

**SECOND AMENDMENT TO CENTENNIAL AGREEMENT BETWEEN BROWARD  
COUNTY AND CITY OF POMPANO BEACH FOR BROWARD-100  
VisualEYES PROJECT**

This is a Second Amendment ("Second Amendment") to the Agreement entered into between Broward County ("County") and the City of Pompano Beach, a municipal corporation organized in the state of Florida ("City"). County and City are collectively referred to as the "Parties" or "parties."

On July 20, 2015, the Parties entered into an agreement ("Agreement") to provide for public artwork relating to the Broward-100 Centennial Celebration ("Centennial").

In conjunction with the Centennial at the time of execution of the Agreement, the County agreed to provide the location for the Artwork. The City committed to provide certain in-kind assistance and recommended a location owned by the County to place the Artwork.

On May 31, 2016, the Parties entered into a First Amendment ("First Amendment") to place the Artwork at a location owned by the City.

The Parties seek to enter into this Second Amendment to the Agreement to amend the location of the Artwork to place it at a location approved by the City as more detailed on Exhibit A.

For good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. The "Recitals" clauses in this Second Amendment are true and accurate.
2. Except as modified herein, all terms and conditions of the Agreement, shall remain in full force and effect. Amendments to the Agreement made pursuant to this Second Amendment are indicated by use of strikethroughs to indicate deletions and bold/underlining to indicate additions, unless otherwise stated.
3. Section 3, "Compensation," is amended as follows:

The City's in-kind consideration for the County's placement of the Artwork on ~~the City's property~~ **Site described in Exhibit A, as amended**, shall be in accordance with the terms of this ~~section and Agreement, including~~ **Exhibit A, as amended**.

4. Section 5, "Public Records," provision is delete in its entirety and replaced with the following:

**5. Public Records. County and City are public entities. Each party is responsible for complying with its public records requests and the public records laws in Chapter 119, Florida Statutes, including Section 119.0701. In the event either party receives a public record requests and determines that the other party might have such document, the requesting party may request the other party to provide the document(s) in a reasonable time if available.**

6. Exhibit A, Scope of Services and Attachment 1 to Exhibit A are amended as attached hereto and are incorporated herein by reference.

7. This Second Amendment shall become effective upon complete execution by the Parties.

*(The remainder of this page is intentionally left blank.)*

**IN WITNESS WHEREOF**, the Parties have made and executed this Second Amendment to Agreement for Broward-100 VisualEYES Project: Broward County, by and through its County Administrator, authorized to execute same by Board action on September 10, 2013, under Agenda Item #48, and the City of Pompano Beach, signing by and through its \_\_\_\_\_, duly authorized to execute same.

COUNTY

WITNESSES:

Broward County, through its  
County Administrator

\_\_\_\_\_  
Signature

By \_\_\_\_\_  
Bertha Henry  
County Administrator

\_\_\_\_\_  
Print Name above

\_\_\_\_\_ day of \_\_\_\_\_, 2017

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name above

Insurance requirements  
approved by Broward County  
Risk Management Division

Approved as to form by  
Joni Armstrong Coffey  
Broward County Attorney  
Governmental Center, Suite 423  
115 South Andrews Avenue  
Fort Lauderdale, Florida 33301  
Telephone: (954) 357-7600  
Telecopier: (954) 357-7641

By \_\_\_\_\_  
Signature (Date)

By \_\_\_\_\_  
Andrea S. Froome (Date)  
Senior Assistant County Attorney

\_\_\_\_\_  
Print Name and Title above

ASF:dp  
03/17/17  
2017-03-17 Pompano Beach Broward 100.Amend#02  
#17-110.06

SECOND AMENDMENT TO CENTENNIAL BROWARD-100 AGREEMENT BETWEEN  
BROWARD COUNTY AND CITY OF POMPANO BEACH FOR BROWARD-100  
VisualEYES PROJECT

CITY

Witnesses:

City of Pompano Beach:

\_\_\_\_\_

By: \_\_\_\_\_  
Mayor

\_\_\_\_\_

By: \_\_\_\_\_  
City Manager

Attest:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_ day of \_\_\_\_\_, 2017

(SEAL)

Approved as to Form:

\_\_\_\_\_  
City Attorney

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by \_\_\_\_\_, as Mayor, \_\_\_\_\_, as City Manager, and \_\_\_\_\_, as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who are personally known to me.

