

City of Pompano Beach

AGREEMENT
FOR COMMISSIONED ARTWORK

with

Fabio Goncalves

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AGREEMENT

THIS AGREEMENT for commissioned artwork entered into this _____ day of _____, 2018, 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

FABIO GONCALVES, individual whose address is 636 SW 14th Terrace, Fort Lauderdale, Florida 33321 (hereinafter "ARTIST").

WHEREAS, on August 10, 2017, 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 to design and install a mural that focused on the idea of playing with perspective (the "Artwork") on a selected west exterior wall behind the Bailey Contemporary Arts Building located at 41 NE Street, Pompano Beach, Florida (the "Project"); and

WHEREAS, the CITY received 56 responses to the foregoing A Call to Artists, one of which was submitted by Fabio Goncalves and is attached hereto and made a part hereof as Exhibit 2; and

WHEREAS, at the meeting of the CITY's Public Art Committee ("PAC") held on October 19, 2017, the PAC reviewed the 56 responses and recommended the City Commission approved Fabio Goncalves proposed design (the "Design Proposal" attached hereto and made a part hereof as Exhibit 3) and select him for the Project; and

WHEREAS, in accordance with the terms and conditions set forth herein, ARTIST is able and prepared to provide the services and insurance described in the A Call to Artists and the Scope of Services attached hereto as Exhibit 4 (collectively the "Work"); and

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

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

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

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 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 – ARTIST's detailed, scaled mural design attached as Exhibit 3 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 Scope of Services described in the A Call to Artists, this Agreement and Exhibit 4 attached hereto.

Site - The selected west exterior wall behind the Bailey Contemporary Arts Building located at 41 NE Street, Pompano Beach, Florida, where the Artwork is to be installed.

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.

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 A Call to Artists and this Agreement, inclusive of the exhibits, particularly Exhibit 4 entitled, "Scope of Services" which shall also contain a schedule for beginning, phasing and completing the Artwork. 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 Development Services Director or his/her written designee shall serve as the CITY's Contract Administrator during the performance of services under this Agreement.

Fabio Goncalves 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 A Call to Artists and this Agreement, inclusive of exhibits. The parties agree that the Scope of Services is a description of ARTIST'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 Design Proposal for the Artwork shall set forth in detail the artistic expression, scope, design, color, size, material and texture of the Artwork 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, fabrication 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 Fabrication and Installation or Integration.

4.2.1 ARTIST shall be responsible for the quality and timely completion of the Work and complete the fabrication and installation of the Artwork in conformity with the Design Proposal. 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 The ARTIST shall not commence installation of the Artwork until the ARTIST has received written approval from the CITY's Contract Administrator.

4.2.3 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.

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.

4.2.4 ARTIST shall perform all Work hereunder at the Site subject to the provisions of a License Agreement between the CITY and the Site's property owners, a copy of which is attached hereto and made a part hereof as Exhibit 5. ARTIST shall work in a manner and time so as not to interfere with any of the operations or maintenance of the supermarket business at 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.

4.2.5 ARTIST shall complete the fabrication and installation of the Artwork in conformity with the Design Proposal approved by both the PAC and the City Commission.

4.2.6 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.

4.2.7 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. 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.

4.2.8 Post Installation: Title: 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, 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.

4.3 Upon CITY's Final Acceptance of the Artwork, ARTIST shall provide CITY a fully-executed original Copyright Assignment of Artwork, a copy of the form for which is attached hereto and made a part hereof as Exhibit 6.

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

5.3 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 4; and assist ARTIST by providing all public information pertaining to the Project to ARTIST without cost.

5.4 The City shall be responsible to provide the Site for Artwork installation via execution of the License Agreement attached hereto as Exhibit 5.

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 ninety (90) days beginning with the date this Agreement is fully executed by both parties, subject to earlier termination as provided herein.

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

7.3 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 4.

7.3.1 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 grant a reasonable extension of time for completion. 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.

7.3.2 The CITY's Contract Administrator may grant ARTIST a reasonable extension of time if there is a delay caused by CITY, third parties and conditions beyond ARTIST's control or Acts of God render timely performance of ARTIST's services impossible or unduly

burdensome; however, the term of this Agreement may only be changed by written amendment approved by Resolution of the City Commission. Failure to fulfill contractual obligations due to conditions beyond either party's control will not be considered a breach of this Agreement provided that such obligations shall be suspended only for the duration of such conditions.

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 the Design Proposal, major modification shall mean more than a 25% overall change from the Design Proposal formally approved by the City 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," require formal review and approval by both the PAC and City Commission and 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 completion phases described below to ensure compliance with the Design Proposal approved by the City Commission.

- 1st Inspection - Artwork installation is 10% complete
- 2nd Inspection - Artwork installation is 25% complete
- 3rd Inspection - Artwork installation is 50% 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.

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 One Thousand Five Hundred Dollars (\$1,500.00) payable in one (1) installment within ten (10) business days from the CITY's Final Acceptance of the Artwork, receipt of a

proper invoice for the Work, and satisfactory completion of the Catalogue Form attached as Exhibit 7.

