

RESOLUTION NO. 2025- 40

**CITY OF POMPANO BEACH
Broward County, Florida**

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE AN AGREEMENT FOR COMMISSIONED ARTWORK BETWEEN THE CITY OF POMPANO BEACH AND INNOVATIVE SCULPTURE DESIGN, LLC TO FABRICATE AND INSTALL A SCULPTURE ENTITLED “VIVACIOUS” ON THE EAST SIDE OF POWERLINE ROAD BY THE SOUTH ENTRANCE TO HARRAH’S POMPANO BEACH CASINO; PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. That an Agreement for Commissioned Artwork between the City of Pompano Beach and Innovative Sculpture Design, LLC to fabricate and install a sculpture entitled “Vivacious” on the east side of Powerline Road by the south entrance to Harrah’s Pompano Beach Casino, is attached hereto and incorporated by reference as if set forth in full, is hereby approved.

SECTION 2. That the proper City officials are hereby authorized to execute said Agreement for Commissioned Artwork between the City of Pompano Beach and Innovative Sculpture Design, LLC.

SECTION 3. This Resolution shall become effective upon passage.

PASSED AND ADOPTED this 14th day of January, 2025.

Signed by:

502CB780EB3F480...
REX HARDIN, MAYOR

ATTEST:

DocuSigned by:

D1C913A8ED334CA...

KERVIN ALFRED, CITY CLERK

JZ/mcm

10/15/24

L:/reso/2025-05

Signed by:



City of Pompano Beach

**AGREEMENT
FOR COMMISSIONED ARTWORK**

with

INNOVATIVE SCULPTURE DESIGN, LLC

TABLE OF CONTENTS

<u>Article</u>	<u>Title</u>	<u>Page</u>
1	Representations	2
2	Scope of Services	4
3	Contract Administrator	4
4	Responsibilities of Artist	4
5	Responsibilities of City	7
6	Non-Assignability and Subcontracting Scope of Services	7
7	Term, Renewal and Time of Performance	8
8	Design and Modification	8
9	Inspections by City	9
10	Compensation, Recording, Inspection, Audit, Background Check and Public Records Procedures	9
11	Notices and Demands	12
12	Governing Law and Venue	12
13	Independent Contractor	13
14	Attorney's Fees and Costs	13
15	Artist's Indemnification of City	13
16	Governmental Immunity	14
17	Public Entity Crimes Act	15
18	Insurance	15
19	Default and Dispute Resolution	15
20	Termination	16

TABLE OF CONTENTS, cont.

<u>Article</u>	<u>Title</u>	<u>Page</u>
21	No Discrimination and American with Disabilities Act	16
22	No Contingent Fee	17
23	Force Majeure	17
24	Waiver and Modification	17
25	Relationship between the Parties	18
26	Severability	18
27	Approvals	18
28	Absence of Conflicts of Interest	18
29	Miscellaneous Terms and Conditions	19
30	Binding Effect	20
31	Warranties and Standards	20
32	Rights in Artwork	22
33	Survival	23
34	Entire Agreement and Interpretation	23

INDEX OF EXHIBITS

Exhibit 1	Call to Artists
Exhibit 2	Artist's Design Proposal
Exhibit 3	Scope of Services
Exhibit 4	Catalogue Form
Exhibit 5	Copyright Assignment
Exhibit 6	Background Check Policy
Exhibit 7	Insurance
Exhibit 8	Workers' Compensation Exemption Letter

AGREEMENT

THIS AGREEMENT, entered into this 21st day of January, 2025, 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

INNOVATIVE SCULPTURE DESIGN, LLC, whose mailing address is 122 Orleans Drive, Maumelle, AR, USA 72113 (hereinafter "ARTIST").

WHEREAS, on November 28, 2023, the CITY issued a Call to Artists, a copy of which is attached hereto and made a part hereof as Exhibit 1, that sought to commission an artist/artist team for hire to design, fabricate, and install a freestanding sculpture to be an entryway artwork into the City of Pompano Beach (the "Artwork") to be located on the east side of Powerline Road by the south entrance to Harrah's Pompano Beach Casino, Pompano Beach, Florida (the "Site"), with the objective for the sculpture to be a futuristic, industrial, contemporary urban, power and energy themed entryway artwork (the "Project"), and

WHEREAS, the CITY received one hundred four (104) applications to the foregoing Call to Artists, of which ninety-five (95) met application requirements, one of which was submitted by Innovative Sculpture Design, LLC and is attached hereto and made a part hereof as Exhibit 2; and

WHEREAS, at its meeting on February 28, 2024, the City's Public Art Subcommittee reviewed the aforesaid responses and recommended Innovative Sculpture Design, LLC and his "Design Proposal" of the sculpture entitled "*Vivacious*" as depicted in Exhibit 2 for this Project; and at its meeting on March 21, 2024, the City's Public Art Committee (the "PAC") motioned to support the Subcommittee's recommendation of this sculpture; and

WHEREAS, in accordance with the terms and conditions set forth herein, ARTIST is able and prepared to provide the insurance as set forth in Exhibit 1 & 7, and the services described in the Scope of Services, Call to Artists, and this Agreement, inclusive of exhibits (collectively the "Work"); and

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

WHEREAS, the City Commission for the CITY has determined to enter 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.

DEFINITIONS

Agreement - This document and other terms and conditions included in the exhibits and documents that are expressly incorporated by reference.

Artwork - The final physical artistic expression resulting from the design, fabrication, installation and integration of the Design Proposal at the Site.

Contract Administrator- The primary responsibilities of the Contract Administrators are to manage and supervise execution and completion of the Scope of Services and the terms and conditions of this Agreement as set forth herein. In the administration of this Agreement, as contrasted with matters of policy, all parties may rely on the instructions or determinations made by the CITY's Contract Administrator; provided, however, that such instructions and determinations do not change the Scope of Services. The Contract Administrator may be changed from time to time using the notice procedure set forth in Article 11 herein.

Contract Price - The amount established in Article 10 of this Agreement. This amount may be amended due to fund appropriation changes to the Project or by subsequent action of the City Commission of Pompano Beach.

Design Proposal: Artists detailed proposed digital mock-up design attached as Exhibit 2 which is formally approved by the City Commission pursuant to this Agreement.

Final Acceptance – The CITY's Contract Administrator's written acceptance of the Artwork installed at the Site in its final form.

Project - The Artwork and theme described in this Agreement and more particularly described in the Call to Artists, Artist's Design Proposal, and the Scope of Services, respectively attached hereto and made a part hereof as Exhibits 1, 2 & 3.

Site –The “*Vivacious*” sculpture is to be installed at an entrance to the City of Pompano Beach located on the east side of Powerline Road by the south entrance to Harrah's Pompano Beach Casino as set forth in Exhibit 1.

Work - The Work includes all labor, materials, equipment, and services provided or to be provided by ARTIST to fulfill ARTIST's obligations under this Agreement.

ARTICLE 1 **REPRESENTATIONS**

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

1.1.1 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.

1.1.2 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.

1.1.3 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.

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

1.2.1 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.

1.2.2 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.

1.2.3 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.

1.2.4 ARTIST represents it has the ability, skill and resources to complete its responsibilities under this Agreement and that the Artwork shall be designed, fabricated and installed to withstand the outdoor climate of South Florida for a minimum of three (3) years and require minimal routine maintenance. This warranty does not apply to damage to the Artwork that may be caused by hurricane or natural disaster.

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

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

1.2.7 ARTIST represents that ARTIST is duly qualified to perform the Work hereunder which shall be performed in a skillful and respectful manner, the quality of which shall be comparable to the best local and national standards for such services.

ARTICLE 2 **SCOPE OF SERVICES**

ARTIST shall perform all Work specified in the Call to Artists and this Agreement, inclusive of the exhibits, particularly Exhibit 3 entitled, "Scope of Services" which contains a summary schedule for completing the Artwork. Specifically, ARTIST will have six (6) months from full execution of this agreement to complete the fabrication and installation of the artwork, during which time the ARTIST will work with the City's Contract Administrator and Pompano Park JV land Holdings, LLC on a continual basis.

ARTIST will also provide the City with a minimum of five (5) professional photographs of the installed Artwork within two (2) weeks after the installation has been approved in writing by the Contract Manager.

Unless stated otherwise in this Agreement, the Work required of ARTIST includes all services, 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.

ARTICLE 3 **CONTRACT ADMINISTRATOR**

The CITY's Public Art Program Manager shall serve as the CITY's Contract Administrator during the performance of services under this Agreement.

Innovative Sculpture Design, LLC shall serve as ARTIST's Contract Administrator during the performance of Work under this Agreement.

ARTICLE 4 **RESPONSIBILITIES OF ARTIST**

4.1 General

4.1.1 ARTIST shall perform all Work identified in the Call to Artists and this Agreement, inclusive of exhibits. The parties agree that the Scope of Services is a description of ARTIST's and CITY's obligations and responsibilities hereunder and is deemed to include preliminary considerations and prerequisites, and all labor, materials, equipment, and tasks which are such an inseparable part of the Work described that exclusion would render performance by ARTIST impractical, illogical, or unconscionable.

4.1.2 The Artists Proposal for the Project shall depict a digital mock-up of the sculpture "Vivacious" approved by PAC and formally by the City Commission, and set forth in detail the artistic expression, scope, design, color, size, material and texture of the Artwork sculpture which is to be installed at the Site.

4.1.3 ARTIST shall perform all services and furnish all supplies, materials and equipment as necessary for the design, execution, fabricating, and installation of the Artwork,

including, but not limited to, payment for all necessary insurance, supplies, materials, tools, equipment and all other items incidental to producing and installing a complete and acceptable Artwork at the Site.

4.1.4 In the event that ARTIST is unable to perform duties within the specified time period due to the death, physical, other incapacity or circumstances beyond ARTIST's control, CITY may either proceed with completion and installation of the Artwork by ARTIST pursuant to the terms of this Agreement or terminate this Agreement for cause. All Work performed by ARTIST prior to death, incapacity or other circumstances beyond the ARTIST's control will be compensated as provided in this Agreement. In the event CITY exercises its right to terminate for cause, CITY may retain another artist to complete the Work or elect to implement ARTIST's design by a third party.

4.1.5 The personal skill, judgment, and creativity of ARTIST is an essential element of this Agreement. Therefore, although the parties recognize that ARTIST may employ qualified personnel to work under ARTIST's supervision, ARTIST shall not assign, transfer or subcontract the creative and artistic portions of the Work to another party without the prior written consent of the CITY. Failure to conform to this provision may be cause for termination at the sole option of the CITY.

4.1.6 ARTIST shall faithfully perform the Work with the standards of care, skill, training, diligence, and judgment provided by highly competent professionals who perform work of a similar nature, the quality of which shall be comparable to the best local and national standards.

4.1.7 ARTIST shall not make any public information release in connection with services performed pursuant to this Agreement without prior written permission of the CITY's Contract Administrator.

4.2 Design, Fabrication, Installation or Integration.

4.2.1 ARTIST shall be responsible for the quality and timely completion of the Work and complete the design, fabrication and installation of the Artwork in conformity with the approved Design Proposal by both the PAC and the City Commission attached as Exhibit 2. Also, prior to CITY's Final Acceptance, ARTIST shall, without additional compensation, correct any errors, omissions, or other deficiencies in the Artwork or be required to make revisions for other practical or non-aesthetic reasons, as identified by the Contract Administrator.

4.2.2 ARTIST will have six (6) months from full execution of this agreement to complete the design, fabrication and installation of the artwork, during which time ARTIST will continuously work with the City's Contract Administrator and Pompano Park JV land Holdings, LLC.

4.2.3 Pompano Park JV Land Holdings, LLC will supply the exterior lighting and foundation for the Artwork.

4.2.4 ARTIST will provide the City with a minimum of five (5) professional photographs of the installed Artwork within two (2) weeks after the installation has been approved in writing by the Contract Manager.

4.2.5 In the event the services of the ARTIST are integrated into, combined, or otherwise coordinated with services by third parties not within the control of ARTIST, ARTIST shall not be responsible for such third-party services. If any part of ARTIST's Work depends upon proper execution or results from work of the CITY or a third party responsible to CITY, ARTIST shall have an ongoing duty to promptly report to CITY any apparent discrepancies or defects in such other work which renders it unsuitable for ARTIST's proper execution prior to proceeding with the Work hereunder. In the event the ARTIST reports a discrepancy or defect at the Site that will delay ARTIST's performance, the CITY shall be responsible for any costs associated with such delay, including the safe storage of the Work pending correction of such discrepancy or defect sufficient to allow installation to proceed. Failure of the ARTIST to report a discrepancy or defect shall constitute an acceptance of the CITY or third party's work as fit and proper to receive ARTIST's Artwork. Any costs caused by defective or ill-timed work shall be borne by the party responsible therefore. Nothing in this section shall limit ARTIST's responsibility to take all reasonable steps to coordinate the Work hereunder with the work of the CITY or a third party.

4.2.6 ARTIST shall perform all Work hereunder at the Site in a manner and time so as not to interfere with any of the operations or maintenance of the Site. ARTIST shall, when working on the Site, keep the premises free from waste materials and rubbish. Upon completion of the Artwork, ARTIST shall, at its sole expense, remove any waste materials, rubbish, tools, equipment, machinery, and surplus materials from the Site 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.

4.2.7 To the extent applicable, ARTIST shall cooperate with CITY's Contract Administrator or other agents as well as any third parties at the Site 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.

4.2.8 ARTIST shall have an ongoing obligation to report in writing any discrepancy or defect at the Site which hinders or impairs installation of the Artwork within three (3) business days of the time ARTIST knew or should have known of the defect and shall cease installation until written notice from the CITY's Contract Administrator that installation should resume. In the event the Artist reports a discrepancy or defect at the Site that will delay ARTIST's performance, the CITY shall be responsible for any costs associated with such delay, including the safe storage of the Work pending correction of such discrepancy or defect sufficient to allow installation to proceed.

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.

4.2.9 Post Installation, Title and Risk of Loss. Title to the Artwork passes to the CITY upon the CITY's written Final Acceptance of the complete, installed Artwork. At any time prior to Final Acceptance, except as otherwise provided herein, 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, rebuild, repair, restore, and make good all such damage to any portion of the Artwork that occurs until the CITY's Final Acceptance. Upon transfer of title, CITY shall be responsible for any and all subsequent damage to the Artwork except damage caused by ARTIST or other agents of the ARTIST. Notwithstanding the foregoing, after installation of the Artwork but pending CITY approval, should the Artwork suffer damage through no fault of the ARTIST, CITY shall be responsible for any expense involved in repair or restoration of the Artwork.