Notary's Seal:

\_\_\_\_\_  
Notary Public, State Of Florida

\_\_\_\_\_  
(Name of Acknowledger Typed, Printed or Stamped)

\_\_\_\_\_  
Commission Number

EXHIBIT A, AMENDED  
SCOPE OF SERVICES

**For Broward 100 VisualEYES Project - ~~First Amendment to~~ Agreement Between Broward County and City of Pompano Beach**

**1. PURPOSE:**

The City has proposed a Site (as described in Section 2 below and currently known as the ~~E. Pat Larkins Community Center~~ **Baily Contemporary Arts Building**) which is owned by the City (as the "Property Owner") for an Artwork, and such site, **Such Site** has been selected by the County, through its **Cultural Division ("Division") and is subject to approval by the** Broward Cultural Council ("Council"), for the Broward-100 VisualEYES project ("Project"). and **The Project** includes Art of Community Initiatives ("Initiatives") which are components of the Broward 100-Celebrating the Art of Community program for the "Centennial." As described by the Cultural Division ("Division") and one of its Centennial's sponsors (the Community Foundation of Broward, Inc.), the Initiatives seek to use art to bridge, bond, and build communities.

**The City represents to County for its reliance that it has the authority and ability to enter into, and will enter into, a license agreement ("License Agreement") with the City of Pompano Beach's Community Redevelopment Agency, a dependent special district established by the City's government ("Property Owner" or "Pompano CRA"). The Property Owner has already authorized the City's placement of the Artwork on the Property Owner's Site. The City shall enter into the License Agreement with the Property Owner prior to commencement of the installation of the Artwork at the licensed property (the Site). The City represents to the County for its reliance that it has the authority to act on behalf of the Property Owner and to commit the Property Owner to any and all rights and obligations required of the Property Owner with regard to placement of artwork and matters related thereto as stated herein, subject to the provisions of the License Agreement. For purposes of this Agreement, the City is acting on behalf of the Pompano CRA as the Property Owner by agreeing to contractual provisions for this purpose which are applicable to the Property Owner. The City shall ensure that this Agreement or the obligations contained therein as to the Property Owner are incorporated into its License Agreement between the City and the Property Owner, pursuant to the provision of the License Agreement.**

The County will use the Site for an Artwork installation by an artist commissioned by the County, through the Division. The City will also jointly organize and facilitate dialogues, workshops, and community meetings between the commissioned artist(s) ("Artist(s)"), **the Property Owner**, the residents, and business owners of the City. The final acceptance **Final Acceptance** shall serve as evidence to the City that the Artwork is fully accepted by the County and meets the requirements of the contract between the County and the Artist(s) ("Final Acceptance"). Title to the Artwork will pass to **the City in the name of the "City of Pompano Beach"** upon Final Acceptance **by the County's Contract Administrator. At any time after receiving the prior written approval of the County's Contract Administrator in his or her sole discretion or**

after expiration or earlier termination of the "Term" in Section 2, the City may transfer title to the Artwork to the Property Owner. The County's Project Manager has provided a copy of the proposed fully executed contract between the County and the Artist to the City's Liaison and the Property Owner and will also provide a copy of the fully executed agreement with any subsequent written amendment(s) to the City's Liaison and the Property Owner.

Except as otherwise stated herein, the City shall maintain the Artwork on the Site for at least the period of time required in Section 2, "Term," subject to earlier termination as provided herein. In its License Agreement with the Property Owner, the City shall include a provision that the Property Owner may not unilaterally terminate the License Agreement for that portion of the licensed property which is necessary for the City to retain the installed Artwork and required maintenance for the "Term" stated in Section 2. Except as otherwise provided herein, the City (through its City Commission or if authorized through its City Manager) may transfer title and maintenance responsibility title to the Property Owner prior to the end of the "Term" if the City first obtains the written approval of the County's Contract Administrator (as designated in Section 10, "Notices,") which approval may be withheld in his or her sole discretion. In the event that the City or the County terminates this Agreement as allowed by Section 4, "Termination," prior to the expiration of the "Term" in Section 2, the City may transfer title to the Artwork to the Property Owner.

The Art of Community Programming Committee ("ACPC") has been established by the Division to provide guidance and direction during the planning and implementation of the Initiatives. The ACPC seeks to attain three key results of engagement commencing upon execution of an agreement between the selected Artist(s) and the County and subject to the Contract Administrator issuance of the notice to proceed which is a written notice to commence work ("Notice to Proceed") by the Contract Administrator. The key established key results are as follows: (1) People are connected through civic engagement that use the arts to reach common goals; (2) Community problems are solved collaboratively using the arts to bridge different sectors; and (3) The arts are recognized as essential to a strong community.