10.1.2 All payment shall be made only for Work actually performed, completed and accepted by CITY pursuant to this Agreement and in accordance with the foregoing payment schedule which shall be accepted by the ARTIST as full compensation for all such Work. 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 ten (10) business days of receipt of ARTIST's proper invoice. 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.

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

For CITY

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

With a copy to:

Laura Atria, Public Art Program Manager
100 West Atlantic Boulevard
Pompano Beach, Florida 33060
Laura.Atria@copbfl.com
954-786-4310 office
954-786-4666 fax

For ARTIST

Fabio Goncalves
636 SW 14th Terrace
Fort Lauderdale, Florida 33321
Fabioonrack@gmail.com
954-830-6675 home

**ARTICLE 12
GOVERNING LAW AND VENUE**

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

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

ARTICLE 13
INDEPENDENT CONTRACTOR

It is expressly understood between the parties that ARTIST'S relationship to CITY hereunder is that of an independent contractor. 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 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 without limitation, even if the claim(s) is/are groundless, false or fraudulent. 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 9. 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 10 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 A Call to Artists (Exhibit 1), ARTIST's Design Proposal (Exhibit 3), 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. Pursuant to the Copyright Assignment attached as Exhibit 6, 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. 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 CITY's Final Acceptance.

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 five (5) 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 B.SC. § 106A and shall constitute a waiver by ARTIST of any rights in the Artwork set out in or otherwise granted by the Visual Artists Rights Act of 1990, 17 B.SC. § 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 B.SC. § 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.

32.2 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.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

"CITY":

Witnesses:

CITY OF POMPANO BEACH

By: _____
LAMAR FISHER, MAYOR

By: _____
GREGORY P. HARRISON, CITY MANAGER

Attest:

ASCELETA HAMMOND, CITY CLERK

(SEAL)

Approved As To Form:

MARK E. BERMAN, CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instruments were acknowledged before me this _____ day of _____, 2018, by **LAMAR FISHER** as Mayor, **GREGORY P. HARRISON** as City Manager and **ASCELETA HAMMOND** as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who are personally known to me.

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

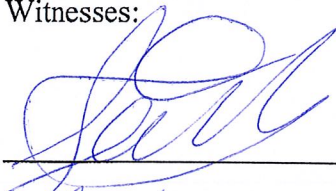
(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

"ARTIST":

Witnesses:

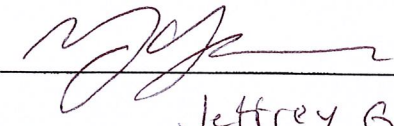
FABIO GONCALVEZ



Leodanis Echevarria
Print Name

BY: Fabio Goncalves

Fabio Goncalves



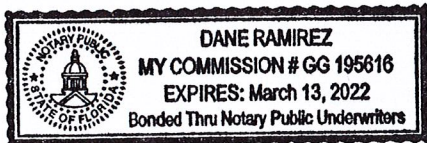
Jeffrey Ravin
Print Name


(SEAL)

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 17th day of May, 2018, by Fabio Goncalves who is personally known to me or who has produced Florida Drivers License (type of identification) as identification.

NOTARY'S SEAL:





NOTARY PUBLIC, STATE OF FLORIDA

Dane Ramirez

Name of Acknowledger Typed, Printed or Stamped

GG195616

Commission Number

FP:jmz
3/2/18
L:agr/devser/2018-469f

Call to Artists: Artists Alley Mural

SELECTED ARTIST BUDGET: \$1,500

DEADLINE: September 29, 2017

INTRODUCTION

The City of Pompano Beach will commission an emerging artist for the design and installation of a mural that will be located on an exterior wall behind the Bailey Contemporary Arts Building located at 41 NE 1st St., Pompano Beach, Florida. The mural should focus on the idea of playing with perspective. The City plans on continuing to expand the area into a mural alley entitled Artists Alley. This will be the fourth mural located in the alley.

THEME

The Public Art Committee is looking for mural designs that play with the idea of perspective, although other themes will also be considered. The design should have a strong presence with a concept that is creative. The materials, design and palette must stand up to local weather and be amenable to ongoing maintenance.

Logos and words are not to be used. The selected artist must apply a UV resistant sealant to the finished product. **The medium of spray paint is encouraged as the wall is textured.**

PROJECT LOCATION

The mural will be located on an exterior wall behind the Bailey Contemporary Arts Building located at 41 NE 1st St., Pompano Beach, Florida. This City is turning this alley into a mural alley entitled Artist Alley. The wall is across from the *World Peace Mural*, is about 23 ft. x 13 ft and is textured.



INSTALLATION

Staff will review and inspect the design in person during installation periods once the artist/design is selected and approved. During these reviews, Staff will make suggestions on the design and application of the mural that the artist will then follow.

Selected artist will be required to create a timelapse video of the mural as it develops.

ARTWORK PURCHASE BUDGET

The selected Artist will receive \$1,500. The price will include all taxes, insurance and all other fees as well as any equipment the artist may need to complete the mural (i.e. cherry picker, paint, etc.). A UV resistant sealant must be applied.

TENTATIVE SCHEDULE

| | |
|--------------------|--|
| August 11, 2017 | Call to Artists will be posted. |
| September 29, 2017 | Deadline for submissions. |
| October 19, 2017 | Public Art Committee will select the final artist. |
| TBA | City Commission approval. |

The selected artist will have 30 days to complete the mural.