ARTICLE 5 **RESPONSIBILITIES OF CITY**

5.1 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.

5.2 CITY shall give prompt written notice to ARTIST whenever CITY observes or otherwise becomes aware of any development that affects the scope or timing of ARTIST's Work; timely review materials submitted to CITY pursuant to Exhibit 3; and provide the ARTIST, at no expense to ARTIST, copies of existing designs, drawings, reports, list of required permits, and other existing relevant data, if any, which is needed by ARTIST in order to perform the Work.

5.3 CITY shall be responsible to maintain the Artwork after Final Acceptance by the CITY's Contract Administrator.

ARTICLE 6 **NON-ASSIGNABILITY AND SUBCONTRACTING**

6.1 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 provide CITY the right, in CITY's sole discretion, to immediately or otherwise terminate this Agreement. Specifically, no assignment of any right or obligation under this Agreement shall be binding on CITY without written consent of the City Commission.

6.2 This Agreement and the rights and obligations herein shall not be assignable or transferable by any process or proceeding in court, or by judgment, execution, proceedings in insolvency, bankruptcy or receivership. 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.

6.3 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**

7.1 Term and Renewal. This Agreement shall be for a term of six (6) months beginning the date this Agreement is fully executed by all parties, and ARTIST shall complete the design, fabrication and installation of the artwork within six (6) months starting once the Agreement is fully executed by all parties, subject to earlier termination as provided herein.

7.2 ARTIST will work with the City's Contract Administrator and Pompano Park JV land Holdings, LLC on a continual basis during the duration of the contract.

7.3 Delay. ARTIST shall notify CITY in writing whenever a delay is anticipated or experienced and set forth in writing all facts and details related to the delay.

7.4 In the event ARTIST is unable to timely complete the Work because of delays which are not the fault of ARTIST, the CITY's Contract Administrator may, at her sole discretion, grant a reasonable extension of time for completion and extend the contract term for up to six (6) months without additional approvals, amendments or modifications to this Agreement.

7.5 Time is of the Essence. Time is of the essence in performing the duties, obligations, and responsibilities required by this Agreement. All duties, obligations and responsibilities of ARTIST required hereunder shall be substantially completed no later than the deadlines set forth in the Scope of Services attached as Exhibit 3. The determination of whether a delay is the fault of ARTIST shall be made by the CITY's Contract Administrator and the ARTIST agrees to abide by such decision. It shall be the responsibility of ARTIST to notify CITY promptly in writing whenever a delay is anticipated or experienced and to inform CITY of all facts and details related to the delay.

ARTICLE 8 **DESIGN AND MODIFICATION**

ARTIST understands and agrees that the Artwork to be created for the Project as well as the Site where the Artwork is to be installed shall be in full compliance with the terms of this Agreement.

In terms of both the Artwork Design Proposal (Exhibit 2), major modification shall mean more than a 25% overall change from the Artwork Design Proposal formally approved by the City's Commission pursuant to this Agreement, and is prohibited without the approval of both the PAC and 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 CITY's Contract Administrator has sole discretion to approve the

modification “as is,” or Contract Administrator may require formal review and approval by PAC and City Commission to 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 the Artwork at the four (4) completion phases described below to ensure compliance with the Design Proposal approved by the City Commission:

- 1st Inspection - Artwork installation is 25% complete
- 2nd Inspection - Artwork installation is 50% complete
- 3rd Inspection - Artwork installation is 75% complete
- 4th Inspection - Artwork installation is 100% complete

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.

ARTIST will provide the City with a minimum of five (5) professional photographs of the installed Artwork within two (2) weeks after the installation has been approved in writing by the Contract Manager.

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

10.1 Compensation. For and in consideration of the mutual covenants and obligations herein as well as other good and valuable consideration received, ARTIST agrees to provide the Work required hereunder for CITY and CITY agrees to pay ARTIST a maximum not-to-exceed total amount of Sixty Thousand Dollars (\$60,000.00) payable as follows:

- Invoice #1 for \$30,000.00 payable within fourteen (14) business days after this Agreement is fully executed by both parties;
- Invoice #2 for \$15,000.00 payable within fourteen (14) days after the Artwork is 50% fabricated;
- Invoice #3 for \$15,000.00 payable within fourteen (14) days after the artwork is 100% fabrication and has been installed and approved by the Contract Administrator; ARTIST’s completion of a single Catalogue Form (Exhibit 4) for the aforesaid Artwork; executed Copyright Assignment (Exhibit 5); and the CITY’s receipt of a proper invoice for the work.

10.1.1 This maximum amount does not constitute a limitation of any sort upon ARTIST’s obligation to perform all Work required hereunder and CITY shall not be obligated to reimburse ARTIST for its expenses unless specifically agreed to in this Agreement.

ARTIST must submit invoices for compensation, but only after the Work for which the invoices are submitted has been completed. Invoices shall state the nature of the services performed and/or the expenses incurred. A written summary shall accompany each original invoice describing the Work completed during that payment period. CITY shall pay ARTIST within fourteen (14) business days of receipt of ARTIST's proper invoices for invoices #1 through #3 and in accordance with the specific payment schedule in 10.1 above. 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. The final invoice must be received no later than thirty (30) calendar days after this Agreement expires.

10.1.2 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 ARTIST's failure to comply with any term, condition, or requirement of this Agreement or from loss on account of inadequate, defective or otherwise unacceptable Work that has not been remedied or loss due to fraud or reasonable evidence indicating fraud by ARTIST. When the 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.

10.2 Recordkeeping, Inspection and Audit Procedures. CITY shall have the right to audit the books, records, and accounts of ARTIST that are related to this Agreement. ARTIST shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Agreement. All books, records, and accounts of ARTIST shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, ARTIST shall make same available at no cost to CITY in written form.

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 Work performed hereunder as required by applicable law(s), including the required retention period of the Florida Public Records Act, Chapter 119, Florida Statutes, as amended from time to time 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. ARTIST shall, by written contract, require its subcontractors to agree to the requirements and obligations of this Article 10.2 -10.4.

10.3 Background Check Procedures. Prior to commencing any Work hereunder ARTIST shall provide the CITY'S Contract Administrator a completed and fully-executed Release so that CITY, at its sole cost, can conduct a background check on ARTIST in accordance with its Background Screening Policy as set forth in Exhibit 6. CITY reserves the right to refuse to permit ARTIST or any of its agents to provide services under this Agreement based upon the grounds for disqualification set forth in the CITY's Background Screening Policy.

10.4 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:

10.4.1 Keep and maintain public records required by the CITY in order to perform the service.

10.4.2 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.

10.4.3 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.

10.4.4 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 notice, demand or other communication may or shall be given by one party to another hereunder, it must be in writing and forwarded (i) upon the parties' mutual written consent, via trackable email that provides delivery/read receipts or (ii) postage prepaid via certified U.S. mail or other trackable common carrier such as FedEx, UPS, etc., and forwarded to the representative and mailing address set forth below until changed by written notice in accordance with this Article and a contemporaneous copy sent to the designated email that provides the delivery method and tracking number.

For CITY

Gregory P. Harrison, 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
Cultural Affairs Department
50 West Atlantic Boulevard
Pompano Beach, Florida 33060
Laura.Atria@copbfl.com
954-545-7800 ext. 3813 office
954-786-4666 fax

For ARTIST

Innovative Sculpture Design, LLC
Hunter Brown
122 Orleans Drive
Maumelle, AR USA 72113
innovativesculpturedesign@gmail.com
870-550-3619

ARTICLE 12 **GOVERNING LAW AND VENUE**

This Agreement must be interpreted and construed in accordance with and governed by the laws of the State of Florida. The exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement will be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Agreement must be litigated in federal court, the exclusive venue for any such lawsuit will be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. BY ENTERING INTO THIS AGREEMENT, THE PARTIES HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.

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. Work provided by ARTIST hereunder shall be subject to supervision of ARTIST. No partnership, joint venture or other joint relationship is created by this Agreement. ARTIST and its agents shall have no authority to employ any person as an employee or agent on behalf of CITY for any purpose or otherwise bind CITY in any respect.

Neither ARTIST nor any of its agents 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 one of its agents is an employee or agent of the CITY, ARTIST shall use its best efforts to correct said mistaken belief both verbally and in writing.

ARTIST shall be deemed an independent contractor for all purposes, and the apprentices selected and managed by ARTIST hereunder or any of its agents, contractors, subcontractors and the employees thereof, shall not in any manner be deemed to be employees of the CITY. As such, the apprentices, agents or employees of the ARTIST, its contractors or subcontractors, 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'S 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**

15.1 ARTIST shall at all times indemnify, hold harmless and defend the CITY, its officials, employees and other authorized agents hereunder from and against any and all claims, losses, demands, suits, damages, attorneys' fees, fines, penalties, expenditures, defense costs, liabilities or causes of action of any nature whatsoever arising directly, indirectly or in connection with ARTIST or ARTIST's authorized agents' actions, negligence, misconduct, omission or provision of Work hereunder. The foregoing indemnification of CITY by ARTIST shall not be operative as to any claims by ARTIST for any causes of action ARTIST has or may have for breaches, defaults, negligence, gross negligence or willful misconduct of CITY or any of its officers, employees or authorized agents.

In the event any lawsuit or other proceeding is brought against CITY by reason of any such claim, cause of action or demand, ARTIST shall, upon written notice from CITY, resist and

defend such claim(s) by counsel satisfactory to CITY or, at CITY's option, pay for an attorney selected by the City Attorney for the CITY and bear all costs and expenses related thereto to investigate, handle, respond to, and provide defense for any such claim(s) even if the claim(s) is/are groundless, false or fraudulent. The provisions and obligations of this Article shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by CITY's Contract Administrator or City Attorney, any sums due ARTIST hereunder may be retained by CITY until all of CITY's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved, and any amount withheld shall not be subject to payment of interest by CITY.

15.2 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.

15.3 ARTIST acknowledges and agrees that CITY assumes no responsibility whatsoever for any personal property, stock or inventory of ARTIST 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 performance of Work hereunder.

15.4 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.

15.5 The provisions of this Article shall survive the expiration or earlier termination of this Agreement.

ARTICLE 16 **GOVERNMENTAL IMMUNITY**

CITY is a political subdivision of the State of Florida and nothing contained in this Agreement shall be construed to waive or affect in any way any of the CITY's rights, privileges and immunities as set forth in § 768.28, Florida Statutes. 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.

ARTICLE 17 **PUBLIC ENTITY CRIMES ACT**

ARTIST represents that the execution of this Agreement will not violate the Public Entity Crimes Act set forth in § 287.133, Florida Statutes, as may be amended from time to time. Violation of this Article shall result in termination of this Agreement and recovery of all monies paid by CITY hereunder and may result in debarment from the CITY's competitive procurement activities.

ARTIST further represents that there has been no determination, based on an audit, that ARTIST committed a "public entity crime" as defined by § 287.133, Florida Statutes, as may be amended from time to time, and that ARTIST has not been formally charged with committing a "public entity crime" regardless of the amount of money involved or whether ARTIST has been placed on the convicted vendor list.

ARTICLE 18 **INSURANCE**

ARTIST shall maintain insurance in the amounts and subject to all conditions set forth in Exhibit 7 attached hereto and made a part hereof. 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 and ARTIST shall be required to execute the Workers' Compensation Exemption Letter attached and made a part hereof as Exhibit 8 if ARTIST elects not to purchase workers' compensation insurance for the Project.

ARTICLE 19 **DEFAULT AND DISPUTE RESOLUTION**

19.1 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.

19.2 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.

19.3 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 in accordance with Article 11 herein.

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 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 therein, the forty-five (45) day advance written notice provision set forth in Article 11 herein shall not apply and it shall be lawful for CITY to immediately terminate this Agreement and in addition to any other remedies provided by law, CITY may possess itself of all rights and privileges heretofore enjoyed by ARTIST.

ARTICLE 20 **TERMINATION**

20.1 Termination for Cause. Breach or default of any of the covenants, duties, or provisions hereunder shall be cause for termination of this Agreement, including, but not limited to, ARTIST'S repeated negligent or intentional submission for payment of false or incorrect bills or invoices; failure to suitably perform the Work; or failure to continuously perform the Work in a manner calculated to meet or accomplish the Project's objectives.

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. The parties agree that if CITY erroneously, improperly or unjustifiably terminates for cause, such termination shall be deemed a termination for convenience.

20.2 Notice of termination shall be provided in accordance with Article 11 above except that notice of termination by the CITY's City Manager, which the City Manager deems necessary to protect the public health, safety, or welfare may be verbal notice that shall be promptly confirmed in writing in accordance with Article 11 herein.

20.3 In the event this Agreement is terminated for any reason, any amounts due ARTIST shall be withheld by CITY until all documents are provided to CITY pursuant to the "Rights In Documents and Work" section in Article 29.

ARTICLE 21 **NO DISCRIMINATION AND AMERICAN WITH DISABILITIES ACT**

21.1 No Discrimination. In the performance of this Agreement, ARTIST and its agents shall not discriminate against any person or entity 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 a basis for service delivery.

21.2 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 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.

21.3 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 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**

CITY and ARTIST agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and is therefore a material term hereof. Failure to insist upon strict compliance with any term, covenant or condition 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's 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 unless CITY elects to terminate this Agreement.

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**

28.1 Neither ARTIST nor any of its agents hereunder shall have or acquire any interest, either direct or indirect or continuing or frequently recurring employment or contractual relationship, that is substantially antagonistic or incompatible with ARTIST's loyal and conscientious exercise of judgment and care related to its performance under this Agreement.

28.2 During the term of this Agreement, ARTIST agrees that neither ARTIST nor any of ARTIST's agents 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, ARTIST agrees that 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 CITY's interests in connection with any such pending or threatened legal or administrative proceeding unless compelled by court process. The limitations of this Article shall not preclude

ARTIST or any persons in any way from representing themselves, including giving expert testimony in support thereof, in any action or in any administrative or legal proceeding.

28.3 In the event ARTIST is permitted hereunder to utilize subcontractors to perform any Work required by this Agreement, ARTIST agrees to require such subcontractors, by written contract, to comply with the provisions of this subsection to the same extent as ARTIST.

ARTICLE 29 **MISCELLANEOUS TERMS AND CONDITIONS**

29.1 In case there is conflict between the terms of the Call to Artists (Exhibit 1), ARTIST's Design Proposal (Exhibit 2), and this Agreement, the terms of this Agreement shall prevail.

