

POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY

A RESOLUTION OF THE POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY ("CRA") APPROVING AND AUTHORIZING THE PROPER OFFICIALS TO EXECUTE A LICENSE AGREEMENT BETWEEN THE CRA AND THE CITY OF POMPANO BEACH FOR THE INSTALLATION OF TWO MOSAIC BENCHES AT THE PATRICIA DAVIS COMMUNITY GARDEN, LOCATED AT 1089 NW 6TH AVENUE, POMPANO BEACH; PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY THAT:

SECTION 1. The License Agreement ("Agreement") between the Pompano Beach Community Redevelopment Agency and the City of Pompano Beach for the installation of two mosaic benches at the Patricia Davis Community Garden located at 1089 NW 6th Avenue, created as part of the city's public art program is attached hereto and incorporated by reference as if set forth in full, is hereby approved.

SECTION 2. The proper officials are hereby authorized to execute said Agreement between the Pompano Beach Community Redevelopment Agency and the City of Pompano Beach.

SECTION 3. This Resolution shall become effective upon passage.

PASSED AND ADOPTED this 18th day of February, 2020.



REX HARDIN, CHAIRPERSON

ATTEST:



MARSHA CARMICHAEL, SECRETARY

f/n

LICENSE AGREEMENT

THIS LICENSE AGREEMENT ("Agreement"), made this _____ day of _____ 2020, by and between:

**POMPANO BEACH COMMUNITY REDEVELOPMENT
AGENCY**, (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 property located at 1089 NW 6th Avenue, Pompano Beach, FL 33060 which is known as the Patricia Davis Community Garden (the "Property" more particularly described in Exhibit "A" attached hereto and made a part hereof); and

WHEREAS, the CITY, through its hired artist, Steven Lutz, would like to install the two mosaic mural benches depicted in the Design Proposal attached hereto and made a part hereof as Exhibit "B" (collectively, the "Artwork") on the Property (the "Project");

WHEREAS, the location for installation of the Artwork on the Property is under the tree depicted in Exhibit "C" attached hereto and made a part hereof (the "Design Location") which is under the exclusive ownership, custody and control of CRA; and

WHEREAS, the CITY's Public Art Committee approved the foregoing Design Location at its meeting on September 19, 2019; 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 two mosaic benches depicted in Exhibit "B" at the "Design Location" depicted in Exhibit "C" 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 ten (10) years after installation of the mural at the Design Location is complete regardless whether ownership of the Property changes before expiration of the ten (10) year period. The aforesaid condition shall be memorialized in any future Purchase and Sales Agreement for the Property during the Term with the intent of binding the Purchaser to the terms of this 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. To the extent permitted by law, the CITY and the CRA 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 the Agreement but for the foregoing indemnification and that their entering into this Agreement shall constitute good and valuable consideration for this indemnification. These provisions shall survive the expiration or earlier termination of this Agreement.

7 INSURANCE. During the term of this Agreement, CRA, at its sole cost, shall maintain insurance in the amounts and subject to all conditions set forth in Exhibit "D."

8 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.

9 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.

10. 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.

11. 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.

12. 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:

Greg Harrison, 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
Cultural Affairs Department
50 West Atlantic Boulevard
Pompano Beach, Florida 33061
Laura.Atria@copbfl.com
954-545-7800 ext. 3813 office

FOR CRA:

Attn: Greg Harrison, Executive Director
Pompano Beach Community Redevelopment Agency
100 West Atlantic Boulevard, Room 276
Pompano Beach, Florida 33060
954-786-4601 phone
Greg.Harrison@copbfl.com

13. 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.

14 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.

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

16 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.

17 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.

18 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.

19. 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.

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

21. 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.

22. 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.

23. 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 POMPANO BEACH

By: _____
REX HARDIN, MAYOR

By: _____
GREGORY P. HARRISON, CITY MANAGER

Attest:

(SEAL)

ASCELETA HAMMOND, CITY CLERK

Approved As To Form:

MARK E. BERMAN, CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me, by means of physical presence or online notarization this _____ day of _____, 2020 by **REX HARDIN** 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

"CRA"/"OWNER":

Witnesses:

Caridad Ant

By: *[Signature]*
REX HARDIN, CHAIRMAN

Shelly R. Bartholomew

By: *[Signature]*
GREGORY P. HARRISON, EXECUTIVE DIRECTOR

Attest:

[Signature]
for MARSHA CARMICHAEL, SECRETARY

(SEAL)

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me, by means of physical presence or online notarization, this 20 day of February, 2020, by **REX HARDIN** as Chairman, **GREGORY P. HARRISON** as Executive Director and **MARSHA CARMICHAEL**, as Secretary, of the Pompano Beach Community Redevelopment Agency, who are personally known to me.

VAZQUEZ

Kimberly

NOTARY'S SEAL:

[Signature]
NOTARY PUBLIC, STATE OF FLORIDA
Jennette Forester Williams
(Name of Acknowledger Typed, Printed or Stamped)



Commission Number

FP/jmz
1/21/20
l:agr/CulturalArts/City-CRA/2020-232f

Exhibit A

Location

Folio #: 4842 35 53 0040

Address: 1089 NW 6 Avenue, Pompano Beach, FL 33060

Legal: PALM TREE PLAT 119-23 B LOT 3 & LOT 4 TOG WITH POR LOT 1 WARRINGTON RESUB 16-34 B, DESC AS: COMM NW COR OF BLK 1, S ALG W/L 299.99 TO POB, CONT S 50, E 135.79, N 50, W 134.80 TO POB



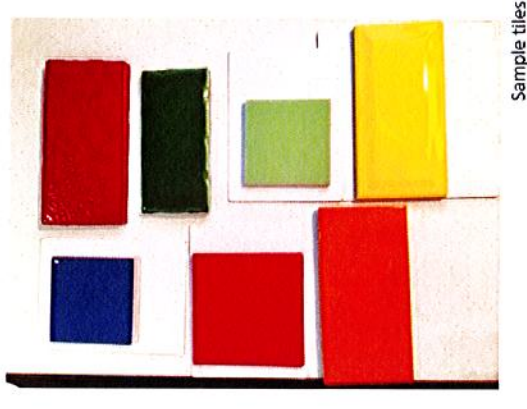
Exhibit B

These design sketches were created through photographs, colored paper, cut out and altered internet mosaic images, (collage) and then various colored pencils, paint, and art photoshop techniques. These are “quick” sketch ideas. The actual mosaic will be much more bright, shiny, cheerful, polished and precise.

For this project I have ordered sample tiles to give you a sense of the vibrant colors that I will use.

Theme: Nature

- Vegetation growing in garden
- Butterflies
- Birds



Design 1:



Design 2



Revision to Design 2: Bee will resemble a bee closer in style to the bees in Design 1.

Exhibit C

2 Benches will be located under the tree in the image below.

