

**City of Pompano Beach**

**AGREEMENT  
FOR COMMISSIONED ARTWORK**

**with**

**BRODIN STUDIOS, INC.**

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## **AGREEMENT**

**THIS AGREEMENT** for Commissioned Artwork (“Agreement”) entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2023, 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

**BRODIN STUDIOS, INC.**, a Minnesota profit corporation, whose mailing address is 70127 330th Street, Kimball, Minnesota 55353 (hereinafter “ARTIST”).

**WHEREAS**, on May 4, 2022, 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, fabricate and install a bronze bust (the “Artwork”) in the Courtyard of the Historic Ali Cultural Arts Center located at 353 Dr. Martin Luther King Blvd., Pompano Beach, Florida (the “Site”) in honor of City Historian, Mrs. Hazel K. Armbrister and her lifetime of accomplishments in our community and beyond (the “Project”); and

**WHEREAS**, the CITY received twenty-nine (29) responses to the foregoing Call to Artists, one of which was submitted by Brodin Studios, Inc., a copy of which is attached hereto and made a part hereof as Exhibit 2; and

**WHEREAS**, at its meeting on August 18, 2022, the City’s Public Art Committee (the “PAC”) reviewed the aforesaid responses and recommended the City Commission approve Brodin Studios, Inc. as the artist 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 Call to Artists and this Agreement, inclusive of exhibits (collectively the “Work”); and

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

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

**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 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, design for the Artwork which has been approved by both the PAC and City Commission pursuant to this Agreement.

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

**Project** - The Artwork and theme described in this Agreement and more particularly described in the Call to Artists, ARTIST's Response and the Scope of Services, the latter of which is attached hereto and made a part hereof as Exhibit 3.

**Site** – The Courtyard of the Historic Ali Cultural Arts Center located at 353 Dr. Martin Luther King Blvd., 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. This warranty does not apply to damage to the Artwork that may be caused by hurricane or high winds that result in the Artwork being struck by matter or materials.

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

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

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

## **ARTICLE 2** **SCOPE OF SERVICES**

ARTIST shall perform all Work specified in the Call to Artists and this Agreement, inclusive of the exhibits, particularly Exhibit 3 entitled, "Scope of Services" which 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 Public Art Program Manager shall serve as the CITY's Contract Administrator during the performance of services under this Agreement.

Nick Christensen shall serve as ARTIST's Contract Administrator during the performance of Work under this Agreement.

**ARTICLE 4**  
**RESPONSIBILITIES OF ARTIST**

4.1 General

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

4.1.2 The 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, 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 Installation or Integration.

4.2.1 ARTIST shall be responsible for the quality and timely completion of the Work and complete the 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. In the event the ARTIST reports a discrepancy or defect at the Site that will delay ARTIST's performance, the CITY shall be responsible for any costs associated with such delay, including the safe storage of the Work pending correction of such discrepancy or defect sufficient to allow installation to proceed. Failure of the ARTIST to report a discrepancy or defect shall constitute an acceptance of the CITY or third party's work as fit and proper to receive ARTIST's Artwork. Any costs caused by defective or ill-timed work shall be borne by the party responsible therefore. Nothing in this section shall limit ARTIST's responsibility to take all reasonable steps to coordinate the Work hereunder with the work of the CITY or a third party.

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

4.2.5 ARTIST shall complete the 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. In the event the Artist reports a discrepancy or defect at the Site that will delay ARTIST's performance, the CITY shall be responsible for any costs associated with such delay, including the safe storage of the Work pending correction of such discrepancy or defect sufficient to allow installation to proceed.

ARTIST's failure to timely report any apparent discrepancy or defect in writing to the CITY shall waive any related objection ARTIST has to the installation and ARTIST shall be solely responsible for any expenses associated with remedying any discrepancy or defect that hinders or impairs installation or damages the Artwork.

4.2.8 ARTIST shall provide CITY written notice a minimum of thirty (30) days in advance that the Artwork is ready to be installed at the Site. CITY reserves the right to request that ARTIST reschedule the installation date.