29.2 The Artwork designed, fabricated and installed by ARTIST hereunder shall be permanent Artwork created solely for CITY. CITY has exclusive property rights to the Artwork. In addition, ARTIST understands and agrees that CITY has the right to deaccession the Artwork three (3) years after CITY's Final Acceptance of same.

29.3 ARTIST understands and agrees the Artwork shall be fabricated and installed to withstand the outdoor climate of South Florida for a minimum of three (3) years after CITY's Final 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. This warranty does not apply to damage to the Artwork that may be caused by hurricane or natural disaster. However, CITY (not ARTIST) shall be solely responsible to bear all costs associated with the repair of any damage to the projects caused by vandalism after installation of the Artwork.

29.4. 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.

29.5 Neither CITY nor ARTIST intend to directly or substantially benefit a third party by this Agreement. Therefore, the parties agree there are no third party beneficiaries to this Agreement and that no party shall be entitled to assert a claim against either of them based upon this Agreement.

29.6 Joint Preparation. Regardless of which party or party's counsel prepared the original draft and subsequent revisions of this Agreement, both CITY and ARTIST acknowledge they have sought and received whatever competent advice and counsel necessary for them to form a full and complete understanding of all rights and obligations herein and that preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

29.7 Truth-in-Negotiation Representation. ARTIST's compensation under this Agreement is based upon representations ARTIST supplied to CITY. 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 any representation is untrue.

29.8 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 CITY's property. 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 CITY's property and ARTIST shall deliver same to the CITY's Contract Administrator within seven (7) days of said termination or expiration by either party. Any compensation due ARTIST shall be withheld until all documents are received as provided herein.

29.9 Incorporation by Reference. The truth and accuracy of each "Whereas" clause set forth above is acknowledged by the parties. All exhibits attached to this Agreement are incorporated into and made a part of this Agreement.

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**

31.1 Original Art. ARTIST warrants that the Artwork being commissioned is the original product of its own creative efforts, and, unless otherwise expressly stated herein, the Artwork is original and a single edition that ARTIST shall not sell or reproduce, or allow others to do so, without CITY's prior written consent.

31.2 Warranty of Quality. ARTIST warrants the Artwork shall be free of defects in material and workmanship, including without limitation any defects consisting of "inherent vice" or qualities accelerating deterioration of the Artwork, and that ARTIST shall correct, at ARTIST's sole expense, any such defects which appear within a period of three (3) years from CITY's Final Acceptance. Should the Artwork deteriorate to the point that it no longer represents ARTIST's intent during ARTIST's lifetime and/or poses a safety hazard due to its deteriorated state and CITY chooses to have the Artwork restored rather than deaccession ARTIST shall be given the first right of refusal to perform the restoration. If funds for such restoration are not available, CITY shall have the right to destroy the Artwork upon notifying ARTIST in writing by certified mail, return receipt requested, sent to ARTIST's last known address, that ARTIST has the right of consultation regarding the Artwork's removal or destruction. "Restore" means to effect repairs to the Artwork necessitated by extensive damage or deterioration which require ARTIST's artistic talents to ensure the restored Artwork reflects the qualities and artistic integrity of the Artwork at Final Acceptance by the CITY.

31.3 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 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 Artwork commissioned hereunder. 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 ARTIST’s life plus fifty (50) years and shall be binding on ARTIST’s successors, heirs and assigns.

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

31.5 Intellectual Property Warranty. ARTIST warrants the Artwork shall not infringe upon or violate any license; copyright, patent, trade secret, trademark, moral rights, semiconductor chip protection or unfair competition law; proprietary information, non-disclosure, intellectual property or other right of any third party; 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.

31.6 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.

31.7 After Final Acceptance of the Artwork, CITY shall be responsible to ensure the Artwork is properly maintained and protected, taking into account the recommendations of ARTIST. However, ARTIST shall be given the right of first refusal to perform repairs and shall be paid a reasonable fee for such services. ARTIST and CITY shall agree in writing upon the fee before commencement of such services. If the parties cannot come to agreement for repair services, ARTIST is unable or unwilling to perform any necessary repairs, or the CITY cannot locate ARTIST, CITY will cause such work to be performed at the CITY's expense in accordance with recognized principles of conservation.

31.8 ARTIST understands and agrees that the provisions of this Agreement shall control to the exclusion of the provisions of the European Union law or other domestic or international law and shall constitute a waiver by the 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.

31.9 Warranty of Authorization and Non-Infringement. ARTIST warrants to ARTIST’s best knowledge, the Work provided under this Agreement will not infringe upon or violate any license; copyright, patent, trade secret, trademark, moral rights, semiconductor chip protection or unfair competition law; proprietary information, non-disclosure; intellectual property or other

right of any third party; any right of privacy; or contain libelous material and the 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**

32.1 ARTIST's Waiver for Integrated Artwork. The provisions of this Agreement shall control over the provisions of 17 U.S.C. § 106A and, with respect to CITY, its employees, agents and sub-contractors, 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 the provisions of this Agreement shall control and 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.

32.1.1 The 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.

32.1.2 All other rights in and to the Artwork relating to the continuing interest ARTIST may have in the Artwork's maintenance and modification are expressly waived by ARTIST and, insofar as such rights are transferable, are assigned to CITY.

32.1.3 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. 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.

32.1.4 ARTIST shall provide City the completed Catalogue Form (Exhibit 4) and fully-executed Copyright Assignment (Exhibit 5) upon CITY's Final Acceptance of the Artwork and prior being entitled to payment of ARTIST's Invoice #3 hereunder.

32.1.5 ARTIST grants to CITY and its assignees 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 catalogues or other similar publication provided that these rights are exercised in a tasteful and professional manner.

All reproductions by the CITY shall contain a credit to the ARTIST and a copyright notice in substantially the following form: © [ARTIST's name, date of publication].

32.1.6 ARTIST shall not reproduce nor replicate the Artwork without CITY's express written permission which the CITY, in its sole discretion, may give except for ARTIST's use of photographs of the Artwork for purposes of his resume, in which case ARTIST must provide acknowledgment to the CITY in substantially the following form: "An original artwork owned and commissioned by the City of Pompano Beach, Florida."

32.2 Copyrights. ARTIST agrees that all Work performed under this Agreement shall comply with all applicable patent, trademark and copyright laws, rules, regulations, and codes. ARTIST further agrees the Work will not utilize any protected patent, trademark or copyright unless ARTIST has obtained proper permission and all releases and other necessary documents. If ARTIST uses any protected material, process or procedure, ARTIST shall disclose such patent, trademark or copyright in the Design Proposal and technical specifications.

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."

The following provisions shall survive the expiration or earlier termination of this Agreement for at least a period of five (5) years after such expiration or termination or longer if required by the Florida Public Records Act as may be amended from time to time; Article 10, "Audit Right and Retention of Records," and Article 11, "Notices and Demands."

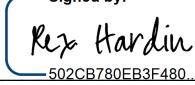
ARTICLE 34 **ENTIRE AGREEMENT AND INTERPRETATION**

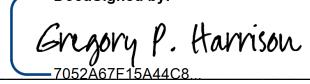
This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and both parties agree there are no commitments, agreements or understandings concerning the subject matter herein that are not contained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

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

“CITY”:

CITY OF POMPANO BEACH

Signed by:
By: 
REX HARDIN, MAYOR

DocuSigned by:
By: 
GREGORY P. HARRISON, CITY MANAGER

Attest:

DocuSigned by:

KERVIN ALFRED, CITY CLERK

Approved As To Form:
DocuSigned by:

MARK E. BERMAN, CITY ATTORNEY



“ARTIST”:

INNOVATIVE SCULPTURE DESIGN, LLC

By:



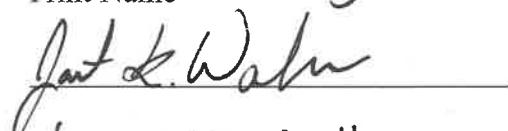
HUNTER BROWN

Witnesses:



Michelle Majone

Print Name



Janet K. Walker

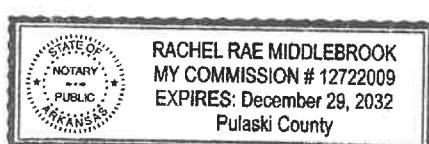
Print Name

STATE OF Arkansas

COUNTY OF Pulaski

The foregoing instrument was acknowledged before me this 8th day of October, 2024, by Hunter Brown, who is personally known to me or who has produced drivers License (type of identification) as identification.

NOTARY'S SEAL:



NOTARY PUBLIC, STATE OF Arkansas

Rachel Middlebrook

Name of Acknowledger Typed, Printed or Stamped

12722009

Commission Number

JZ/mcm

4/23/2024

L:agr/culturalarts/2024-528

EXHIBIT 1

Call to Artists: Pompano Beach Powerline Road Entrance Sculpture

BUDGET: \$50,000.00

DEADLINE: January 3, 2024

SUMMARY

The City of Pompano Beach will commission an artist/artist team for a work for hire project to design, fabricate, and install a freestanding sculpture. This sculpture will be an entryway artwork into the City of Pompano Beach. Sculpture location will be on the east side of Powerline Road by the south entrance to Harrah's Pompano Beach Casino. Themes for the sculpture include futuristic, industrial, contemporary urban, power, and energy. The project is open to all professional artists nationwide.

THEME & REQUIREMENTS

The commissioned artwork will be an entry sculpture to the City of Pompano Beach on Powerline Road. The artwork must be a standalone sculpture. The theme should incorporate futuristic, industrial, contemporary urban, power, and energy. No logos are to be used. Pompano Live! Will be providing the pad and exterior lighting.

PROJECT LOCATION

The location is at an entrance to the City of Pompano Beach located on the east side of Powerline Road by the south entrance to Harrah's Pompano Beach Casino.

Link to Location: <https://cdn.pompanobeachfl.gov/pba/images/Location.pptx>

ARTWORK PURCHASE BUDGET

The purchase budget established for the project is \$50,000.00. The price will include all insurance, taxes, fees, permits, delivery, installation, and engineering. Applicants must submit a detailed budget list. Pompano Live! Will be providing the pad and exterior lighting.

APPLICATION

All submissions should be submitted through CaFE. Submissions received after the deadline will not be accepted. Submissions must include:

1. Resume
2. Artist statement – a brief description of yourself and the design concept;
3. Examples of previous artwork (minimum 3; maximum 5); and
4. Optional: Design Sketch.

Failure to meet Call to Artists and submittal requirements will result in disqualification.

Three (3) artists will be shortlisted and paid an honorarium of \$200 to create a detailed proposal.

ELIGIBILITY

The project is open to all professional artists nationwide. *Artist* or *Professional Artist* means a practitioner in the visual arts, generally recognized by critics and peers as a professional of serious intent and ability, income realized through the sole commission of artwork and frequent or consistent art exhibitions. Artists are NOT eligible if they are immediate family or business partners of members of the Public Art Committee or program staff.

ARTIST SELECTION PROCESS

The selection process is managed by the City of Pompano Beach. The Pompano Beach Public Art Committee may create a subcommittee that will serve as the selection committee. The City Commission will have final approval of the selected artist and design. Final purchase approval is contingent upon inspection ensuring long-term conservation of the artwork.

Other Selection Issues:

Florida “Sunshine Laws”: All meetings of the Public Art Committee are open to the public, are publicly advertised and are documented through written minutes.

Conflicts of Interest: Artists with immediate family or business partners on the selection committee are not eligible to apply. A selection committee member may choose to withdraw from discussion and voting for any apparent conflict of interest.

Public Art Committee Contacts: Artist applicants should not contact Public Art Committee members between the release of the Call to Artists and the completion of the selection process. Contact the City of Pompano Beach for all questions and information.

QUESTIONS

Contact: Laura Atria, Public Art & Artists in Residence Program Manager

Phone: 954-545-7800 ext. 3813

E-mail: Laura.Atria@copbfl.com

BACKGROUND ON POMPANO BEACH

Pompano Beach is a city located in Broward County along the coast of the Atlantic Ocean, just north of Ft. Lauderdale. The nearby Hillsboro Inlet forms part of the Atlantic Intracoastal Waterway. In 2013, the City adopted the Pompano Beach Cultural Arts Master Plan. Pompano Beach is a Cultural Arts destination in north Broward County, featuring innovative arts programming. The City's cultural facilities include the Ali Cultural Arts, Bailey Contemporary Arts, the Cultural Center of Pompano Beach, and the Pompano Beach Amphitheater.

BACKGROUND ON POMPANO BEACH PUBLIC ART PROGRAM

In 2012, the Pompano Beach City Commission adopted a public art ordinance to “enhance the aesthetic and cultural value of the city by including works of art on public properties within the city.” The City Commission seeks “benefits of public art that are both aesthetic and economic.” For more information on what is planned over the next ten year period, please refer to the Public Art Masterplan that is located at http://pompanobeachfl.gov/index.php/pages/public_art/public_art.

PERMITS

It shall be the artist's responsibility, where applicable, to obtain all necessary permits prior to fabrication and installation. The artist will ensure that the design will be code compliant and meet Florida Building Code requirements and can stand up to South Florida weather conditions and wind load requirements.

INSURANCE

LICENSEE shall not commence services under the terms of this Agreement until certification or proof of insurance detailing terms and provisions has been received and approved in writing by the CITY's Risk Manager. If you are responding to a bid and have questions regarding the insurance requirements

hereunder, please contact the City's Purchasing Department at (954) 786-4098. If the contract has already been awarded, please direct any queries and proof of the requisite insurance coverage to City staff responsible for oversight of the subject project/contract.

LICENSEE is responsible to deliver to the CITY for timely review and written approval/disapproval Certificates of Insurance which evidence that all insurance required hereunder is in full force and effect and which name on a primary basis, the CITY as an additional insured on all such coverage.

Throughout the term of this Agreement, CITY, by and through its Risk Manager, reserve the right to review, modify, reject or accept any insurance policies required by this Agreement, including limits, coverages or endorsements. CITY reserves the right, but not the obligation, to review and reject any insurer providing coverage because of poor financial condition or failure to operate legally.

Failure to maintain the required insurance shall be considered an event of default. The requirements herein, as well as CITY's review or acceptance of insurance maintained by LICENSEE, are not intended to and shall not in any way limit or qualify the liabilities and obligations assumed by LICENSEE under this Agreement.

Throughout the term of this Agreement, LICENSEE and all subcontractors or other agents hereunder, shall, at their sole expense, maintain in full force and effect, the following insurance coverages and limits described herein, including endorsements.

A. Worker's Compensation Insurance covering all employees and providing benefits as required by Florida Statute, Chapter 440. LICENSEE further agrees to be responsible for employment, control and conduct of its employees and for any injury sustained by such employees in the course of their employment.