ELIGIBILITY

This is a national Call. The project is open to emerging visual artists only. An *emerging artist* refers to someone who is in the early stages of his/her career, who is up and coming and on their way to becoming a more established artist but who has not yet established a reputation among art critics. Artists are NOT eligible who are immediate family or business partners of members of the Public Art Committee or program staff.

SUBMITTAL REQUIREMENTS

All submissions should be submitted through CaFE. Submissions received after September 29, 2017 will not be accepted. Submissions must include:

- Digital Images of previous artworks, murals if available (Maximum of 5 digital images of minimum of 3 not including detailed shots);
- Resume;
- Concept Statement– limited to 3000 characters describing the general theme of the mural; and
- Proposed Design Concept – a scaled drawing of the proposed mural design; must include color palette.

PROPOSAL SELECTION CRITERIA

The artist will be selected based on the following criteria:

- Appropriateness of the mural design to the site and theme;
- Quality of the artwork; and
- Must be an Emerging Artist.

ARTIST SELECTION PROCESS

The selection process is managed by the City of Pompano Beach. The City Commission will have final approval of the selected artist and design.

Other Selection Issues:

- a. Florida "Sunshine Laws": All meetings of the Public Art Committee are open to the public, are publicly advertised and are documented through written minutes.
- b. 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.
- c. 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 staff for all questions and information.

QUESTIONS

Contact: Laura Atria, Public Art Program Manager
Phone: 954-786-4310
E-mail: Laura.Atria@copbfl.com

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.

CaFÉ Event Artist Citation

Artists Alley Mural Artist Citation

Fabio Goncalves

CONTACT

Contact via Home Phone

Email fabioonrack@gmail.com

Phone 954 830-6675

Cell

Web Site <http://www.fabioonrack.com>

Mailing 636 SW 14 Ter
Ft Lauderdale FL () USA
33321-

EVENT SPECIFIC DATA

Status Accepted

Booth # 0

Wait List # 0

CUSTOM ANSWERS

Provide a pdf or jpg of the proposed mural design. This design must be to-scale replica of the mural design you are proposing to install.

PB proposal.jpg (download)

Provide the color palette you will be using in your mural design.

Color palette PB.jpg (download)

PAYMENTS

Transactions ID# 556456 (1) \$0.00 Entry Fee using a Visa or Mastercard

COMMUNICATION

Emails

ART

Category

Statement My work and this piece is inspired by the intersection of dreamscape and reality. The illusion of a 3-dimensional world inside a wall is meant to challenge our ideas of time and space, and to inject a sense of wonder into the everyday. After my introduction to painting through a near-death experience in my early teens, I found my love for airbrush and acrylic paint. This project in particular represents the duality between a personal sense of freedom and limitlessness that creating art gives me with the plotted, precise reality of execution.