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

## **ARTICLE 5** **RESPONSIBILITIES OF CITY**

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

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

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

#### **ARTICLE 6** **NON-ASSIGNABILITY AND SUBCONTRACTING**

6.1 This Agreement is not assignable and ARTIST agrees it shall not sell, assign, transfer, merge or otherwise convey any of its interests, rights or obligations under this Agreement, in whole or in part, to any other person, corporation or entity. Any attempt by ARTIST to assign or transfer any of its rights or obligations under this Agreement without first obtaining the CITY'S written approval shall provide CITY the right, in CITY's sole discretion, to immediately or otherwise terminate this Agreement. Specifically, no assignment of any right or obligation under this Agreement shall be binding on CITY without written consent of the City Commission.

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

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

#### **ARTICLE 7** **TERM, RENEWAL AND TIME OF PERFORMANCE**

7.1 Term and Renewal. This Agreement shall be for a term of one (1) year beginning the date this Agreement is fully executed by both parties, subject to earlier termination as provided herein. In the event ARTIST is unable to timely complete the Work because of delays which are not the fault of ARTIST, the CITY's Contract Administrator may, at her sole discretion, grant a reasonable extension of time for completion and extend the contract term for up to six (6) months without additional approvals, amendments or modifications to this Agreement.

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

7.3 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 3. The determination of whether a

delay is the fault of ARTIST shall be made by the CITY's Contract Administrator and the ARTIST agrees to abide by such decision. It shall be the responsibility of ARTIST to notify CITY promptly in writing whenever a delay is anticipated or experienced and to inform CITY of all facts and details related to the delay.

**ARTICLE 8**  
**DESIGN AND MODIFICATION**

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

In terms of 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," or Contract Administrator may 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 installation of the Artwork at the completion phases described below to ensure compliance with the Design Proposal approved by the City Commission.

- 1<sup>st</sup> Inspection - Artwork fabrication is 10% complete
- 2<sup>nd</sup> Inspection - Artwork fabrication is 25% complete
- 3<sup>rd</sup> Inspection - Artwork fabrication is 50% complete
- 4<sup>th</sup> Inspection - Artwork fabrication is 75% complete
- 5<sup>th</sup> Inspection - Artwork is 100% installed at the Site/Final Acceptance

ARTIST shall notify the CITY's Contract Administrator in writing when each of the completion phases has been reached. At a minimum, ARTIST shall provide CITY's Contract Administrator photographic or video proof to demonstrate compliance with the foregoing completion phases although CITY, in its Contract Administrator's sole discretion, reserves the right to require further documentation or personally inspect the Artwork 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 Forth-Nine Thousand Four Hundred Dollars (\$49,400.00) payable as follows:

- Invoice #1 for \$4,940.00 payable within fourteen (14) business days after this Agreement is fully executed by both parties;
- Invoice #2 for \$11,115.00 payable within fourteen (14) business days after PAC's approval of the Design Proposal;
- Invoice #3 for \$11,115.00 payable within fourteen (14) business days after the Artwork is 50% fabricated;
- Invoice #4 for \$11,115.00 payable within fourteen (14) business days after the Artwork is 100% fabricated;
- Invoice #5 for \$11,115.00 payable within fourteen (14) business days after Final Acceptance of the Artwork, receipt of a proper invoice for the Work, and satisfactory completion of the Catalogue Form attached as Exhibit 4.

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

ARTIST must submit invoices for compensation, but only after the Work for which the invoices are submitted has been completed. Invoices shall state the nature of the services performed and/or the expenses incurred. A written summary shall accompany each original invoice describing the Work completed during that payment period. CITY shall pay ARTIST within 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.

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

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

ARTIST shall be required to record, preserve and make available at all reasonable times for CITY'S local inspection, examination and audit, complete and accurate records for all Work

performed hereunder as required by applicable law(s), including the required retention period of the Florida Public Records Act, Chapter 119, Florida Statutes, as amended from time to time if applicable, or if the Florida Public Records Act is not applicable, for a minimum period of five (5) years after termination or expiration of this Agreement. However, if an audit has been initiated and audit findings have not been resolved, the records shall be retained until resolution of the audit findings. ARTIST shall make available for CITY's inspection at reasonable times all time logs, financial records, federal/state tax returns and any other documents attendant to ARTIST's Work hereunder. ARTIST shall, by written contract, require its subcontractors to agree to the requirements and obligations of this Article 10.2 -10.4.