B. Liability Insurance.

(1) Naming the City of Pompano Beach as an additional insured as CITY's interests may appear, on General Liability Insurance only, relative to claims which arise from LICENSEE's negligent acts or omissions in connection with LICENSEE's performance under this Agreement.

(2) Such Liability insurance shall include the following checked types of insurance and indicated minimum policy limits.

Type of Insurance	Limits of Liability
GENERAL LIABILITY:	Minimum 1,000,000 Per Occurrence and \$2,000,000 Per Aggregate
* Policy to be written on a claims incurred basis	
XX comprehensive form	bodily injury and property damage
XX premises - operations	bodily injury and property damage
— explosion & collapse	
— hazard	
— underground hazard	
XX products/completed	bodily injury and property damage combined

operations hazard	
XX contractual insurance	bodily injury and property damage combined
XX broad form property damage	bodily injury and property damage combined
XX independent contractors	personal injury
XX personal injury	
— sexual abuse/molestation	Minimum \$1,000,000 Per Occurrence and Aggregate
— liquor legal liability	Minimum \$1,000,000 Per Occurrence and Aggregate

AUTOMOBILE LIABILITY: Minimum \$1,000,000 Per Occurrence and \$2,000,000 Per Aggregate. Bodily injury (each person) bodily injury (each accident), property damage, bodily injury and property damage combined.

XX comprehensive form	<input type="checkbox"/> Minimum \$10,000/\$20,000/\$10,000
XX owned	(Florida's Minimum Coverage)
XX hired	
XX non-owned	

REAL & PERSONAL PROPERTY

— comprehensive form	Agent must show proof they have this coverage.
----------------------	--

EXCESS LIABILITY	Per Occurrence	Aggregate
— other than umbrella	bodily injury and property damage combined	\$2,000,000 \$2,000,000

PROFESSIONAL LIABILITY	Per Occurrence	Aggregate
— * Policy to be written on a claims made basis	\$1,000,000	\$1,000,000

(3) If Professional Liability insurance is required, LICENSEE agrees the indemnification and hold harmless provisions set forth in the Agreement shall survive the termination or expiration of the Agreement for a period of three (3) years unless terminated sooner by the applicable statute of limitations.

C. Employer's Liability. If required by law, LICENSEE and all subcontractors shall, for the benefit of their employees, provide, carry, maintain and pay for Employer's Liability Insurance in the minimum amount of One Hundred Thousand Dollars (\$100,000.00) per employee, Five Hundred Thousand Dollars (\$500,000) per aggregate.

D. Policies: Whenever, under the provisions of this Agreement, insurance is required of the LICENSEE, the LICENSEE shall promptly provide the following:

(1) Certificates of Insurance evidencing the required coverage;

- (2) Names and addresses of companies providing coverage;
- (3) Effective and expiration dates of policies; and
- (4) A provision in all policies affording CITY thirty (30) days written notice by a carrier of any cancellation or material change in any policy.

E. Insurance Cancellation or Modification. Should any of the required insurance policies be canceled before the expiration date, or modified or substantially modified, the issuing company shall provide thirty (30) days written notice to the CITY.

F. Waiver of Subrogation. LICENSEE hereby waives any and all right of subrogation against the CITY, its officers, employees and agents for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, then LICENSEE shall notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy which includes a condition to the policy not specifically prohibiting such an endorsement, or voids coverage should LICENSEE enter into such an agreement on a pre-loss basis.

APPROXIMATE SCHEDULE (For Staff Purposes only- Not to be posted in call)

Call to Artist will be posted. November 28, 2023

Deadline for submissions. January 3, 2024

Artist will be selected.

Exhibit 2



Project Proposal

Prepared for: Pompano Beach Powerline Rd. Entrance Sculpture

Prepared by: Innovative Sculpture Design LLC, Hunter Brown

February 16, 2024

Project Details

Title: Vivacious

Medium: Marine-grade stainless-steel

Finish: Automotive finish with a mirror-polished stainless-steel accent panel

Weight: Approx 7,000lbs

Scale: 20'H

Base: Circular concrete base with recessed center

- structural specs for base / foot to be determined by structural engineer
- artwork is welded to steel anchor plate and mounted to 3/4" anchor plate with anchor holes.
- plate is attached to concrete pad using hilti anchor system/ set by artist during install

Location: Powerline Rd. Pompano Beach, Florida

SCALE

5'D sphere

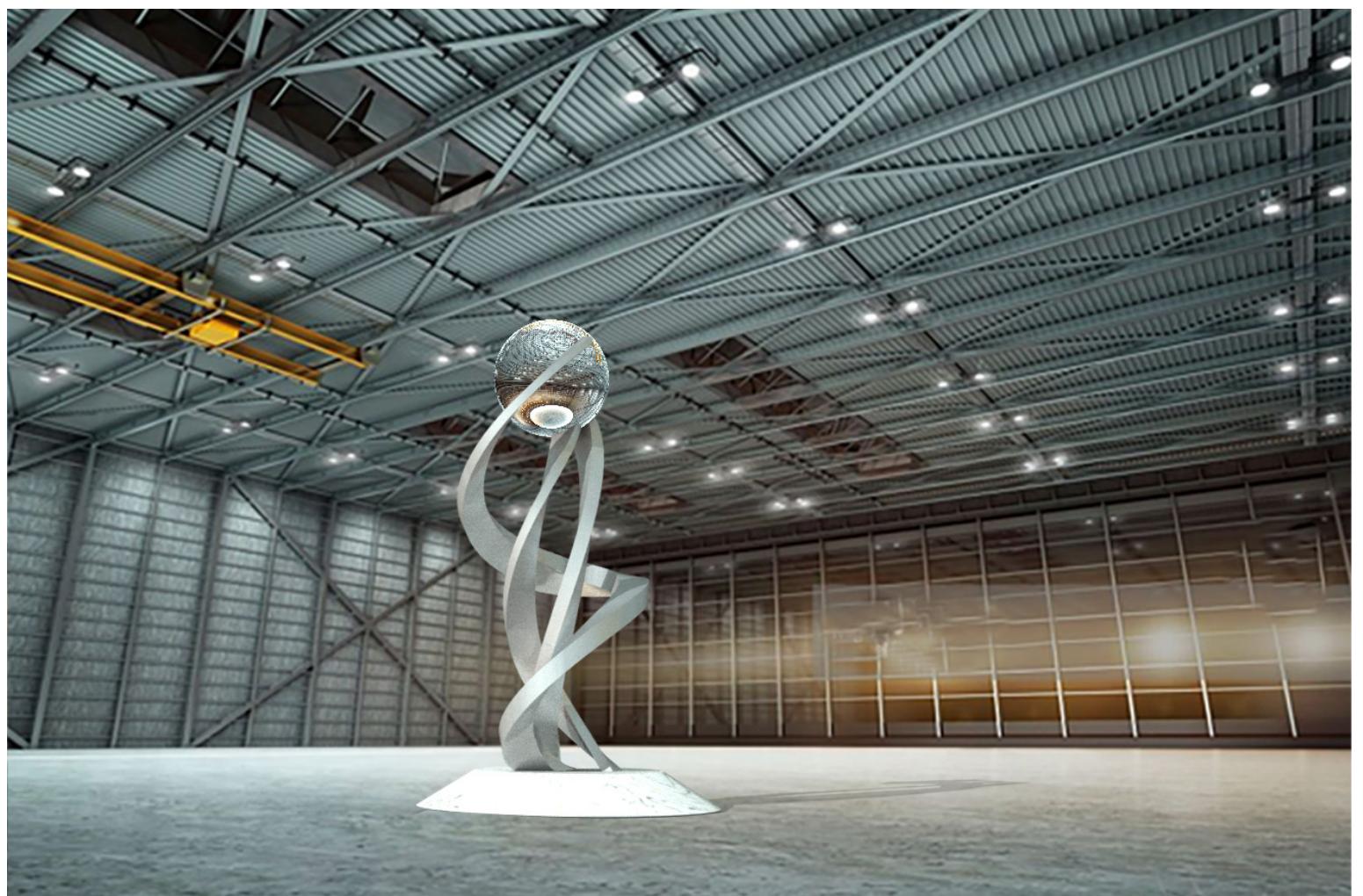
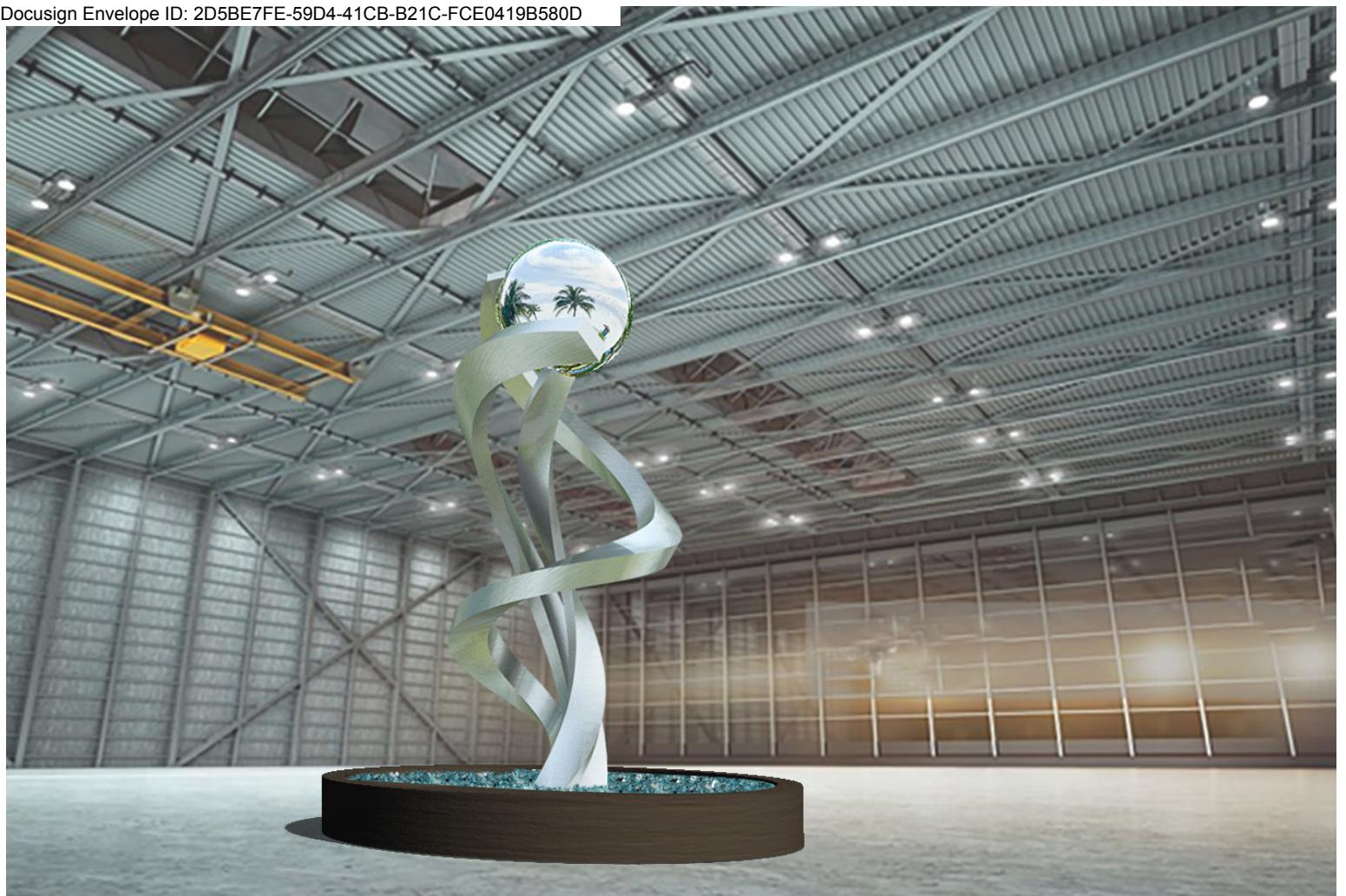
20'H