## **2. LOCATION:**

The Site selected by the County, through its Cultural Council, is ~~the west façade of the E. Pat Larkins Community Center located at 520 Dr. Martin Luther King, Jr. Boulevard, Pompano Beach, Florida 33060~~ the rear of Baily Contemporary Arts building located in Broward County at 41 NE 1<sup>st</sup> Street, Pompano Beach, Florida 33060 ("Site"). The total wall space available to the Artist(s) shall be approximately 437 210 square feet as shown more fully in the amended Attachment 1, ~~as amended~~, to Exhibit A.

## **3. BACKGROUND DESCRIPTION OF PROJECT:**

The County is commissioning artists to create exterior Artwork for the Broward-100 VisualEYES project. A minimum of one artwork project ("Project") will be implemented in each of the nine (9) County Commission Districts. The Division will manage the artist selection process through a Call to Artists. Artist(s) will be selected and assigned to a Site by the Council based on recommendations from the ACPC. Artwork will be painted and applied to walls owned by the

City Property Owner at the Site and licensed to the City under a License Agreement between the Property Owner and the City. Maintenance of the Site ("Site Maintenance") is the sole responsibility of the ~~Property Owner~~ City during the "Term" stated in Section 2, subject to earlier termination as provided in Section 4 and Exhibit A as amended. After the Final Acceptance, the County and others (including its Division and its Greater Fort Lauderdale Convention & Visitors Bureau and, as applicable, the Community Foundation of Broward, Inc.) shall retain the right provided in the County's contract with the Artist, including, but not limited to, the right to use images of the Artwork for non-commercial purposes such as displaying the Artwork as part of ~~its~~ the County's Public Art and Design program on its website, ~~as part of~~ any other display medium, or for any other non-commercial purposes.

The Project is not a community design project, and the Artwork will be the original creative concept of the Artist(s).

#### **4. ADMINISTRATIVE COORDINATION:**

The Contract Administrator (as defined in Section 10 ("Notices")) shall serve as, or designate, a Division's Project Manager ("Project Manager"). The City will appoint or has appointed a liaison ("Liaison") which City may change from time to time in writing (via e-mail or otherwise) to the e-mail address in Section 10 ("Notices"). The City, through its designated Liaison, shall maintain communication with the Artist(s), the Property Owner and Project Manager via telephone, fax, letter, or e-mail and shall provide progress updates in writing (by e-mail or otherwise) as requested by the Project Manager or the Property Owner. ~~A written plan and schedule for the community engagement component of the Project is defined as dialogues workshops, meetings, charrettes, or any other outreach events envisioned by the Artist(s) where the Artist(s) will meet with the community. Such community engagement activities may include discussions with the Artist about the Artist(s)' conceptual design.~~ **All community engagement activities are complete at the time of entry into the Second Amendment. At the time of the entry into this Second Amendment, the City represents to the County for its reliance that the City's Public Art Committee has recommended, and the Property Owner has approved, the Artist's proposed design attached as the amended Attachment 1 to Exhibit A.** The schedule for the installation of the Artwork will be provided by the County in writing (by e-mail or otherwise) to the City and the Property Owner, through ~~it's~~ the City's designated Liaison, and, Such schedule may be adjusted based on the needs of the Artist(s) with the prior written approval (by e-mail or otherwise) from the Contract Administrator in his or her sole discretion. The City may also request adjustment to the schedule which is subject to the prior written approval (by e-mail or otherwise) of the Contract Administrator in his or her discretion prior to such adjustments. The City, through its designated Liaison, shall provide the Artist(s) with all available requested information about the community and the Artwork's Site and shall inform the Artist(s) of any limitation, such as events taking place near the Site, which may impact the Artist's schedule. The City's Liaison shall notify the Project Manager in writing (by e-mail or otherwise) within three (3) business days if the Artist(s) fails to meet any agreed upon deadlines or in the event there is a need to further coordinate other matters that affect the scheduled completion date for the Artwork.

## 5. COLLABORATION AND COORDINATION:

After considering recommendations from the ACPC, the County, through ~~subject to approval of~~ its Council in its sole discretion, ~~will assign~~ **has assigned** the selected Artist(s) to the approved Site. The County, through its Council, in its sole discretion, may replace the assigned Artist(s) for any reason it determines necessary in order to ensure the timely completion of the Project or for any other reason. The County's determination as to replacement of the assigned Artist(s) will be final, and the City will cooperate with the assigned Artist(s), including the replacement(s), if any. **At the time of entry into the First Amendment, The the City approves provided its approval for** the County ~~proceeding~~ to replace the initially assigned Artist(s) which was assigned to the former County-owned location. **At the time of entry into the Second Amendment, both the City and the Property Owner, acting through the City, provided approval for the County to proceed with the assigned Artist(s) and with the Artist(s) proposed design attached as the amended Attachment 1 to Exhibit A.**

The Contract Administrator will issue the Notice to Proceed to the Artist(s) in writing (by e-mail or otherwise) as soon as possible following execution of the contract between the County and the replacement Artist(s). The Notice to Proceed will be issued by the designated Project Manager at each project milestone. Project milestones include, but are not limited to, the following: 1) community engagement; and 2) approval of Artwork design and Artwork implementation at the Site.