10.3 Background Check Procedures. Prior to commencing any Work hereunder ARTIST shall provide the CITY'S Contract Administrator a completed and fully-executed Release so that CITY, at its sole cost, can conduct a background check on ARTIST in accordance with its Background Screening Policy as set forth in Exhibit 5. 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](mailto:RecordsCustodian@copbfl.com)**

## **ARTICLE 11** **NOTICES AND DEMANDS**

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

### **For CITY**

Gregory P. Harrison, City Manager  
P.O. Drawer 1300  
Pompano Beach, Florida 33060  
[Greg.Harrison@copbfl.com](mailto:Greg.Harrison@copbfl.com)  
954-786-4601 office  
954-786-4504 fax

### **With a copy to:**

Laura Atria, Public Art Program Manager  
Cultural Affairs Department  
50 West Atlantic Boulevard  
Pompano Beach, Florida 33060  
[Laura.Atria@copbfl.com](mailto:Laura.Atria@copbfl.com)  
954-545-7800 ext. 3813 office  
954-786-4666 fax

### **For ARTIST**

Nick Christensen  
70127 330th Street  
Kimball, MN USA 55353  
[brodinsale@arvig.net](mailto:brodinsale@arvig.net)  
302-419-5575 cell

**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'S FEES AND COSTS**

In the event of any litigation involving the terms and conditions of this Agreement, it is understood and agreed that the prevailing party in such litigation shall be entitled to recover from the non-prevailing party reasonable attorney and paraprofessional fees as well as all out-of-pocket costs and expenses incurred thereby by the prevailing party in such litigation through all appellate levels. The provisions of this Article shall survive termination of this Agreement.



**ARTICLE 15**  
**ARTIST'S INDEMNIFICATION OF CITY**

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

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

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

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

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

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

**ARTICLE 16**  
**GOVERNMENTAL IMMUNITY**

CITY is a political subdivision of the State of Florida and nothing contained in this Agreement shall be construed to waive or affect in any way any of the CITY's rights, privileges and immunities as set forth in § 768.28, Florida Statutes. Nothing herein constitutes or shall be construed as consent to be sued by third parties in any matter arising out of this Agreement or any other contract.

**ARTICLE 17**  
**PUBLIC ENTITY CRIMES ACT**

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

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

**ARTICLE 18**  
**INSURANCE**

ARTIST shall maintain insurance in the amounts and subject to all conditions set forth in Exhibit 6 attached hereto and made a part hereof. ARTIST shall not commence operations under this Agreement until certification or proof of insurance detailing terms and provisions of coverage has been received and approved by the CITY'S Risk Manager. In addition, the CITY shall be named as an additional insured on the Certificate of Insurance and ARTIST shall be required to execute the Workers' Compensation Exemption Letter attached and made a part hereof as Exhibit 8 if ARTIST elects not to purchase workers' compensation insurance for the Project.

**ARTICLE 19**  
**DEFAULT AND DISPUTE RESOLUTION**

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

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

19.3 If the party receiving written notice of default provides written notice denying same within ten (10) calendar days of receipt or the alleged default has not been remedied within ten (10) calendar days after receipt of written notice and is continuing, either party may appeal in writing to the City Manager for the CITY in accordance with Article 11 herein.

Upon receipt of said written appeal or demand, the City Manager for the CITY may request additional information relating to the dispute from either or both parties which shall be provided within a reasonable time. Upon the City Manager's receipt and timely review of the disputed matter, the City Manager may make a decision regarding the alleged default as he/she deems appropriate under the circumstances. If the City Manager's decision is not implemented within the deadline set forth therein, the forty-five (45) day advance written notice provision set forth in Article 11 herein shall not apply and it shall be lawful for CITY to immediately terminate this Agreement and in addition to any other remedies provided by law, CITY may possess itself of all rights and privileges heretofore enjoyed by ARTIST.

## **ARTICLE 20** **TERMINATION**

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

In the event of a breach or default, the defaulting party shall be given written notice which describes in reasonable detail the alleged breach or default and ten (10) calendar days to cure same, and either party may avail itself of the informal Default and Dispute Resolution Procedures set forth in Article 11 above or seek other remedies as provided hereunder or by law. The parties agree that if CITY erroneously, improperly or unjustifiably terminates for cause, such termination shall be deemed a termination for convenience.