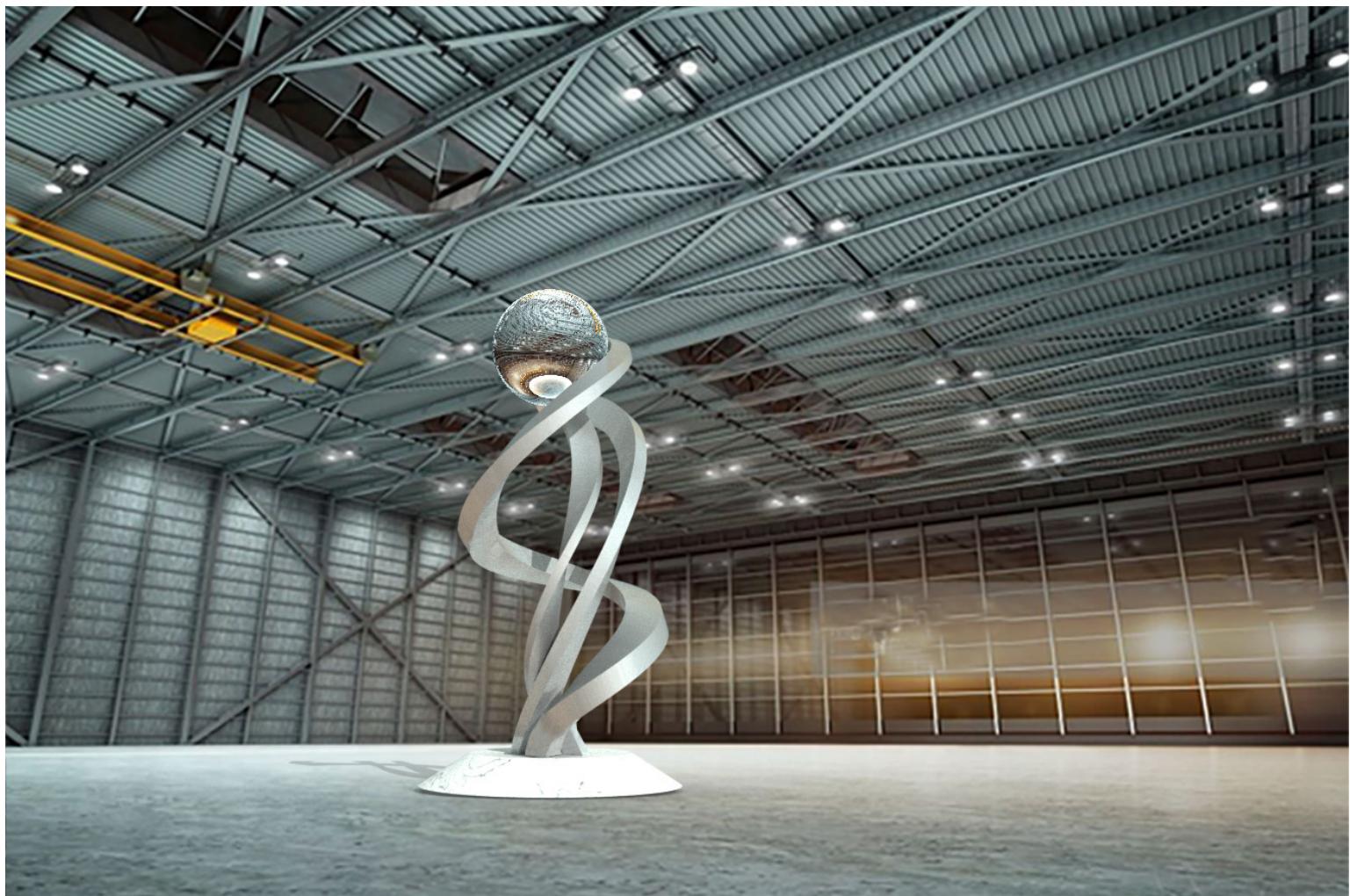
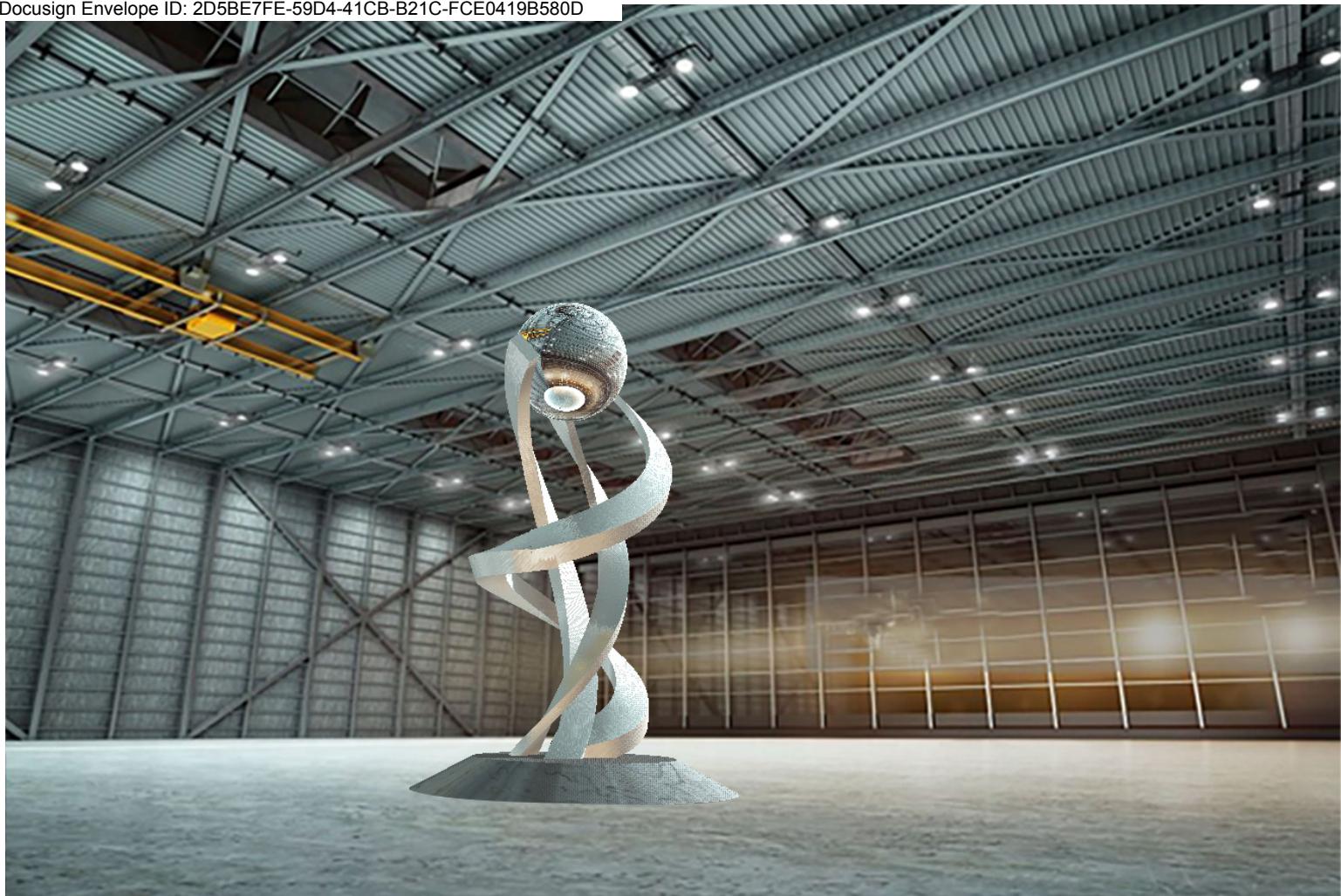
9' overall diameter

30"H

18'D base







FINISH

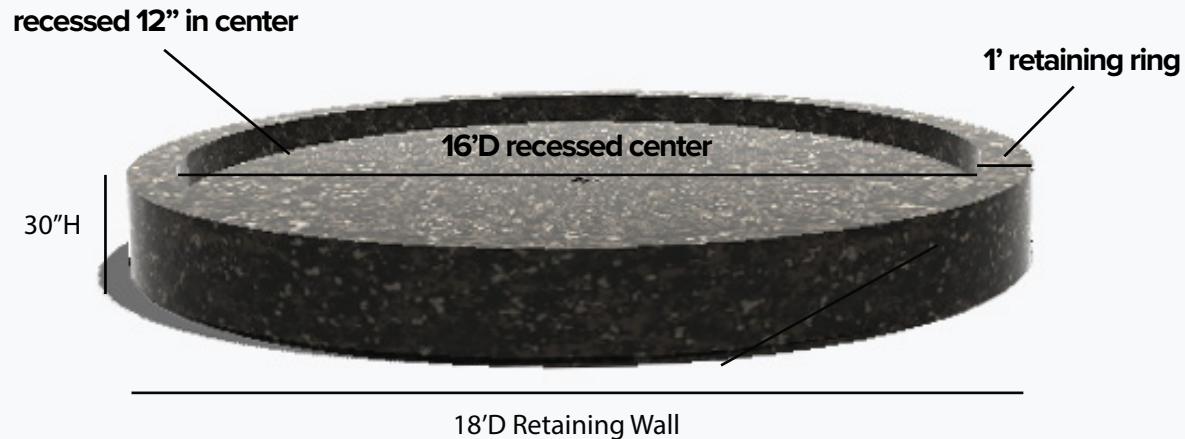
Sample Finish:

Brush--pattern stainless/with mirror polished stainless



Other finishes and colors are optional*

BASEDESIGN



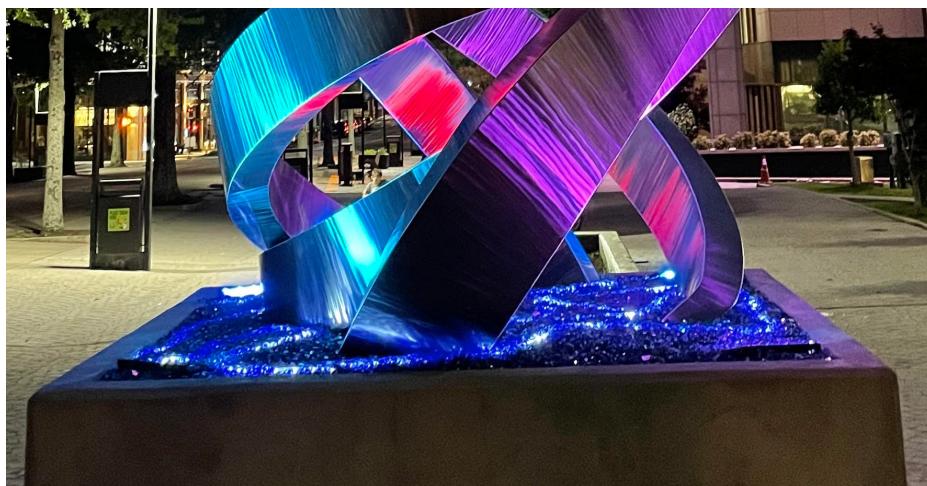
Base Finish: Rubbed concrete with stain sealer (other options available)

Base Specs: Per Structural Engineer Spec (finishes and proportions can be adjusted)

- This base construction helps with creating a barrier between the artwork and the viewer
- Artwork is welded to anchor plate/anchor plate attached in recessed area with hilti anchors
- Conduit for up lighting stubbed up inside inner extrusion ring
- Color Kinetics lighting installed inside retaining wall
- Landscape material to cover base plate attachment and to fill around light fixtures covering conduit inside retaining wall. (defer to design team for final look)

Other base options available*

Glass Sample





Shown with no elevated base.

Concrete Footing: 10'x10' concrete foot poured below grade with top of concrete just below grade.

- Artwork attached to concrete pad with Hilti Anchors by artist
- Attachment covered with landscape material

Base Specs: Per Structural Engineer Spec (finishes and proportions can be adjusted)

LIGHTING DESIGN

Color Kinetics lighting by Philips will be used to illuminate the piece. The Blast luminaires set the standard for flood lighting - delivering high quality light and uncompromising performance with exceptional reliability. The Blast Powercore lighting boosts the output to meet the most demanding white and color lighting applications. The fixtures have precise color, remote monitoring, and programming capabilities that open doors for innovative light show programming.

Lighting design will include 8 Color-Blast Gen5 fixtures. Lights to be mounted inside the retaining wall and wired in series. A box housing the controller will be placed in an accessible nearby location. The artist will program light shows to the controller prior to the installation.



Project Plan

We fabricate and complete all stages of the fabrication process at Innovative Sculpture Studio. The 8000sq. ft. studio has high structural beams and plenty of space to produce monumental works in house. Our fabrication assistants are trained in all stages of the process, from fabricating structural armatures to applying the final finish.

The base construction is to be contracted and completed prior to the completion of the fabrication process by Innovative Sculpture using structural specs provided by a certified structural engineer contracted by Innovative Sculpture. Base finish and proportions subject to final approval by design team.

Once the fabrication is complete we will prepare the artwork for safe transport. We will transport the assembled work as one piece using a oversize carrier. Installation will be completed in 1 day by the Innovative Sculpture team using a crane to pick and set the piece on the footing. A lane closure for the day will likely be necessary. The base plate will be secured to the footing using threaded studs per engineering drawing specs. The studs will be set by Innovative Sculpture Design during install to allow for flexibility with the final orientation.

Maintenance

The piece is constructed in high chromium stainless steel (316 grade). The steel sheet is welded around a structural form constructed in tube and solid round stainless rods. This structure is designed to withstand high wind load and storms and will take into account hurricanes. The skin material/exterior material has high chromium content which is a chemical composition created for protecting the surfaces from oxidation even if the coating is compromised. The artwork will feature a blended brush pattern. The finished surfaces will be coated with Everbrite Protectaclear, a self-leveling resin coating made to protect the surfaces from grime and help maintain the surface luster. Maintenance includes washing the piece similar to washing a car. (If pressure washing the psi should be less than 3000psi with a non aggressive tip.) Water and mild soap can be used to wash the sculpture as needed. A new coating is recommended every 6-8 years. The coating is a wipe on application that is very easy to reapply. Innovative Sculpture offers a maintenance contract and prefers to apply Everbrite coating as needed.

Footing

Innovative Sculpture will off design recommendations for the footing and attachment. The purchasing party will be responsible for all site-work outside of the artwork installation. Footing/base is to be complete prior to scheduled installation. The piece itself will be mounted on a 1" plate that will be anchored to the footing using Hilti anchor system. Anchors to be set by artist during the installation. This creates flexibility in the final orientation of the artwork.

INNOVATIVE SCULPTURE DESIGN



Description

The Vivacious concept emerges as a testament to contemporary art, a symphony of abstract forms that dance with life.

The stainless-steel canvas bears the marks of creativity—a brush-pattern finish. The artist's strokes, deliberate and fluid, the etched pattern creates a dramatic everchanging visual, highlighting the relationship between light and reflection.

The sculpture defies stillness. Its forms twist, curve, and leap—an orchestra of motion frozen in time. Between these forms lies a dance—the interplay of positive and negative space. Emerging from the earth, like shoots reaching for sunlight. Each form carries a story—a memory, a dream, a fragment of existence. Their upward journey mirrors our aspirations. We, too, sprout toward the sky, seeking connection and transcendence.

High above, a polished sphere hovers—an enigma. Is it a celestial body, a symbol of community, or a reflection of our own yearnings? The forms embrace it, as if saying, "We share this space, this journey." The design exudes vitality. It laughs, twirls, and beckons. Perhaps it celebrates life, love, or the sheer joy of existence..

Budget

Description	Quantity	Unit Price	Cost
Materials			
11G 316 stainless sheet	12	\$ 833.50	\$ 10,002.00
1/2" stainless round bar	40	\$ 29.00	\$ 1,160.00
Sch. 40 2" tube	14	\$ 105.00	\$ 1,470.00
7'D 3/4" anchor plate	1		\$ 1,690.00
5'D Polished Sphere			\$ 6,000.00
Total:			\$ 20,322.00
Consumables/Production Cost			
Welding Consumables			\$ 1,000.00
Finish and Abrasives			\$ 1,500.00
Total:			\$ 2,500.00
Labor /Profit			
Production Labor			\$55,000.00
Labor Discount			-\$26,500.00
Total			\$ 28,500.00
Transport / Install			
Transport			\$ 3,000.00
Crane Rental and Opperator			\$ 2,000.00
Reach Lift rental			\$ 2,000.00
Lodge			\$ 600.00
Install Fee			\$ 1,000.00
Total:			\$ 8,600.00
Grand Total:			\$ 59,922.00

Site-work budget

Base/ Lighting (not included in artist scope of work)

Budget with Recommended Base

	Cost
Color Kinetics Lighting	\$ 12,000.00
Lighting Hook Up Electric	\$ 5,000.00
Base Contractng	\$ 30,000.00
Engineer Fee for footing/attachment	\$ 1,500.00
Azuria Blue Fire Glass	\$ 2500.00
Total	\$ 51,000.00

Budget with sub-grade concrete footing

Color Kinetics Lighting	\$12,000.00
Lighting Hook up Elecric	\$ 5,000.00
Footing	\$ 8,000.00
Engineer Fee for footing/attachment	\$ 1,500.00
Total:	\$26,500.00

Exhibit 3
Scope of Services

A. Introduction

The City of Pompano Beach is commissioning Innovative Sculpture Design (ARTIST) for the design, fabrication, and installation of a sculpture entitled “Vivacious” that will be located at the east side of Powerline Road by the south entrance to Harrah’s Pompano Beach Casino. A Call to Artists was posted on November 28, 2023, with a deadline of January 3, 2024. One hundred four (104) artists submitted applications; ninety-five (95) applications met requirements. At the February 28, 2024 Public Art Subcommittee Meeting, the Subcommittee recommended Innovative Sculpture Design (ARTIST) for the project. At the March 21, 2024 Public Art Committee Meeting, the Committee motioned to support the Subcommittee’s recommendation.