Art Basel
Acrylic and enamel
20' x 13' x 0"
\$5500.00



Painted Boy
Acrylic
20' x 30' x 0"
\$5000.00



Pais e Filhos School
Acrylic and Enamel
22" x 36" x 0"
\$8000.00



Stairs
Acrylic on canvas
18" x 24" x 0"
\$1500.00



Crianças Feliz
Acrylic and enamel on concrete
16' x 46' x 0"
\$8000.00



Harry Potter
Acrylic and enamel on concrete
8" x 11" x 0"
\$1500.00

studio onrack

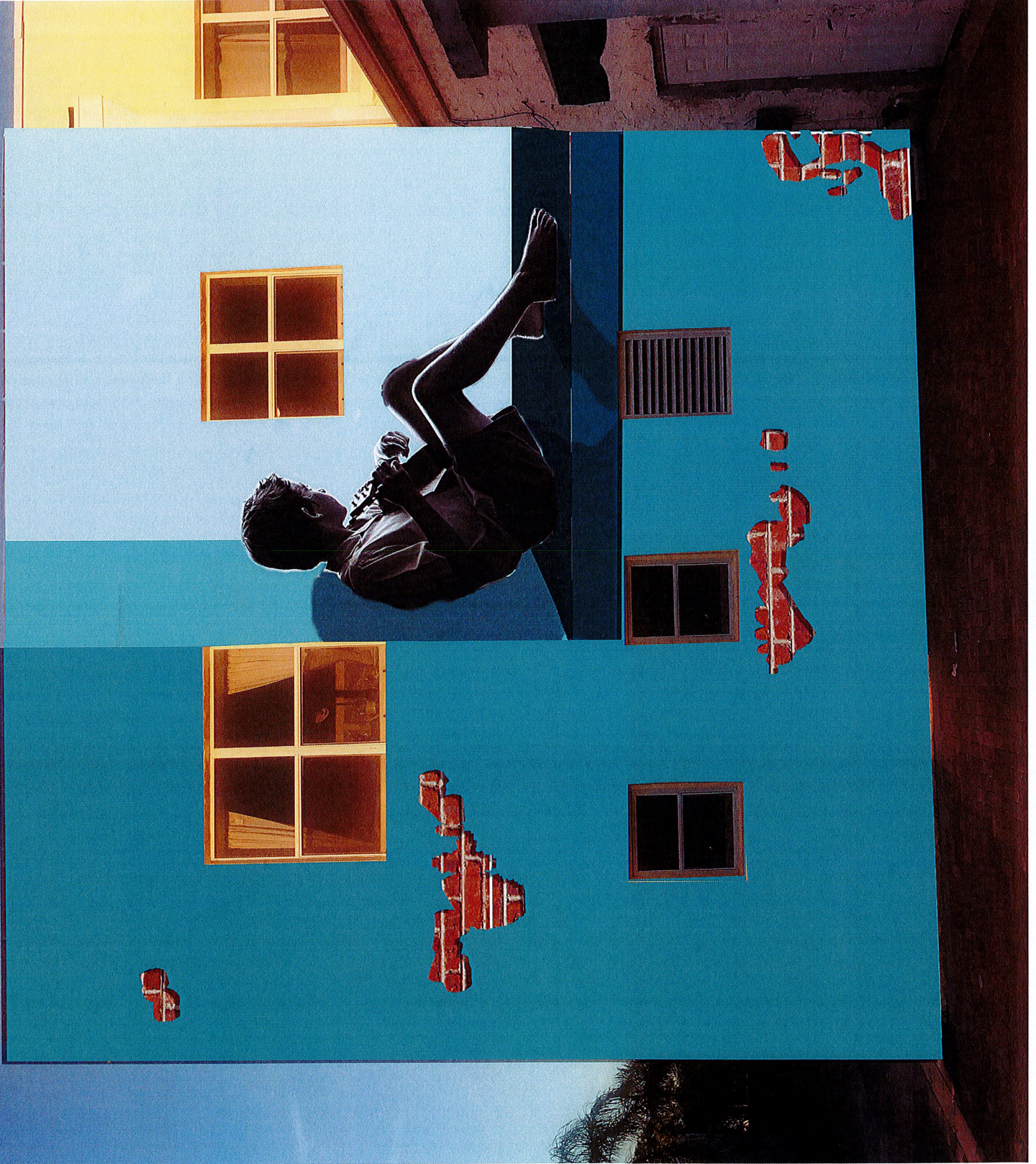


EXHIBIT: 4

Scope of Services

The Artist is required to complete the following services.

- Artist will fabricate and install the mural design approved by the Public Art Committee and the City Commission. (Mural Design is attached.)
- The Artist will commence installation of the mural at a maximum of 30 days after the Agreement is fully executed and will have thirty (30) days to complete the installation.
- An Anti-graffiti and UV resistant coating must be applied to the mural.
- Artist must create a time-lapse video a minimum of 60 seconds containing footage of the mural installation.
- Artist will communicate with Contract Administrator during the installation of mural.

Mural Design Below. (Design will vary from this sketch as this is a digital image. Actual mural design will be completed by hand.)



LICENSE AGREEMENT

THIS AGREEMENT, made this _____ day of _____ 2018, by and between:

POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY, a public body corporate and politic, under Part III, Chapter 163, Florida Statutes (hereinafter "CRA"),

and

CITY OF POMPANO BEACH, a municipal corporation of the State of Florida (hereinafter "CITY").

WITNESSETH:

WHEREAS, CRA is the owner of the commercial property known as the Bailey Contemporary Arts building which is located at 41 NE 1 Street, Pompano Beach, FL 33060 (the "Property"); and

WHEREAS, the CITY, through its hired artist, Fabio Goncalvez, would like to paint the mural depicted in the Design Proposal attached hereto and made a part hereof as Exhibit "A" upon the west exterior wall of the Bailey Contemporary Arts building (the "Design Location") located on the Property (the "Project");

WHEREAS, the Design Location is under the exclusive ownership, custody and control of the CRA; and

WHEREAS, the CITY's Public Art Committee approved the foregoing artist, his Design Proposal and the Design Location at its meeting on October 19, 2017; and

WHEREAS, CRA desires to allow CITY to use the Property as heretofore described for the Project.

NOW, THEREFORE, in consideration of the foregoing and mutual covenants and conditions hereinafter contained, it is agreed by the parties hereto as follows:

1. **AUTHORIZATION AND LICENSE FEE.** CRA hereby grants to CITY and CITY hereby accepts from CRA, a license to install and maintain, at CITY's sole cost, the mural depicted in Exhibit "A" on the "Design Location" subject to the terms, covenants, fees and conditions hereinafter set forth. In exchange, CITY agrees to pay CRA Ten Dollars (\$10.00) as compensation for this License as well as provide the in-kind benefit of installing and maintaining the Project, at CITY's sole cost, on CRA's Property, the receipt and sufficiency of which are hereby acknowledged.

2. **TERM.** The term of Agreement shall commence upon date this Agreement is fully-executed by both parties (the "Effective Date") and continue in duration for a minimum of five (5) years after installation of the mural at the Design Location is complete regardless if ownership of the Property changes before expiration of the five (5) year period. Said condition shall be included in the writing of any future Purchase and Sales Agreement.