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

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

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

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

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

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

**ARTICLE 22**  
**NO CONTINGENT FEE**

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

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

**ARTICLE 23**  
**FORCE MAJEURE**

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

If CITY or ARTIST are unable to perform, or are delayed in their performance of any obligations under this Agreement by reason of any event of Force Majeure, such inability or delay shall be excused at any time during which compliance therewith is prevented by such event and

during such period thereafter as may be reasonably necessary for either party to correct the adverse effect of such event of force majeure.

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

#### **ARTICLE 24** **WAIVER AND MODIFICATION**

CITY and ARTIST agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and is therefore a material term hereof. Failure to insist upon strict compliance with any term, covenant or condition of this Agreement shall not be deemed a waiver of such, nor shall any waiver or relinquishment of such right or power at any time be taken to be a waiver of any other breach. Further, the acceptance of a single or repeated payment(s) by CITY after it falls due or after knowledge of any breach by ARTIST shall not be construed as a waiver of any of the CITY's rights hereunder.

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

#### **ARTICLE 25** **RELATIONSHIP BETWEEN THE PARTIES**

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

#### **ARTICLE 26** **SEVERABILITY**

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

#### **ARTICLE 27** **APPROVALS**

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

**ARTICLE 28**  
**ABSENCE OF CONFLICTS OF INTEREST**

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

28.2 During the term of this Agreement, ARTIST agrees that neither ARTIST nor any of ARTIST's agents hereunder shall serve as an expert witness against CITY in any legal or administrative proceeding in which he, she, or ARTIST is not a party unless compelled by court process. Further, ARTIST agrees that such persons shall not give sworn testimony or issue a report or writing as an expression of his or her expert opinion which is adverse or prejudicial to the CITY's interests in connection with any such pending or threatened legal or administrative proceeding unless compelled by court process. The limitations of this Article shall not preclude ARTIST or any persons in any way from representing themselves, including giving expert testimony in support thereof, in any action or in any administrative or legal proceeding.

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

**ARTICLE 29**  
**MISCELLANEOUS TERMS AND CONDITIONS**

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

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

29.3 ARTIST understands and agrees the Artwork shall be fabricated and installed to withstand the outdoor climate of South Florida for a minimum of three (3) years after CITY's Final Acceptance of same. Further, ARTIST understands and agrees that CITY is entitled to rely upon the foregoing durability provision such that if any part(s) of the Artwork substantially deteriorates or is otherwise found to be defective, as determined solely by the CITY's Contract Administrator, ARTIST shall be responsible to repair or replace same at ARTIST's sole cost. This warranty does not apply to damage to the Artwork that may be caused by hurricane or high winds that result in the Artwork being struck by matter or materials. However, CITY (not ARTIST) shall be solely responsible to bear all costs associated with the repair of any damage to the projects caused by vandalism after installation of the Artwork.

29.4 ARTIST may be given the right of first refusal to perform repairs or restoration. If the parties cannot agree on repair services or ARTIST is unable or unwilling to perform any necessary repairs on terms acceptable to CITY, or CITY cannot locate ARTIST, CITY may have

such work performed at CITY's own expense in accordance with recognized principles of repair, restoration or conservation.

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

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

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

29.8 Rights in Documents and Work. Any and all reports, photographs, surveys, and other data and documents provided or created in connection with this Agreement shall be and remain the CITY's property. In the event of termination or expiration of this Agreement, any reports, photographs, surveys, and other data and documents prepared by ARTIST, whether finished or unfinished, shall become the CITY's property and ARTIST shall deliver same to the CITY's Contract Administrator within seven (7) days of said termination or expiration by either party. Any compensation due ARTIST shall be withheld until all documents are received as provided herein.

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

### **ARTICLE 30** **BINDING EFFECT**

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

### **ARTICLE 31** **WARRANTIES AND STANDARDS**

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

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

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

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

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

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

31.7 After Final Acceptance of the Artwork, CITY shall be responsible to ensure the Artwork is properly maintained and protected, taking into account the recommendations of



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

31.8 ARTIST understands and agrees that the provisions of this Agreement shall control to the exclusion of the provisions of the European Union law or other domestic or international law and shall constitute a waiver by the ARTIST of any rights in the Artwork set out in or otherwise granted by laws of other jurisdictions addressing ARTIST's rights in the Artwork.