B. Objective

To continue to beautify and enhance the City of Pompano Beach by creating an entryway sculpture.

C. Scope of Work

Following full execution of the Agreement, the ARTIST will work with the City’s Contract Administrator and Pompano Park JV Land Holdings LLC. during the fabrication and installation of the artwork. Pompano Park JV Land Holdings LLC. will be supplying the exterior lighting and foundation for the artwork.

Proposed Design is located in Exhibit 2 and may vary as the depiction of the design is a digital mock up.

The ARTIST will provide City a minimum of five (5) professional photographs of the installed Artwork within two (2) weeks after the installation has been approved in writing by the Contract Manager.

D. Summary Schedule

This Agreement is for six (6) months after full execution by both parties.

E. PROJECT LOCATION

The mural will be located at the east side of Powerline Road by the south entrance to Harrah’s Pompano Beach Casino.

Exhibit 3
Scope of Services

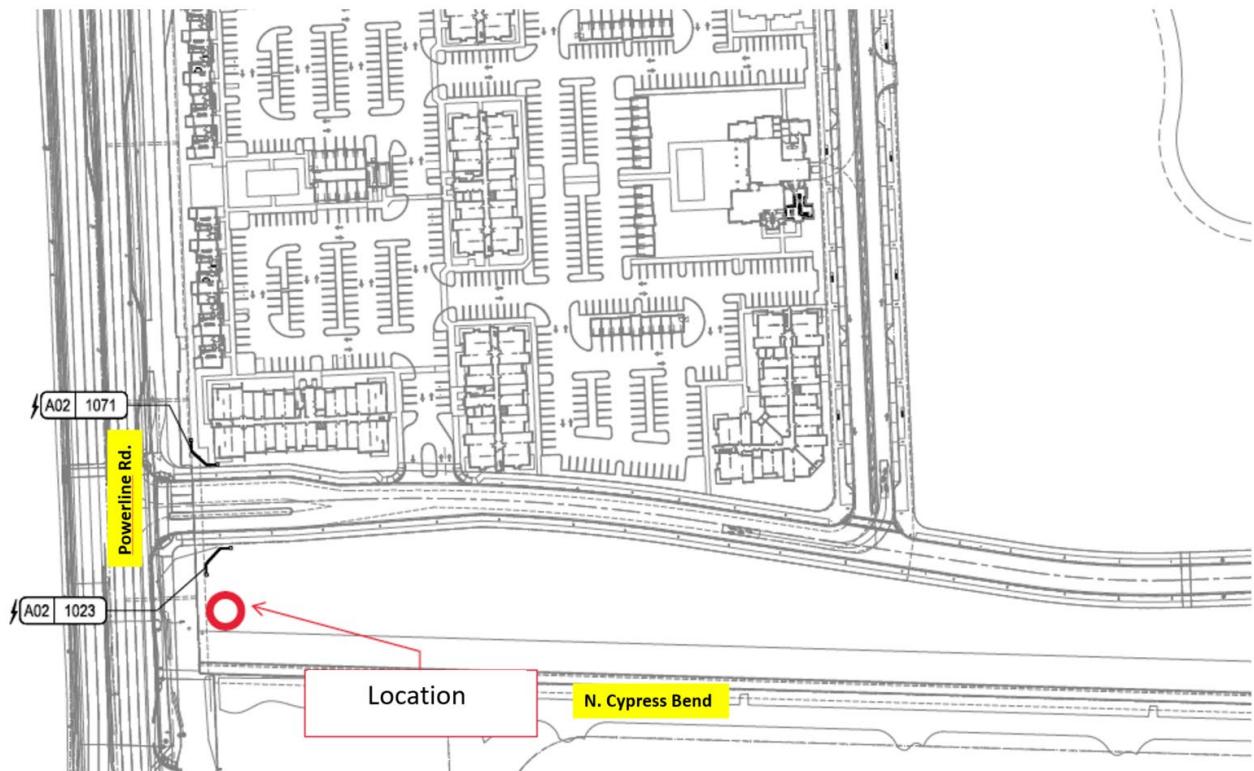


Exhibit 3
Scope of Services

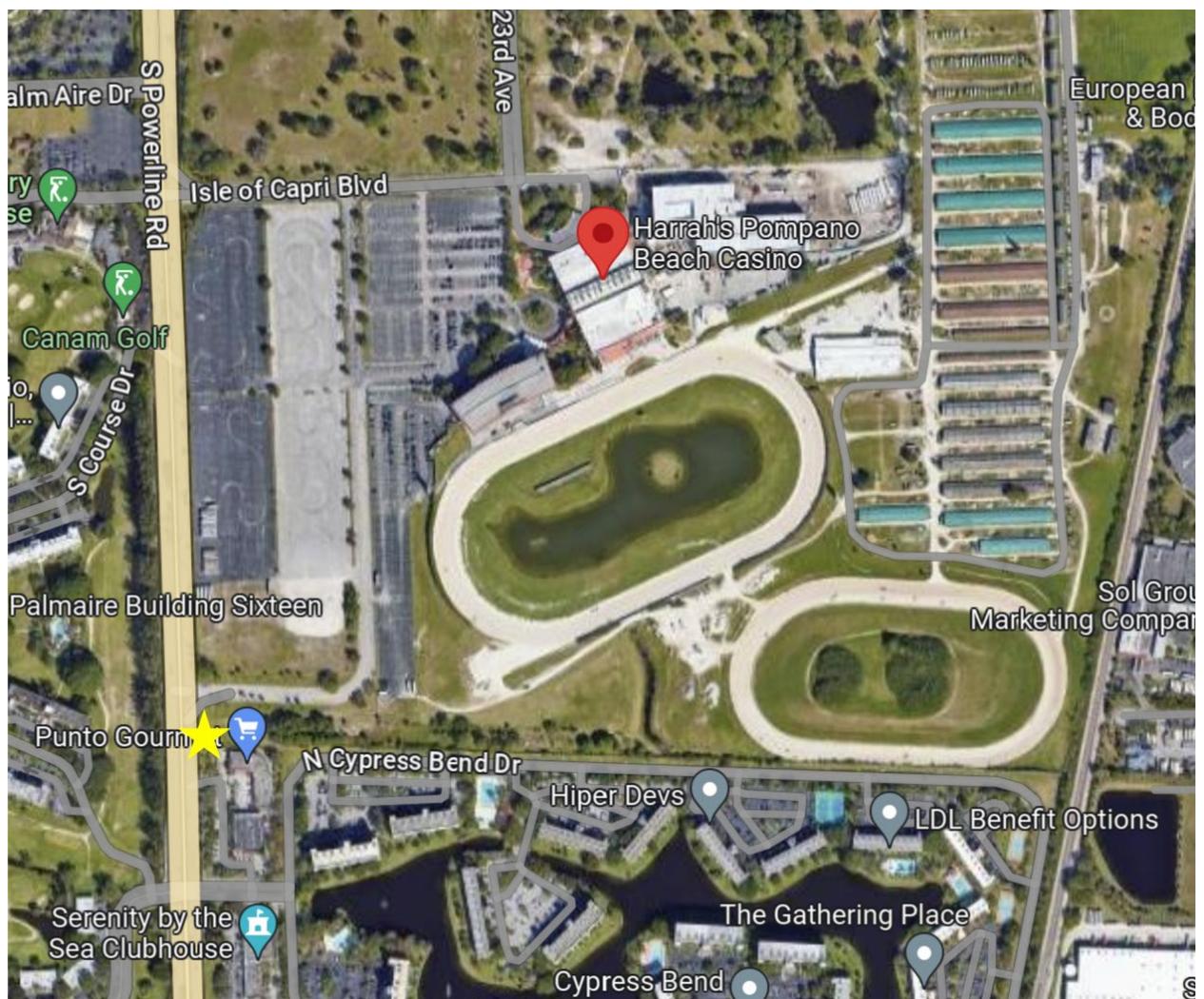


Exhibit 4

THE CITY OF POMPANO BEACH PUBLIC ART CATALOGUING FORM

NOTE: Please add attachments to provide comprehensive information for the following:

I. Artist Information

- A. 1. Name:
- 2. Name you want to use to label and PR materials, if differs from above:
- B. Date of Birth:
- C. Place of Birth:
- D. Address, e-mail, web-site:
- E. Phone:
- F. One paragraph biography of artist:

II. Work of Art

- A. Title:
- B. Description of materials:
- C. Dimensions in inches:
- D. Inscription marks:
- E. Artwork with electronic components used:
 - Name of item:
 - Manufacturer info (address, telephone, e-mail):
 - Supplier info (address, telephone, e-mail):

G. Artist's statement:

III. Fabrication Information

- A. Material(s) used in Artwork:
- B. Material Finish:
- C. Material Suppliers:

D. Materials used in the presentation of the project (maquette):

E. Fabricators (name, address, phone, e-mail, web site):

F. Fabrication method (attach diagrams or drawings):

G. Architect/Engineer (name, address, telephone, e-mail):

IV. Installation

A. Installation executed by (name, address, phone, fax, e-mail, website):

B. Installation method (attach diagram of substructure, footings, CD with documents and photographs):

C. Date of Installation:

V. External Factors

A. Describe physical positioning of the artwork:

B. Describe existing environmental factors which may affect the condition of the artwork:

C. If the Artwork is site-specific, describe the relationship of the Artwork to its site:

VI. Maintenance (attach schedule of maintenance for specific items: light bulb, electronics, etc.)

A. Short-term:

B. Long-term:

C. Note desired appearance of the artwork:

VII. Digital copies for use in repair of sound art and graphic reproduction:

VIII. Documentation

A. Artist has supplies two (2) identical CD's with a minimum of fifteen (15) professional quality digital format images illustrating all components of the Artwork with a minimum resolution of 300dpi.

Exhibit 5

COPYRIGHT ASSIGNMENT OF ARTWORK TO THE CITY OF POMPANO BEACH

This Copyright Assignment (the "Assignment") is made and effective as of October 8, 2024 ("Effective Date") pursuant to a Service Contract for Artwork dated January 21, 2025, 2024 (the "Agreement") between Innovative Sculpture Design, LLC ("Artist") and the City of Pompano Beach, a Florida municipal corporation ("City"), concerning the Public Art project described below.

RECITALS

WHEREAS, the City commissioned the Artist/Artist Team to design, fabricate, and install a freestanding sculpture entitled "*Vivacious*" at the entryway into the City of Pompano Beach (the "Artwork") located on the east side of Powerline Road by the south entrance to Harrah's Pompano Beach Casino (the "Design Location") as depicted in the Artist's Design Proposal attached hereto and made a part hereof as Exhibit 2; and

WHEREAS, it is Artist's intention to assign and transfer to City all of Artist's right, title and interest in and to the Artwork; and

NOW, THEREFORE, in consideration of the covenants and premises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Artist represents and warrants as follows:

1. Assignment of the Artwork

As of the Effective Date stated above, Artist does hereby forever grant exclusively to City for its use and disposition without reservation, all ownership rights, physical custody and control of said Artwork, including, but not limited to, all rights to reproduce, publish, adapt, modify, distribute, display, publicize, and transmit (digitally or otherwise) the Artwork; all income, royalties and damages hereafter due or payable with respect to the Artwork; create derivative works based on the Artwork; use the copyright or assign it to a third party; and to sue a third party for past, present or future infringement or misappropriation of the Artwork.

2. Consideration

As consideration for assignment of the Artwork and Artist's representation and warranties in this Assignment, City has promised to pay Artist a total fixed fee of Sixty Thousand (\$60,000.00) payable after the work has been verified and completed per the Agreement.

3. Artist's Representations, Warranties and Waiver

Artist hereby represents and warrants to City that:

- (a) Artist is the sole owner of all right, title, and interest in and to the Artwork;
- (b) The Artwork is original, not in the public domain, not plagiarized, and does not contain anything that is libelous or obscene;
- (c) Artist has not assigned, transferred, licensed, pledged, sold or otherwise encumbered the Artwork or agreed to do so thereby warranting the Artwork is free and clear of all encumbrances and there are no other permissions that need to be obtained in order for this Assignment to be completed;
- (d) Artist has full power and authority to enter into this Assignment and to make the assignment as provided in Paragraph 1 above;
- (e) As the original creator/owner of the Artwork to be given to the City for public display, Artist has not copied or reproduced in any way, anyone's original work in this final submitted product given to City and therefore Artist is not aware of any violation, infringement, or misappropriation of any third party's rights or any claims of rights, including existing intellectual property rights, rights of privacy and any other rights;
- (f) Artist is not aware of any third-party consents, assignments, or licenses that are necessary to perform under this Assignment;
- (g) Artist was not acting within the scope of employment of any third party when conceiving, creating, or otherwise performing any activity with respect to the Artwork assigned in Paragraph 1 above;
- (h) Artist understands and agrees the provisions of this Assignment shall control over the provisions of 17 U.S.C. Section 106A (a) and shall constitute a waiver by Artist of any rights in the Artwork set out on or otherwise granted by 17 U.S.C. Section 106A (a), Visual Artists Rights Act of 1990;
- (i) Artist agrees to agree to release and hold harmless the City, its officers, agents and employees, from any and all liability, including claims which arise from any negligence, omission, copyright or statutory violation, and for any loss, damage or misuse of the Artwork which occurs while it is depicted on the City's display;
- (j) Artist shall provide prompt assistance and cooperation in the prosecution of legal proceedings involving said Artwork or derivative works therefrom, said registrations granted thereon, including proceedings before the Copyright Office of the United States or any foreign country, and for court actions, provided however, that the expense which may be incurred by Artist lending such assistance and cooperation shall be paid by City; and

(k) Artist understands and agrees the Artwork may become an integral part of the City's display and the depiction and/or copy of the Artwork may be integrated onto the City's display so that its image can be viewed by the public. Said integration and use of the image of the Artwork may subject it to future removal or other modification by reason of its integration onto the City's display. Notwithstanding the foregoing, Artist does hereby consent to incorporation of the Artwork onto the City's display and waives any rights in the Artwork granted by 17 U.S.C. Section 106A (a), Visual Artists Rights Act of 1990.