### Community Engagement:

The City's Liaison is required to attend one (1) County workshop that will provide an overview of the Project's goals and instruction on compiling and implementing a plan to engage with the community prior to design of the Artwork. The City's Liaison shall, and the County will require the Artist(s) to, collaborate with each other to create a written Community Engagement Plan ("Plan") for written approval (by e-mail or otherwise) by the County (through its Project Manager). Community engagement activities outlined in the written Community Engagement Plan will take the form of workshops, meetings, charrettes, or any other outreach activities envisioned by the Artist(s). At such meetings, the Artist(s) can gather information and ideas from the City, and the community that may influence the visual content of the Artwork design; however, the final Artwork will be the Artist(s)' original creative concept. The City, through its designated Liaison, will be responsible for scheduling, coordinating, or facilitating the necessary community dialogues between the Artist(s) and the community as defined in the approved Community Engagement Plan. **At the time of entry into the Second Amendment, the City and the Property Owner (acting through the City) acknowledge that community engagement and all outreach activities are complete and are acceptable to them.**

### Design of Artwork:

~~The Contract Administrator will issue the Notice to Proceed to the Artist(s) in writing (by e-mail or otherwise) to design the Artwork for the Site upon receipt of documentation from the Artist(s) and confirmation from the Liaison that the activities outlined in the approved Plan are complete. The Artwork design will be an independent creative work of art by the Artist(s) and, therefore, does not need to represent the image of the City, E. Pat Larkins, the E. Pat Larkins Community Center, persons residing in the City, or deceased residents of the~~



~~City. The County will require the Artist(s) to first obtain the prior written approval of the Contract Administrator (by e-mail or otherwise) and any individual whose image is being incorporated (or his or her written legally authorized person) before the Artist can proceed to incorporate a portrait of any living or deceased person into the Artwork. City shall inform the Project Manager and the Artist(s) in writing (by e-mail or otherwise) of all City policies, ordinances, or resolutions stipulating naming rights or use of images of living or deceased persons on City property, including, but not limited to, creative work of art or artworks.~~

The County will require the Artist(s) to create two (2) designs. The City, through its designated Liaison, shall, in writing (by e-mail or otherwise), notify the Project Manager of the design selected from the two submitted (2) designs for implementation by the Artist(s). The City's approval shall be provided in a resolution or letter, signed by the Mayor or City Manager on behalf of the City. **The City shall obtain the Property Owner's approval by a letter (using its official letterhead) signed by its Executive Director within five (5) business days following City's issuance of a resolution indicating the City's selected design. Such letter shall be provided to the County within two (2) business days after the City's receipt from the Property Owner.** ~~In the event that the City rejects the designs, the City may send a written request to County's Project Manager that the Artist re-design the Artwork up to one (1) time. Thereafter, if the City recommends rejection of the design(s), the Liaison will provide written notification to the County's Project Manager within two (2) days after such rejection and will include notification that the County may proceed to issue a notice of termination of the County's and Artist's contract if the County chooses to do so, since the City does not want to proceed any further with the project. City will also issue a notice of termination of this Agreement as provided in Section 4, "Termination."~~ **Prior to entry into the Second Amendment, the City previously requested re-designs of the Artwork; therefore, no further re-designs may be requested by the City or the Property Owner following the City's execution of the Second Amendment. Execution of the Second Amendment constitute acknowledgement by the City and the Property Owner (acting through the City) that the Artwork design (attached as the Attachment 2 to Exhibit A amended) is acceptable to them and will be executed by the County's Artist at the Site.**

## 6. DESCRIPTION OF DELIVERABLES:

- The City's Liaison will meet with Artist(s) within ten (10) business days of being notified in writing (by e-mail or otherwise) by the Project Manager that the Artist(s) has been assigned to the Project. ~~and that a~~ **An amendment to the a** ~~Agreement between the Artist and the County has been fully executed~~ **or will be negotiated to reflect the replacement location for the Artwork at the licensed Site relating to the proposed Licensed Agreement between the City and the Property Owner.**
- ~~The County's Project Manager will provide the Artist(s)' draft of the Community Engagement Plan to the Liaison for review by the City. The City shall review and approve in writing (via e-mail or otherwise) the Community Engagement Plan within five (5) business days of receipt. The City shall not unreasonably withhold approval of the Community Engagement Plan. After the City's approvals, the County's Project Manager will, in his or her sole discretion, approve the Artist(s)' Community Engagement Plan and~~