31.9 Warranty of Authorization and Non-Infringement. ARTIST warrants to ARTIST's best knowledge, the Work provided under this Agreement will not infringe upon or violate any license; copyright, patent, trade secret, trademark, moral rights, semiconductor chip protection or unfair competition law; proprietary information, non-disclosure; intellectual property or other right of any third party; any right of privacy; or contain libelous material and the ARTIST possesses full power to enter into this Agreement and to convey the rights herein granted to CITY without the consent of any third party.

## **ARTICLE 32** **RIGHTS IN ARTWORK**

32.1 ARTIST's Waiver for Integrated Artwork. The provisions of this Agreement shall control over the provisions of 17 U.S.C. § 106A and, with respect to CITY, its employees, agents and sub-contractors, shall constitute a waiver by ARTIST of any rights in the Artwork set out in or otherwise granted by the Visual Artists Rights Act of 1990, 17 U.S.C. § 106A. If there is a conflict or inconsistency between any provision contained in this Agreement and any provision contained in any provision of domestic or international law, including without limitation the European Union law, ARTIST understands and agrees the provisions of this Agreement shall control and constitute a waiver by ARTIST of any rights in the Artwork set out in or otherwise granted by laws of other jurisdictions addressing ARTIST's rights in the Artwork.

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

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

32.1.3 CITY shall make a reasonable effort to notify ARTIST of any proposed action that will remove, destroy, or otherwise modify the Artwork by providing notice to ARTIST in accordance with the "Notices" section of this Agreement, including, if applicable, notice of any planned deaccession. Any lack of notice to ARTIST shall not impede CITY's ability to proceed with any modification, repair or removal. CITY has an unlimited, perpetual, and irrevocable right to use or reproduce the Artwork in any non-commercial manner or media whatsoever, including without limitation to prepare derivative works based upon the Artwork and to distribute copies of the Artwork.

32.1.4 ARTIST shall provide City the completed Catalogue Form (Exhibit 4) and fully-executed Copyright Assignment (Exhibit 7) upon CITY's Final Acceptance of the Artwork and prior being entitled to payment of ARTIST's Invoice #2 hereunder.

32.1.5 ARTIST grants to CITY and its assignees an irrevocable license to make two dimensional reproductions of the Artwork for non-commercial purposes, including, but not limited to, reproductions used in brochures, media publicity, and exhibition catalogues or other similar publication provided that these rights are exercised in a tasteful and professional manner.

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

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

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

### **ARTICLE 33** **SURVIVAL**

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

The following provisions shall survive the expiration or earlier termination of this Agreement for at least a period of five (5) years after such expiration or termination or longer if

required by the Florida Public Records Act as may be amended from time to time; Article 10, "Audit Right and Retention of Records," and Article 11, "Notices and Demands."

**ARTICLE 34**  
**ENTIRE AGREEMENT AND INTERPRETATION**

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

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

**"CITY":**

Witnesses:

**CITY OF POMPANO BEACH**

\_\_\_\_\_

By: \_\_\_\_\_  
REX HARDIN, MAYOR

\_\_\_\_\_

By: \_\_\_\_\_  
GREGORY P. HARRISON, CITY MANAGER

Attest:

\_\_\_\_\_  
KERVIN ALFRED, CITY CLERK

(SEAL)

Approved As To Form:

\_\_\_\_\_  
MARK E. BERMAN, CITY ATTORNEY

**"ARTIST":**

**BRODIN STUDIOS, INC.**, a Minnesota profit corporation

Witnesses:

*Samuel Ehlinger*  
Print Name

*Matthew Eignek*  
Print Name

By: *Nick Christensen*  
NICK CHRISTENSEN, President

STATE OF ~~FLORIDA~~ Minnesota  
COUNTY OF Stearns

The foregoing instrument was acknowledged before me this 23<sup>rd</sup> day of February, 2023, by **NICK CHRISTENSEN** as President of Brodin Studios, Inc., a Minnesota profit corporation, who is personally known to me or who has produced N/A (type of identification) as identification.

NOTARY'S SEAL:



*Barry M Belknap*  
NOTARY PUBLIC, STATE OF ~~CALIFORNIA~~ Minnesota  
Name of Acknowledger Typed, Printed or Stamped  
20239573  
Commission Number