3. **USE OF PREMISES.** CRA hereby grants to CITY and CITY hereby accepts from CRA, a license to use the Design Location, upon and subject to all of the terms, covenants, fees and conditions hereinafter set forth. CITY specifically agrees the Property shall not be used for any other purpose whatsoever without the written consent of CRA; that CITY shall not permit the Design Location to be used or occupied in any manner that is inconsistent with the use granted herein; and that CITY shall take good care of the Design Location, suffer no waste or injury thereto, and take no action which would interfere with the commercial business operating on the Property.

CITY agrees to accept the Design Location in the condition and state of repair on the date hereof, "as is", and expressly acknowledges and agrees that CRA shall not be obligated to make repairs to, or to perform any work on it.

4. **ASSIGNMENT.** CITY is not permitted to assign, transfer, convey or otherwise dispose of this License to any other person or corporation without the previous written consent of CRA.

5. **MAINTENANCE.** CITY agrees to at all times maintain and repair the Project at its sole cost and expense. CRA agrees that what constitutes reasonable maintenance and repair of the mural Project shall be determined by CITY, in CITY's sole discretion.

6. **INDEMNIFICATION AND NO WAIVER OF SOVEREIGN IMMUNITY.** Nothing contained in this Agreement shall be deemed to affect the rights, privileges and immunities of either party as set forth in § 768.28, Florida Statutes, nor shall anything included herein be construed as consent to be sued by third parties in any matter arising out of this Agreement or any other contract. Both parties are state agencies or political subdivisions as defined in § 768.28, Florida Statutes, and agree to be fully responsible for the acts and omissions of their respective agents or employees to the extent permitted by law.

To the extent permitted by law, CRA and the CITY shall at all times, indemnify, hold harmless and defend one another, including each other's respective agents and employees from and against all claims, suits, actions, damages or causes of action arising during the term of this Agreement by reason of the service(s) to be performed, including costs, reasonable attorneys' fees and expenses incurred in or by reason of the defense of any such claim, suit or action and the investigation thereof.

Both parties acknowledge and agree they would not enter into this Agreement but for the foregoing indemnification and that their entering into this Agreement shall constitute good and valuable consideration for this indemnification. The provisions and obligations of this Section shall survive the expiration or earlier termination of this License.

7. **AMENDMENTS.** No modification, amendment or alteration of the terms or conditions contained herein shall be effective unless contained in a written document executed by the parties hereto, with the same formality and of equal dignity herewith.

8. **SURRENDER UPON TERMINATION.** CITY shall peaceably surrender this license and, at CITY's sole cost, restore the Design Location to the condition it was in prior to installation of the Project upon written notice as provided for in Section 12 herein.

9. **WAIVER.** Failure of either party to insist upon strict performance of any covenant or condition of this Agreement, or to exercise any right herein contained, shall not be construed as a waiver or relinquishment for the future of any such covenant, condition or right; but the same shall remain in full force and effect. None of the conditions, covenants or provisions of this Agreement shall be waived or modified except by the parties hereto in writing.

10. **TERMINATION.** CITY may cancel this Agreement for convenience or cause at any time during the term thereof upon sixty (60) days written notice to CRA.

11. **NOTICES.** Any notice or demand, which under the terms of this Agreement or by any statute or ordinance must be given or made by a party hereto shall be in writing and provided by email, fax or certified mail to the other party as set forth below, or to such other address as such party may from time to time designate by notice.

Addresses of the parties are as follows:

FOR CITY: City Manager
City of Pompano Beach
Post Office Box 1300
Pompano Beach, Florida 33061
Greg.Harrison@copbfl.com
954-786-4601 office
954-786-4504 fax

With a copy to:
Laura Atria, Public Art Program Manager
100 West Atlantic Boulevard
Pompano Beach, Florida 33061
Laura.Atria@copbfl.com
954-786-4310 office
954-786-4666 fax

FOR CRA: Executive Director
Pompano Beach CRA
P.O. Box Drawer 1300
Pompano Beach, Florida 33061
Greg.Harrison@copbfl.com
954-786-4601 office
954-786-4504 fax

12. ENTIRE AGREEMENT. This Agreement embodies the entire agreement between the parties. It may not be modified or terminated except as provided herein. If any provision herein is invalid, it shall be considered deleted here from, and shall not invalidate the remaining provisions.

13. MISCELLANEOUS PROVISION. It is expressly understood and agreed that no real or personal property is leased to CITY and that CITY is a licensee not a lessee.

14. LAWS AND ORDINANCES. CITY shall observe all local, state and federal laws, ordinances and other regulations directly relating its use of the Property.

15. RECORDATION OF AGREEMENT. This Agreement shall be recorded in the Public Records of Broward County, Florida, at the expense of CITY, with a copy given to CRA.

16. GOVERNING LAW AND VENUE. The Agreement shall be governed by the laws of the State of Florida, both as to interpretation and performance. CITY and CRA submit to the jurisdiction of Florida courts and federal courts located in Florida with respect to claims under this Agreement. The parties agree that proper venue for any suit at law or in equity attendant to this Agreement shall be instituted and maintained only in courts of competent jurisdiction in Broward County, Florida.

No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and in addition to every other remedy given herein, now or hereafter existing at law or in equity or by statute or otherwise. Both parties agree to waive all rights to sue or collect from the other any damages other than direct damages and they expressly waive benefit of the bargain, punitive, special, exemplary, treble or consequential damages.