~~provide the approved plan to the City within five (5) business days of written approval. The Liaison will organize, schedule, and facilitate community meetings or dialogues in accordance with the Community Engagement Plan.~~

- The County's Project Manager will submit ~~two (2) Artwork design proposals and a conceptual work schedule to the City's Liaison. The City's Liaison shall submit a letter to the County's Project Manager within thirty (30) business days following receipt, signed by the City Manager/Administrator or Mayor, indicating that the City has agreed upon the first and the second choices of design for the Artwork.~~ The City **and the Property Owner** may request minor changes to the design; however, the Project Manager in his or her sole discretion will determine if the changes are minor. Major changes to the design may not be requested by the City, **the Property Owner**, or the County and, if so requested, may be denied in the sole discretion of the Contract Administrator as identified in Section 10 ("Notices"). For purposes of this Agreement, major changes to the design are defined as a complete redesign, change of theme, imagery, color, or content of the Artwork or City's **or Property Owner's** requested change of the County's Artist(s). The Council, shall make the final design selection for the Site. The City shall not use any of the Artwork design proposals from the Artist(s) for commercial, non-commercial, or any other purpose without prior written approval from the Contract Administrator and the Artist(s).
- The City's Liaison will schedule and coordinate all required reviews of the Artwork proposal by its City Commission, City's Planning Department, ~~Community Redevelopment Authority ("CRA")~~ **the Property Owner (that is the Pompano CRA)**, or any other City review panels and shall expedite the process to ensure the approved Artist(s)' schedule can be met by the City.
- Liaison shall attend the Substantial Completion Inspection (that is, an inspection of the completed Artwork to evaluate any omissions or deficiencies) and the Final Completion Inspection (that is, an inspection of the completed Artwork that takes place upon the Artist(s) notifying the Project Manager that all identified deficiencies and omissions have been corrected). Such inspections will be scheduled by the County's Project Manager. The Final Completion Inspection will take place within three (3) business days of the Artist(s) advising the Project Manager that the Artwork is complete. Such inspection shall include the Artist(s) and the County's Project Manager in addition to those individuals identified in the paragraph immediately above. The City **and the Property Owner** will authorize its Liaison to sign the Final Completion Report (that is, a report acknowledging that the Artwork has been inspected and is complete in accordance with the selected design) or the City's Manager/Administrator may do so.
- The signing of the County's Final Completion Report by the City, through its Liaison or City's Manager/Administrator, shall serve as the City's **and the Property Owner's** acknowledgement of the completion and acceptance of the Artwork. The City and the Property Owner will not use or authorize use of the completed Artwork for commercial, non-commercial, or other purposes without prior written approval from the County's Contract Administrator and the Artist(s).

## **7. TIMELINE FOR COMPLETION:**

The City shall commence services upon receipt of a fully executed Agreement and receipt of a copy of the Notice to Proceed which will be sent by e-mail notice from the County's Project Manager to the selected Artist(s). The Contract Administrator, in his or her sole discretion, will determine when the City's and the Property Owner's services are complete and will advise the City and the Property Owner in writing in accordance with this Agreement.

## **8. ADDITIONAL SERVICES:**

All media releases issued by the City or the Property Owner relating to the Artwork shall name the County (in the name of "Broward County"), the Community Foundation of Broward, Inc., and the City of Pompano Beach as the sponsors of the Artwork. The County's Contract Administrator may provide the City (in writing by e-mail or otherwise) with the names of additional project sponsors including, but not limited to, the lead and presenting sponsor(s). All sponsors shall be named in all City media releases, brochures, web pages, and newsletters and all other City-generated publications containing information about the Project. All City media releases, web pages, newsletters, and brochures referencing the Project will be provided to the Project Manager for review and written approval (by e-mail or otherwise) prior to public release or publication.

## **9. PAYMENTS AND SCHEDULE OF DELIVERABLES**

This Project is funded by the County through the Broward County Board of County Commissioners and community sponsors for the Broward-100.

The parties acknowledge that the Artist(s) may attribute the Artwork commission to the County's Broward-100 VisualEYES.

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ATTACHMENT 1, ~~AS AMENDED~~, TO EXHIBIT A (AMENDED)  
(Site)



**ATTACHMENT 2, TO EXHIBIT A**



Visionary

Cecilia Lueza 2016