Artist agrees to immediately notify City in writing of any facts or circumstances arise that would make any of the representations in this Assignment inaccurate.

4. Documentation

Artist warrants that as soon as is reasonably possible following a request from City, Artist shall provide City with a complete copy of all documentation in Artist's possession that (i) relates to the Artwork for the City's own use (ii) is needed to meet record-keeping requirements of the City, or (iii) allows City to assert its rights granted pursuant to this Assignment.

Artist warrants that as soon as is reasonably possible following a request from City, Artist shall also:

- (a) promptly execute any and all additional documents, including any separate assignments of the Artwork which are deemed necessary or desirable by City to perfect in it, the right, title and interest herein conveyed;
- (b) generally, do all other lawful acts reasonable and necessary to record the Assignment in the United States and throughout the world; and
- (c) promptly execute all documents reasonable and necessary for City to obtain a copyright on the Artwork and/or on any continuing, divisional, or reissue applications thereof.

5. No Further Use of Artwork

After the Effective Date, Artist agrees to make no further use of the Artwork or any derivatives thereof, except as authorized by the City's prior written consent and Artist agrees not to challenge the City's use or ownership, or validity of the Artwork provided, however, that Artist shall retain Artist's rights to be identified as the Artist whenever the Artwork is reproduced, published, distributed, or otherwise publicly displayed.

6. Successors and Assigns

All references in this Assignment to the Parties shall be deemed to include, as applicable, a reference to their respective successors and assigns. The provisions of this Assignment shall be binding upon and shall inure to the benefit of the successors and assigns of the Parties.

7. Notice

Whenever notice, demand or other communication may or shall be given by one party to another hereunder, it must be in writing and forwarded (i) upon the parties' mutual written consent, via trackable email that provides delivery/read receipts or (ii) postage prepaid via certified U.S. mail or other trackable common carrier such as FedEx, UPS, etc., and forwarded to the representative and mailing address set forth below until changed by written notice in accordance with this Article and a contemporaneous copy sent to the designated email that provides the delivery method and tracking number. For the present, the parties designate the following respective places for giving of notice, to-wit:

If to City:

City Manager
P.O. Box Drawer 1300
Pompano Beach, FL 33060
Greg.Harrison@copbfl.com

With a copy to:

Attn: Laura Atria, Public Art Program Manager
Cultural Affairs Department
50 West Atlantic Boulevard
Pompano Beach, FL 33060
Laura.Atria@copbfl.com

If to the Artist:

Innovative Sculpture Design, LLC
Hunter Brown
122 Orleans Drive
Maumelle, AR USA 72113
innovativesculpturedesign@gmail.com

8. Severability

Whenever possible, each provision of this Assignment, will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Assignment is held to be invalid, illegal, or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other provision or any other jurisdiction, but this Assignment will be reformed, construed, and enforced in such jurisdiction as if such invalid, illegal, or unenforceable provisions had never been contained herein.

9. Entire Assignment

This Assignment, together with Exhibit 2, constitutes the final, complete, and exclusive statement of the agreement between the Parties with respect to the subject matter hereof and supersedes any and all other prior and contemporaneous agreements and understandings, both written and oral.

10. Headings

Headings used in this Assignment are provided for convenience only and shall not be used to construe meaning or intent.

I represent that I have carefully read and understand the entire contents of this Copyright Assignment, that I have the authority, either on behalf of myself or as agent for the Artist/Owner of the Artwork to sign this Agreement, and that I have signed on my own free will.

“ARTIST”:

Witnesses:


Michelle Majom
Print Name

INNOVATIVE SCULPTURE DESIGN, LLC


Hunter Brown


Janet K. Walker
Print Name

STATE OF Arkansas
COUNTY OF Pulaski

The foregoing instrument was acknowledged before me, by means of physical presence or online notarization, on this 8th day of October, 2024, by Hunter Brown who is personally known to me or who has produced Driver's License (type of identification) as identification.

NOTARY'S SEAL:




NOTARY PUBLIC, STATE OF Arkansas

Rachel Middlebrook
Name of Acknowledger Typed, Printed or Stamped

12722009
Commission Number

Exhibit 6

**CITY OF POMPANO BEACH
ADMINISTRATIVE POLICY**

TITLE:	Youth Program Background Screening Policy	Number:	500.06
		Effective:	3-10-04
		Revised:	8-27-07
		Revised:	7-23-08
		Revised:	8-2-10

In an effort to ensure that the City of Pompano Beach provides a safe place for children to learn and enjoy recreation programs, and in an effort to acquire and retain volunteers and instructors who are more likely to safely interact with participants in programs, the Parks and Recreation Department will conduct criminal background screening on all prospective volunteers and instructors, and based upon the recommended guidelines for credentialing set by the National Recreation and Park Association, shall establish and enforce criteria for disqualification of applicants.

(1) The following shall constitute grounds for disqualification of an applicant:

(a) The applicant has been found guilty of any of the following crimes listed below:

"Guilty" means that a person was found guilty following a trial, entered a guilty plea or entered a no contest plea, accompanied by a court finding of guilt, regardless of whether there was an adjudication of guilt (conviction) or a withholding of guilt. Acquittal, Nolle Prossse, or dismissal of charges shall not be included in said definition:

1. **SEX OFFENSES INVOLVING CHILDREN**

*All Sex Offenses and Offenses involving children or the abuse of children – regardless of the amount of time since offense. Examples include but are not limited to child molestation, rape, sodomy, prostitution, indecent exposure.

2. **FELONIES**

*All Felony Offenses involving violence – regardless of the amount of time since the offense. Examples include but are not limited to: murder, attempted murder, manslaughter, aggravated battery, aggravated assault, kidnapping, robbery.

**CITY OF POMPANO BEACH
ADMINISTRATIVE POLICY**

PAGE 2

TITLE:	Youth Program Background Screening Policy	Number:	500.06
		Revised:	8-2-10

*All Felony Offenses, other than those for violence, sex, or offenses involving children, within the past seven (7) years of the date of the application. Examples include but are not limited to: drug offenses, theft.

3. MISDEMEANORS

*All Misdemeanor offenses involving violence within the past five (5) years of the application date. Examples include but are not limited to: simple battery, assault, domestic violence.

*Any three (3) or more Misdemeanor drug offenses or alcohol offenses, or any combination of same within the past five (5) years of the application date. Examples include, but are not limited to, driving under the influence, possession of marijuana, disorderly conduct, possession of drug paraphernalia.

*Any other Misdemeanor offense within the past five (5) years of the application date that would be considered a potential danger to children or that is directly related to the function of that coach. Examples include but are not limited to contributing to the delinquency of a minor, providing alcohol to a minor, petty theft of money.

- (b) Pending prosecution of offenses listed under subsection (a.) above.
- (c) Falsification of any requested information on the application.

**CITY OF POMPANO BEACH
ADMINISTRATIVE POLICY**

PAGE 3

TITLE:	Youth Program Background Screening Policy	Number:	500.06
		Revised:	8-2-10

(d) Any person who at the time of the application is serving a period of Community Control or probation for any offense. No such person shall be eligible until all supervision has terminated and all provisions of the sentence have become final.



Dennis W. Beach, City Manager

PO Box 2358
Bloomington IL 61702-2358



A-1584 A

GATTIS, NICOLE &
BROWN, HUNTER S
216 HIDDEN VALLEY LOOP
MAUMELLE AR 72113-6784

Policy Number: 404 0685-E13-04

Policy Period: November 13, 2024 to May 13, 2025

Vehicle:

2021 GMC K1500

Principal Driver:

HUNTER S BROWN

When you provide a check as payment, you authorize us either to use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction. When we use information from your check to make an electronic fund

AUTO RENEWAL

PREMIUM PAID: \$951.08

DO NOT PAY.

Your premium is billed through the State Farm Payment Plan

State Farm Payment Plan Number: 1901492261

Your State Farm Agent

LEE TUXHORN

Office: 501-851-0875

Address: 11605 MAUMELLE BLVD

N LITTLE ROCK, AR 72113-6529

If you have a new or different car, have added any drivers, or have moved, please contact your agent.

Thank you for choosing State Farm.

transfer, funds may be withdrawn from your account as soon as the same day we receive your payment, and you will not receive your check back from your financial institution.

APPROVED *Daniel Beecher*
By Daniel Beecher at 12:05 pm, Oct 16, 2024

Policy Number: 404 0685-E13-04
Prepared September 20, 2024

1004583

Page number 1 of 9

143562 202 01-15-2018



Drive Safe & Save™ puts you in the driver's seat of your discount.

Get a discount just for enrolling. From there, how you drive determines how much you save.

If you haven't already, download the app and enroll. Text **SAVEMORE** to **42407**; contact your agent, LEE TUXHORN, at 501-851-0875; or scan this QR code.



Discounts may exceed 30% and vary state-to-state (NY capped at 30%). Not available in CA, MA, RI. A discount may not be available in NC depending on individual facts and circumstances. Setup required.



VEHICLE INFORMATION

Review your policy information carefully. If anything is incorrect, or if there are any changes to your vehicle information, please let us know right away.

Vehicle Description	Vehicle Identification Number (VIN)	Who principally drives this vehicle?	How is this vehicle normally used?
2021 GMC K1500	1G TU9AEF1MZ250634	HUNTER BROWN, a married male, who will be age 37 as of November 13, 2024.	To Work, School or Pleasure.

Other Household Vehicle(s)

Your premium may be influenced by other State Farm policies that currently insure the following vehicle(s) in your household:

2017 CHEVROLET TAHOE

The premium for this renewal was determined using an annual mileage this vehicle is expected to be driven that was developed from information we obtained or was provided by you. The national average is more than 12,000 miles driven annually according to the U.S. Department of Transportation. Please contact us if you expect your annual mileage to change over the next year.

Premium Adjustment

Each year, we review our medical payments and personal injury protection coverages claim experience to determine the vehicle safety discount that is applied to each make and model. In addition, we review the comprehensive, collision, bodily injury and property damage claim experience annually to determine which makes and models have earned decreases or increases from State Farm's standard rates. If any changes result from our reviews, adjustments are reflected in the rates shown on this renewal notice.

DRIVER INFORMATION

Assigned Driver(s)

The following driver(s) are assigned to the vehicle(s) on this policy.

Name	Age as of November 13, 2024	Gender	Marital Status
HUNTER S BROWN	37	Male	Married

Other Household Driver(s)

In addition to the Principal Driver(s) and Assigned Driver(s), your premium may be influenced by the drivers shown below and other individuals permitted to drive your vehicle. This list does not extend or expand coverage beyond that contained in this automobile policy. The drivers listed below are the drivers reported to us that most frequently drive other vehicles in your household.

NICOLE GATTIS



Principal Driver & Assigned Drivers

For each automobile, the **Principal Driver** is the individual who most frequently drives it.

Each driver is designated as an **Assigned Driver** on the household automobile that they most frequently drive. Your

premium may be influenced by the information shown for these drivers.

IMPORTANT NOTICE REGARDING YOUR PREMIUM

State Farm works hard to offer you the best combination of price, service, and protection. The amount you pay for automobile insurance is determined by many factors such as the coverages you have, where you live, the kind of car you drive, how your car is used, who drives the car, and information from consumer reports.

You have the right to request, no more than once during a 12-month period, that your policy be re-rated using a current credit-based insurance score. Re-rating could result in a lower rate, no change in rate, or a higher rate.

COVERAGE AND LIMITS

See your policy for an explanation of these coverages.

A	Liability	
	Bodily Injury 100,000/300,000	
	Property Damage 100,000	\$328.42
D	100 Deductible Comprehensive	\$256.82
G	1000 Deductible Collision	\$302.34
H	Emergency Road Service	\$3.44
R1	Car Rental & Travel Expense	
	\$50 Per Day, \$1,500 Max	\$27.88
U	Uninsured Motor Vehicle	
	Bodily Injury 25,000/50,000	\$12.67
U1	Uninsured Motor Vehicle	
	Property Damage 25,000	\$4.53
S1	Death Indemnity	\$1.98
T1	Total Disability	\$1.67
W	Underinsured Motor Vehicle	
	Bodily Injury 25,000/50,000	\$11.33
Total Premium		\$951.08

If any coverage you carry is changed to give broader protection with no additional premium charge, we will give

you the broader protection without issuing a new policy, starting on the date we adopt the broader protection.

DISCOUNTS

These adjustments have already been applied to your premium.

Multiple Line	✓
Multicar	✓
Good Driving	✓
Total Discounts	\$464.73



SURCHARGES AND DISCOUNTS

AUTOMOBILE RATING PLAN - Applies to private passenger cars only.

Accident-Free Discount – Once your policy has been in force for at least three years with no chargeable accidents, you may qualify for our Accident-Free Discount. Once you qualify, this discount applies as long as there are no chargeable accidents, and may even increase over time.

Good Driving Discount - Newer policyholders who do not yet qualify for our Accident-Free Discount (available after three years with no chargeable accidents) may already be receiving a Good Driving Discount. This discount continues to apply until your policy qualifies for the Accident-Free Discount as long as there are no chargeable accidents and no new drivers. If you add new drivers, they must also qualify in order for your Good Driving Discount to continue.

Chargeable Accidents - For new business rating, an accident is chargeable if it results in \$750 or more of damage to any property. For renewal business, an accident is chargeable as of the date State Farm pays at least \$750 (for accidents occurring on or after April 1, 1999) under

property damage liability and collision coverages for an at-fault accident.

Surcharges – If there are chargeable accidents, you may lose your Good Driving Discount or Accident-Free Discount and receive accident surcharges. But if the accident is the first to become chargeable in nine years and this policy has been in force for at least that long, the Accident-Free Discount will continue and no surcharge will apply. The surcharge for each accident depends upon the number and timing of the accidents, and each accident surcharge will remain in effect up to three years.

Surcharges will be removed if the company is given satisfactory evidence that the driver involved is no longer a member of the household or will not be driving the car in the future. If that driver is insured on another State Farm policy, his or her driving record will be considered in the rating of the other policy.

These discounts and surcharges do not apply to all coverages. For complete details, see your State Farm agent.

ADDITIONAL INFORMATION

If any information on this renewal notice is incomplete or inaccurate, or if you want to confirm the information we have in our records, please contact your agent. For additional

information regarding discounts or coverages, see your State Farm agent or visit statefarm.com®.

Buying a new car? Remember to contact your agent!