17. NO THIRD PARTY BENEFICIARIES. The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. None of the parties intends to directly or substantially benefit a third party by this Agreement. The parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the parties based on this

Agreement. Nothing herein shall be construed as consent by any agency or political subdivision of the State of Florida to be sued by third parties in any manner arising out of any contract.

18. NON-DISCRIMINATION. Neither CITY nor CRA shall discriminate against any Person in the performance of duties, responsibilities and obligations under this Agreement because of race, age, religion, color, gender, national origin, marital status, disability or sexual orientation.

19. CONTINUITY. This Agreement shall be binding on and inure to the benefit of the parties, their successors and assigns.

20. PUBLIC RECORDS. Each party shall maintain its own respective records and documents associated with this Agreement in accordance with the records retention requirements applicable to public records. Each party shall be responsible for compliance with any public documents request served upon it pursuant to §119.07, Florida Statutes, and any resultant award of attorney's fees of non-compliance with that law.

21. 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, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds alone on the part of CRA be deemed Force Majeure.

22. ENTIRE AGREEMENT AND INTERPRETATION. This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and both parties agree there are no commitments, agreements or understandings concerning the subject matter herein that are not contained in this Agreement. Accordingly, both parties agree no deviation from the terms herein shall be predicated upon any prior representations or agreements, whether oral or written.

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

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

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year hereinabove written.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

"CITY":

Witnesses:

CITY OF POMPAÑO BEACH

By: _____
LAMAR FISHER, MAYOR

By: _____
GREGORY P. HARRISON, CITY MANAGER

Attest:

ASCELETA HAMMOND, CITY CLERK

(SEAL)

Approved As To Form:

MARK E. BERMAN, CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instruments were acknowledged before me this _____ day of _____, 2018 by **LAMAR FISHER** as Mayor, **GREGORY P. HARRISON** as City Manager and **ASCELETA HAMMOND** as City Clerk of the CITY of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who are personally known to me.

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

Signed, Sealed and Witnessed
In the Presence of:

Sandra M. Mooney

Print Name: Sandra M. Mooney

Shelley R. Bartholomew

Print Name: Shelley R. Bartholomew

Shelley R. Bartholomew

Print Name: Shelley R. Bartholomew

Approved as to Form:

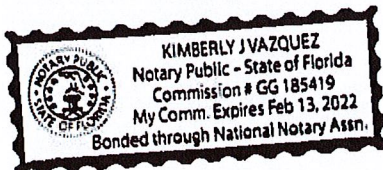
Claudia M. McKenna

Claudia M. McKenna, CRA Attorney

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 23rd day of May, 2018, by **LAMAR FISHER** as Chairman, **GREGORY P. HARRISON** as Executive Director, and **MARSHA CARMICHAEL** as Secretary of the Pompano Beach Community Redevelopment Agency, who is personally known to me.

NOTARY'S SEAL:



L:agr/cra/2018-470f

"CRA":

**POMPANO BEACH COMMUNITY
REDEVELOPMENT AGENCY**

By: [Signature]
Lamar Fisher, Chairman

ATTEST:

[Signature]
Marsha Carmichael, Secretary

EXECUTIVE DIRECTOR:

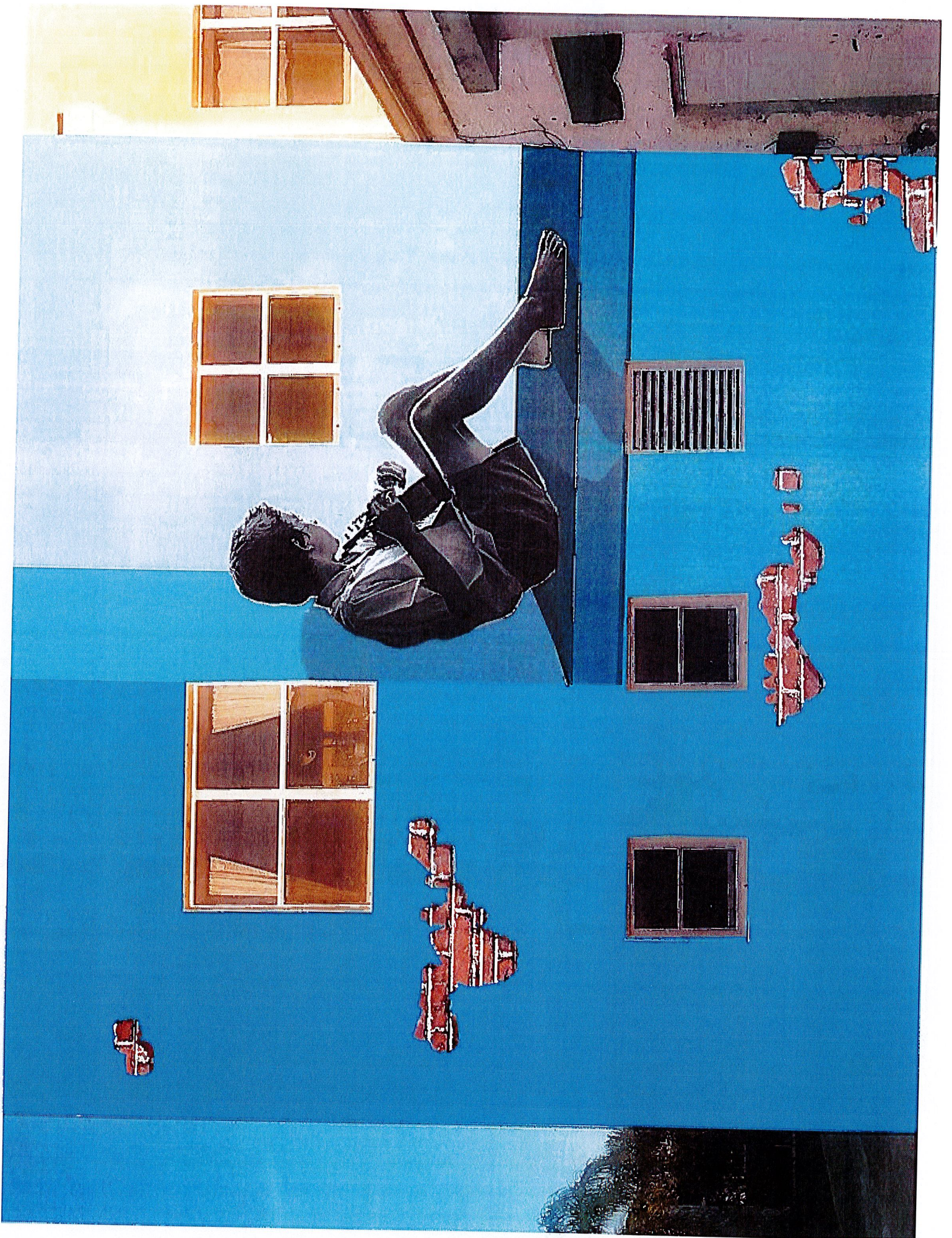
By: [Signature]
Gregory P. Harrison

Print Name: Greg Harrison

NOTARY PUBLIC, STATE OF FLORIDA

Kimberly J Vazquez
(Name of Acknowledger Typed, Printed or Stamped)

00185419
Commission Number



**COPYRIGHT ASSIGNMENT OF ARTWORK
TO THE CITY OF POMPANO BEACH**

This Copyright Assignment (the "Assignment") is made and effective as of _____, 2018 ("Effective Date") pursuant to an Agreement For Commissioned Artwork dated _____, 2018 (the "Agreement") between Fabio Goncalvez ("Artist") and the City of Pompano Beach, a Florida municipal corporation ("City") concerning the public art project described below.

RECITALS

WHEREAS, pursuant to the aforesaid Agreement and the City's Revocable License Agreement with the owner of the commercial property located at 41 NE 1 Street, Pompano Beach, FL 33060 (the "Property"), the City commissioned Artist to paint the mural depicted in the Design Proposal attached hereto and made a part hereof as Exhibit 1 (the "Artwork") on the west exterior wall behind the Bailey Contemporary Arts Building located on the Property (the "Design Location"); 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 maximum not-to-exceed total amount of Nine Thousand Four Hundred Dollars (\$9,400.00) payable in two installments in accordance with Article 10 of 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 106 (A)(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 106 (A)(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 106 (A)(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 relates to the Artwork for the City's own use, is needed to meet record-keeping requirements of the City, or 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

Any notice or other communication provided for herein or given hereunder shall be in writing and given in person, by overnight courier, or by mail (registered or certified mail, postage prepaid, return receipt requested) to the respective Party as follows:

For City

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

With a copy to:

Laura Atria, Public Art Program Manager
100 West Atlantic Boulevard
Pompano Beach, Florida 33060
Laura.Atria@copbfl.com
954-786-4310 office
954-786-4666 fax

For Artist

Fabio Goncalvez
636 SW 14 Terrace
Fort Lauderdale, Florida 33321
Fabioonrack@gmail.com
954-830-6675 home

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 1, 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. 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

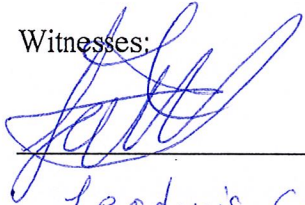
jurisdiction as if such invalid, illegal, or unenforceable provisions had never been contained herein.

11. Headings

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

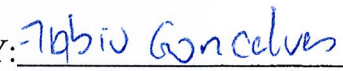
I represent that I have carefully read and understand the entire contents of this Copyright Assignment, that I have the authority, either on behalf of myself or as agent for the Artist/Owner of the Artwork to sign this Agreement, and that I have signed on my own free will.

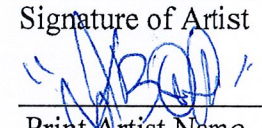
Witnesses:



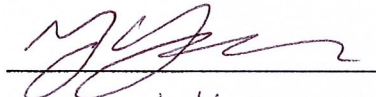
Leodanis Echeverria
Print Name

ARTIST

BY: 

Signature of Artist


Print Artist Name

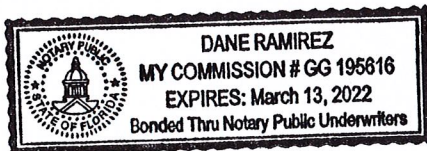


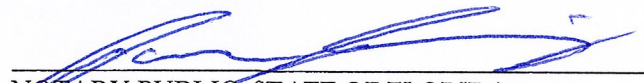
Jeffrey Gaurin
Print Name

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 17th day of May, 2018, by Fabio Goncalves who is personally known to me or who has produced Florida Drivers License (type of identification) as identification.

