

1. Original Art. ARTIST warrants that the Artwork being commissioned is the original product of ARTIST's own creative efforts and, unless otherwise expressly stated herein, the Artwork is original and is a single edition.

2. Warranty of Quality. ARTIST warrants that the Artwork shall be free of defects in material and workmanship, including without limitation any defects consisting of "inherent vice" or qualities accelerating the deterioration of the Artwork and that ARTIST shall correct, at ARTIST's sole expense, any such defects which appear while the Artwork is installed at the land location. However, ARTIST shall not be responsible to correct any defects that arise after the CITY's Final Acceptance of the Artwork once it is attached to the Lady Luck upon submersion in the Atlantic Ocean.

3. Sale or Reproduction. ARTIST represents and warrants that ARTIST shall not sell or reproduce the Artwork or allow others to do so without the prior written approval of CITY. For the purposes of this Agreement, the Artwork is considered "reproduced" if the dimensions of another work exceed seventy-five percent (75%) of the dimensions of the commissioned Artwork. For purposes of this section, "dimensions" shall include, but not be limited to, sound, light, and other expressions not captured in a two or three dimensional physical object. This covenant shall continue in effect for a period consisting of the life of ARTIST plus fifty (50) years and shall be binding on ARTIST's successors, heirs and assigns.

4. Materials. ARTIST warrants to CITY that all materials used will be new unless otherwise specified and that all services will conform in all ways with the Agreement. ARTIST shall deliver the Artwork to CITY free and clear of any liens.

5. Intellectual Property Warranty. ARTIST warrants that the Artwork will not infringe upon or violate any license, copyright law, patent law, trade secret law, trademark law, moral rights law, semiconductor chip protection law, unfair competition law, proprietary information, non-disclosure, intellectual property or other right of any third party, or infringe upon or violate any right of privacy, or contain libelous material. ARTIST warrants that the Artwork complies with all applicable patent, trademark and copyright laws, rules, regulations, and codes. ARTIST further agrees that the Artwork shall not utilize any protected patent, trademark or copyright unless ARTIST has obtained all necessary permission and authority and provides documentation of same to CITY. If ARTIST uses any protected material, process or procedure in connection with the Artwork, ARTIST shall disclose such patent, trademark or copyright in the construction drawings and technical specifications.

6. Warranty of Authorization. ARTIST represents that ARTIST possesses full power to enter into this Agreement and to convey the rights herein granted to CITY without the consent of any third party.

ARTICLE 32
RIGHTS IN ARTWORK

1. The provisions of this Agreement shall control over the provisions of 17 U.S.C. § 106A and shall constitute a waiver by ARTIST of any rights in the Artwork set out in or otherwise granted by the Visual Artists Rights Act of 1990, 17 U.S.C. §106A. If there is a conflict or inconsistency between any provision contained in this Agreement and any provision contained in any provision of domestic or international law, including without limitation the European Union law, ARTIST understands and agrees that the provisions of this Agreement shall control and shall constitute a waiver by ARTIST of any rights in the Artwork set out in or otherwise granted by laws of other jurisdictions addressing ARTIST's rights in the Artwork.

2. Artwork may become an integral part to the architecture of the applicable building, structure, or site, and installation and integration of the Artwork may subject the Artwork to future removal, destruction, or other modifications including, without limitation, in connection with the renovation, destruction, or redevelopment of the applicable building, structure, or site or change of use. ARTIST consents to the incorporation of the Artwork into the building or structure or at the site, and waives any rights in the Artwork granted by 17 U.S.C. § 106A or any other applicable law.

3. CITY has an unlimited, perpetual, and irrevocable right to use or reproduce the Artwork in any non-commercial manner or media whatsoever, including without limitation to prepare derivative works based upon the Artwork, and to distribute copies of the Artwork.

4. CITY shall make a reasonable effort to notify ARTIST of any proposed action that will remove, destroy, or otherwise modify the Artwork by providing notice to ARTIST in accordance with the "Notices" section of this Agreement, including, if applicable, notice of any planned Deaccession. Any lack of notice to ARTIST shall not impede CITY's ability to proceed with any modification, repair, or removal.

ARTICLE 33
SURVIVAL

The following provisions shall survive the expiration or earlier termination of this Agreement: Article 10B, "Recordkeeping, Inspection and Audit Procedures"; Article 12, "Governing Law and Venue"; Article 15, "ARTIST's Indemnification of City"; Article 29, Paragraph 10, "Rights in Documents and Work"; Article 29, Paragraph 11, regarding Artwork repair and restoration; Article 31, "Warranties and Standards"; Article 32, "Rights in Artwork"; and this Article 33, "Survival."

ARTICLE 34
ENTIRE AGREEMENT AND INTERPRETATION

This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and both parties agree there are no commitments, agreements or understandings concerning the subject matter herein that are not contained in this Agreement. Accordingly, both parties agree no

deviation from the terms herein shall be predicated upon any prior representations or agreements, whether oral or written.

Regardless of which party or party's counsel prepared the original draft and subsequent revisions of this Agreement, both CITY and ARTIST and their respective counsel have had equal opportunity to contribute to and have contributed to its contents, and this Agreement shall not be deemed to be the product of, and therefore construed against either party.

It is further agreed the omission of a term or provision contained in an earlier draft of this Agreement shall have no evidentiary significance regarding the contractual intent of the parties and that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document agreed to and executed by authorized representatives of both parties with the same formality of this Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

“CITY”:

CITY OF POMPANO BEACH

By: _____
REX HARDIN, MAYOR

By: _____
GREGORY P. HARRISON, CITY MANAGER

Attest:

ASCELETA HAMMOND, CITY CLERK

(SEAL)

Approved As To Form:

MARK E. BERMAN, CITY ATTORNEY

"ARTIST"

Witnesses:

Kenneth Meyerson

Kenneth Meyerson
Print Name

M. S. Quanbeck

M. S. QUANBECK
Print Name

TYLER FUQUA CREATIONS, INC.

Tyler FuQua
TYLER FUQUA, PRESIDENT
Tyler FuQua

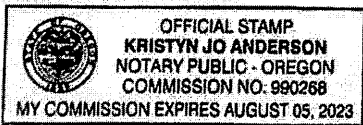
STATE OF OREGON
COUNTY OF Multnomah

The foregoing instrument was acknowledged before me, by means of physical presence or online notarization, this 19th day of July, 2021, by TYLER FUQUA as President of Tyler FuQua Creations, Inc., who is personally known to me or who has produced Oregon Driver License (type of identification) as identification.

NOTARY'S SEAL:

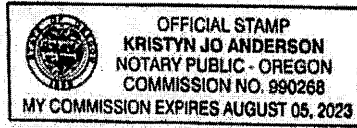
Kristyn Jo Anderson
NOTARY PUBLIC, STATE OF OREGON

KRISTYN JO ANDERSON
Name of Acknowledger Typed, Printed or Stamped



990268
Commission Number

NOTARY'S
SEAL:



Kristyn Jo Anderson

NOTARY PUBLIC, STATE OF

OREGON

KRISTYN JO ANDERSON
Name of Acknowledger Typed, Printed or Stamped

990268
Commission Number

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