When you buy an additional car or one that replaces a car already on your policy, you need to report the change to your agent **promptly**. Even though the dealership you purchased the car from may offer to notify your agent or insurance company, you, as the named insured, are responsible for reporting all changes to your auto policy. By contacting your agent, you can help:

- avoid any complications or lack of coverage in the event of an accident or loss,
- avoid insurance verification problems with a lienholder, the police, or the department of motor vehicles, and
- ensure that you receive any new discounts you may be entitled to.

Your current State Farm policy automatically provides certain coverages for a new or replacement car for up to a specified, limited number of days after you take possession of the car. Please refer to your policy for the number of days that applies in your state.

If you have any questions about coverage for a newly acquired car, please contact your State Farm agent.

Disclaimer: This message is provided for informational purposes only and does not grant any insurance coverage. The terms and conditions of coverage are set forth in your State Farm Car Policy booklet, the most recently issued Declarations Page, and any applicable endorsements.



Important Notice

For information or assistance with any insurance problem, be sure **to contact your State Farm® agent first**. Your "good neighbor" agent will be happy to help you. Please see the enclosed policy Declarations Page or renewal notice for the name and phone number of your agent.

If additional information or assistance is required, you may contact:

State Farm Insurance Companies
1 State Farm Plaza
Bloomington, IL, 61710-0001
800-STATEFARM (800-782-8332)

If we at State Farm Insurance Company fail to provide you with reasonable and adequate service, you should feel free to contact:

Arkansas Insurance Department
1 Commerce Way, Suite 102
Little Rock, AR 72202
800-852-5494
501-371-2640

State Farm Mutual Automobile Insurance Company
State Farm Fire and Casualty Company
Bloomington, IL



153-7505 AR

IMPORTANT NOTICE

Regarding Changes to Your Policy

AMENDATORY ENDORSEMENT 6125E is added to your **State Farm® Car Policy 9804A**.

Note the following changes to your policy.

PHYSICAL DAMAGE COVERAGES

- **Limit and Loss Settlement – Comprehensive Coverage and Collision Coverage**
 - No deductible applies to the repair of windshield glass.
 - An additional option for reasonable repair costs and labor rates has been added.
 - Item 1.a.(4) is deleted.

The endorsement follows this notice. Please read the endorsement and place it with your policy. If you have any questions, please contact your State Farm agent.

DISCLAIMER: This notice only provides a general summary of changes to your State Farm policy. This notice is not a statement of contract. This notice does not change, modify, or invalidate the provisions, terms, or conditions as set forth in your State Farm policy booklet, the most recently issued declarations, and any applicable endorsements.

State Farm Mutual Automobile Insurance Company
State Farm Fire and Casualty Company
Bloomington, IL

153-7505 AR
(09/2024)

Page 1 of 1

AMENDATORY ENDORSEMENT

This endorsement is a part of the policy. Except for the changes this endorsement makes, all other provisions of the policy remain the same and apply to this endorsement.

PHYSICAL DAMAGE COVERAGES

Limit and Loss Settlement – Comprehensive Coverage and Collision Coverage

Item 1.a. is changed to read:

1. **We** have the right to choose to settle with **you** or the owner of the **covered vehicle** in one of the following ways:
 - a. Pay the cost to repair the **covered vehicle** minus any applicable deductible. No deductible applies to the repair of windshield glass.
 - (1) **We** have the right to choose one of the following to determine the cost to repair the **covered vehicle**:
 - (a) The cost agreed to by both the owner of the **covered vehicle** and **us**;
 - (b) A bid or repair estimate approved by **us**; or
 - (c) A repair estimate that is written based upon or adjusted to:
 - (i) reasonable repair costs and labor rates as determined by **us** for the repair market where the **covered vehicle** is to be repaired;
 - (ii) the prevailing competitive price. Prevailing competitive price means prices charged by a majority of the repair market as determined by a survey made by **us** for the area where the **covered vehicle** is to be repaired;
 - (iii) the lower of paintless dent repair pricing established by an agreement **we** have with a third party or the paintless dent repair price that is competitive in the market; or
 - (iv) a combination of (i), (ii), or (iii) above.

If asked, **we** will identify at least one facility that will perform the repairs with the pricing and labor rates identified by **us**.

The repair estimate will include parts sufficient to restore the **covered vehicle** to its pre-loss condition. **You** agree with **us** that the repair estimate may include new, used, recycled, and reconditioned parts. Any of these parts may be either original equipment manufacturer parts or non-original equipment manufacturer parts, and **you** agree these parts are sufficient to restore the **covered vehicle** to its pre-loss condition.

IN THE REPAIR OF **YOUR** COVERED MOTOR VEHICLE UNDER THE PHYSICAL DAMAGE COVERAGE PROVISIONS OF THIS POLICY, **WE** MAY REQUIRE OR SPECIFY THE USE OF MOTOR VEHICLE PARTS NOT MADE BY THE ORIGINAL MANUFACTURER. THESE PARTS ARE REQUIRED TO BE AT LEAST EQUAL IN

TERMS OF FIT, QUALITY, PERFORMANCE, AND WARRANTY TO THE ORIGINAL MANUFACTURER PARTS THEY REPLACE.

You also agree that replacement glass need not have any insignia, logo, trademark, etching, or other marking that was on the replaced glass.

- (2) The cost to repair the **covered vehicle** does not include any reduction in the value of the **covered vehicle** after it has been repaired, as compared to its value before it was damaged.
- (3) If the repair or replacement of a part results in betterment of that part, then **you** or the owner of the **covered vehicle** must pay for the amount of the betterment;

6125E



2023 ANNUAL REPORT TO STATE FARM® MUTUAL POLICYHOLDERS

In 2023, State Farm experienced significant policy growth in the Auto and Homeowners lines of business yet reported underwriting losses due to elevated claims severity and catastrophe activity. While reporting an operating loss, State Farm Mutual Automobile Insurance Company remains financially strong. The State Farm group of companies continues to be the leading personal Auto and Home insurer in the United States. We offer products and services to meet multiple needs. Local agents combined with digital tools allow you to connect with us in ways that best fit your situation.

The A.M. Best Co., which provides an independent opinion of an insurance company's ability to meet obligations to policyholders, continues to give State Farm Mutual its highest rating (A++).

We are good neighbors committed to making a difference. Together, through State Farm employees and independent contractor agents, we will keep doing our part to build and support stronger, safer and better educated communities where people can thrive.

In the years ahead, we will continue delivering on our mission to help more people in more ways. Thank you for choosing State Farm. It's our privilege to serve you.

Jon C. Farney
President & Chief Executive Officer

Notice of Annual Meeting

The annual meeting of State Farm Mutual Automobile Insurance Company is held each year at 10 a.m. on the second Monday of June at the Company's Corporate Headquarters, One State Farm Plaza, Bloomington, Illinois. All members may attend the annual meeting, and the first named insured has a right to vote by proxy or in person. You may receive a proxy by writing to Customer Service, One State Farm Plaza, Bloomington, Illinois 61710. Please include your State Farm Mutual Automobile Insurance Company policy number in your request. A return envelope will be provided for your convenience and proxies must be on file with the Corporate Secretary 20 days before the annual meeting. Please visit statefarm.com® for any changes to the annual meeting location, date or time.

State Farm Mutual Automobile Insurance Company
Bloomington, IL

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

Statement of Condition (In Millions of Dollars)

	<u>2023</u>	<u>2022</u>
Cash and Short Term Investments	\$ 2,100	\$ 1,568
Bonds	58,861	56,551
Unaffiliated Common & Preferred Stocks	85,789	75,880
Equity in Insurance Subsidiaries	51,903	51,851
Other Assets	22,135	19,962
Total Assets	\$220,788	\$205,812
Liabilities		
Claims and Claim Expenses	\$ 50,319	\$ 44,154
Unearned Premiums	17,179	13,559
Other Liabilities	18,538	16,890
Surplus		
Funds for Protection of State Farm Mutual Policyholders, including the Investment Fluctuation Reserve	\$ 79,740	\$ 75,702
Funds Assigned for Protection of Customers of Subsidiaries	51,872	51,828
Special Surplus Segregation from Retroactive Reinsurance	0	2
Funds Assigned for Catastrophe Reinsurance Assumed from Affiliates	3,140	3,677
Total Liabilities and Surplus	\$220,788	\$205,812

Summary of Operating Data (In Millions of Dollars)

	<u>2023</u>	<u>2022</u>
Premium Earned	\$ 57,187	\$ 46,592
Less: Dollars for Claims	48,437	43,752
Expenses for Paying Claims	6,336	5,490
Service and Administrative Fees	12,219	10,680
Underwriting Gain or (Loss)	(9,805)	(13,330)
Plus: Investment Gain ¹ and Other Income	4,558	3,475
Income before Dividends and Taxes	(5,247)	(9,855)
Less: Dividends to Policyholders	0	0
Income Taxes Incurred (Recoverable)	(512)	(1,153)
Net Income	\$ (4,735)	\$ (8,702)

¹Investment Gain is reported net of capital gains tax.

An independent public accounting firm audited the Company's financial statements.

Board of Directors

Dan E. Arvizu – Former Chancellor, New Mexico State University System
Keith Block – Chief Executive Officer and Founder, Smithpoint Capital
Charles K. Bobrinsky – Vice Chairman & Head of Investment Group, Ariel Investments
Jon C. Farney – President & Chief Executive Officer, State Farm Mutual Automobile Insurance Company
Kate Gebo – Executive Vice President, Human Resources and Labor Relations, United Airlines
Caroline S. Grace – President and Chief Executive Officer, AMN Healthcare Services, Inc.
James Hackett – Former President and CEO, Ford Motor Company
W. H. Knight, Jr. – Former Professor of Law & Distinguished Academic in Residence, Seattle University School of Law
Vicki A. O'Meara – Strategic Advisor and Former Chairman, AdSwerve
Gary L. Perlin – Former Chief Financial Officer, Capital One Financial Corp.
Michael L. Tipsord – Chairman of the Board
Steven C. Williams – Chief Executive Officer, PepsiCo Foods North America
Kenneth J. Worzel – Chief Customer Officer, Nordstrom, Inc.

153-9000.58

153-9000.58



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
11/26/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME: _____	
	PHONE (A/C, No. Ext): (855) 222-5919	FAX (A/C, No): _____
INSURED	E-MAIL ADDRESS: support@nextinsurance.com	
	INSURER(S) AFFORDING COVERAGE	
INSURER A: Next Insurance US Company		NAIC # 16285
INSURER B: _____		_____
INSURER C: _____		_____
INSURER D: _____		_____
INSURER E: _____		_____
INSURER F: _____		_____
APPROVED <i>Daniel Beecher</i> <i>By Daniel Beecher at 7:43 am, Dec 10, 2024</i>		

COVERAGES

CERTIFICATE NUMBER: 586972103

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSPR LTR	TYPE OF INSURANCE	ADD'L SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	X COMMERCIAL GENERAL LIABILITY					EACH OCCURRENCE \$1,000,000.00
	CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR					DAMAGE TO RENTED PREMISES (Ea occurrence) \$100,000.00
A		X	NXTKRYYLWJ-00-GL	11/26/2024	11/26/2025	MED EXP (Any one person) \$5,000.00
	GEN'L AGGREGATE LIMIT APPLIES PER:					PERSONAL & ADV INJURY \$1,000,000.00
	X POLICY PRO-JECT LOC					GENERAL AGGREGATE \$2,000,000.00
	OTHER:					PRODUCTS - COMP/OP AGG \$2,000,000.00
	AUTOMOBILE LIABILITY					S
	ANY AUTO					COMBINED SINGLE LIMIT (Ea accident) \$
	OWNED AUTOS ONLY	SCHEDULED AUTOS				BODILY INJURY (Per person) \$
	Hired AUTOS ONLY	NON-OWNED AUTOS ONLY				BODILY INJURY (Per accident) \$
	DED RETENTION S					PROPERTY DAMAGE \$ (Per accident) \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY					S
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y/N <input checked="" type="checkbox"/> N/A					PER STATUTE, OTHER
	(Mandatory in NH)					E.L. EACH ACCIDENT \$
	If yes, describe under DESCRIPTION OF OPERATIONS below					E.L. DISEASE - EA EMPLOYEE \$
						E.L. DISEASE - POLICY LIMIT \$
A	Professional Liability	X	NXTKRYYLWJ-00-GL	11/26/2024	11/26/2025	Each Occurrence: \$1,000,000.00 Aggregate: \$2,000,000.00

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

The Certificate Holder is City of Pompano Beach. This Certificate Holder is an Additional Insured on the General Liability policy per the Additional Insured Automatic Status Endorsement. All Certificate Holder privileges apply only if required by written agreement between the Certificate Holder and the insured, and are subject to policy terms and conditions.

CERTIFICATE HOLDER

City of Pompano Beach
100 W Atlantic Blvd
Pompano Beach, FL 33060

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE



Click or scan to view

© 1988-2015 ACORD CORPORATION. All rights reserved.

Exhibit 8

February 20, 2024

Innovative Sculpture Design
4200 Hoerner Rd
Little Rock, AR USA
72209

Dear Innovative Sculpture Design,

You have elected not to purchase Workers' Compensation insurance to cover your employees. The State of Florida allows your company to operate without insurance. However, you are required by the State to "post clear written notice in a conspicuous location at each worksite directed to all employees and other persons performing services at the worksite of their lack of entitlement to benefits" as described in Chapter 440 of the Florida Statutes.

The City of Pompano Beach requires: **ALL CONTRACTORS MUST AGREE TO BE RESPONSIBLE FOR THE EMPLOYMENT, CONTROL AND CONDUCT OF THEIR EMPLOYEES AND FOR INJURY SUSTAINED BY SUCH EMPLOYEES IN THE COURSE OF THEIR EMPLOYMENT.**

Please sign the area below acknowledging your compliance with the above requirements. Return this original letter to me at 50 West Atlantic Blvd. Attn. Laura Newitt AKA Laura Atria, Pompano Beach, 33060. If you have any questions or concerns, feel free to contact me at 954-545-7800 ext. 3813 or email me at Laura.Atria@copbfl.com.

Sincerely,

Laura Newitt

Laura Newitt
Public Art Program Manager
City of Pompano Beach, Florida

Innovative Sculpture Design has posted notice(s) declaring the absence of Workers' Compensation insurance coverage, as required by the State of Florida. Innovative Sculpture Design agrees to be responsible for the employment, control and conduct of our employees and for any injury sustained by such employees in the course of their employment.



Signature

2/21/2024

Date

Innovative Sculpture Design, Hunter Brown
Name & Title (print)

Hunter Brown