NOTARY'S SEAL:





NOTARY PUBLIC, STATE OF FLORIDA
Dane Ramirez

Name of Acknowledger Typed, Printed or Stamped
GG 195616

Commission Number

Exhibit 7

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: Fabio Gonçalves
2. Name you want to use to label and PR materials, if differs from above: Fabio ONRACK
- B. Date of Birth: 06.28.1989
- C. Place of Birth: São Paulo, Brasil
- D. Address, e-mail, web-site: FabioOnRack@gmail.com / www.FABIOONRACK.COM
- E. Phone: 9548306675
- F. One paragraph biography of artist: www.FABIOONRACK.COM/bio.HTML

II. Work of Art

- A. Title: UNTITLED
- B. Description of materials: ENAMEL, Latex and ACRYLIC Paint.
- 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: www.FABIOONRACK.COM/Bio.HTML.

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):

(MURAL see above)

- 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): www.FABIDONRACK.com
- B. Installation method (attach diagram of substructure, footings, CD with documents and photographs): *mural*

- 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: *N/A*
- B. Long-term: *UV resistant coating*
- 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: 8

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 Prose, 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

EXHIBIT 9
INSURANCE REQUIREMENTS

ARTIST 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. ARTIST shall direct all queries and proof of the requisite insurance coverage to the CITY's Contract Administrator who shall be responsible to provide the CITY's Risk Manager evidence that the insurance required hereunder is in full force and effect.

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 CONTRACTOR, are not intended to and shall not in any way limit or qualify the liabilities and obligations assumed by CONTRACTOR under this Agreement.

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

| Type of Insurance | Limits of Liability |
|------------------------------|------------------------------------|
| AUTOMOBILE LIABILITY: | Minimum \$10,000/\$20,000/\$10,000 |

A. Policies: Whenever, under the provisions of this Agreement, insurance is required of the CONTRACTOR, the CONTRACTOR 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.

B. Insurance Cancellation or Modification. Should the required insurance policy be canceled before the expiration date, or modified or substantially modified, ARTIST shall provide thirty (30) days written notice to the CITY.

C. Waiver of Subrogation. CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR enter into such an agreement on a pre-loss basis.

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**Alexandria Zangari
Fabio Goncalves**
Gold Membership



Form A022 FL (03/11)

IF YOU'RE IN AN ACCIDENT

1. Remain at the scene. Don't admit fault.
2. Find a safe location, call the police, and exchange driver information.
3. Call Progressive right away.

TO REPORT A CLAIM

Call 1-800-274-4499 or go to claims.progressive.com.

Use your own repair shop, or choose one in our network. Or, let us manage the process start-to-finish at our Service Center in Fort Lauderdale, FL.

PROGRESSIVE

KEEP THIS CARD IN YOUR VEHICLE WHILE IN OPERATION.

Florida Automobile Insurance Identification Card

Insurer: Progressive Select Insurance Co - 02960
Policy Number: 920776547

Effective Date: 04/15/2018

Expiration Date: 10/15/2018

☒ Personal Injury Protection
Benefits/Property Damage Liability

☒ Bodily Injury Liability
See policy and outline of coverage;
damage to a rental vehicle is covered
to the extent shown therein.

Named Insured(s):

Alexandria Zangari
Fabio Goncalves

Year Make

Model

VIN

2007 Kia

Sorento

KNDJD736175709387

2004 Ford

Ranger

1FTYR14U14PB61336

NAIC Number: 10192

NOT VALID FOR MORE THAN ONE YEAR FROM EFFECTIVE DATE.

See claims reporting information on reverse side.

Misrepresentation of insurance is a first degree misdemeanor.

APPROVED

By Cindy Lawrence at 5:19 pm, May 29, 2018



Laura Atria

to me

9:10 AM View details

...

Exhibit: 10



Development Services Attn. Laura Atria
100 West Atlantic Blvd.
Pompano Beach, FL 33060
Phone: (954) 786-4310
FAX: (954) 786-4666
Email: Laura.Atria@copbfl.com
www.pompanobeachfl.gov

March 27, 2018

Fabio Goncalves
636 SW 14 Ter.
Ft. Lauderdale, FL. 33321

Dear Mr. Goncalvez:

Your company has fewer than four employees, and you have elected not to purchase Workers' Compensation insurance to cover these 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 ANY 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 100 West Atlantic Blvd. Attn. Laura Atria, Pompano Beach, 33060. If you have any questions or concerns, feel free to contact me at 954-786-4310 or email me at Laura.Atria@copbfl.com.

Sincerely,

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

Fabio Goncalvez has posted notice(s) declaring the absence of Workers' Compensation insurance coverage, as required by the State of Florida. Fabio Goncalvez 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.

Fabio Goncalves
Signature

04.30.2018.
Date

"Fabio Goncalves"
Name & Title (print)