

ORDINANCE NO. 2023- 26

CITY OF POMPANO BEACH
Broward County, Florida

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE AN AGREEMENT FOR COMMISSIONED ARTWORK BETWEEN THE CITY OF POMPANO BEACH AND SONATA KAZIMIERAITIENE FOR THE PUBLIC ART PROJECT KNOWN AS MOSAIC TEAM 3; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, pursuant to law, ten (10) days' notice has been given by publication in a paper of general circulation in the City, notifying the public of this proposed ordinance and of a public hearing in the City Commission Chambers of the City of Pompano Beach; and

WHEREAS, a public hearing before the City Commission was held pursuant to the published notice described above, at which hearing the parties in interest and all other citizens so desiring had an opportunity to be and were, in fact, heard; now therefore,

BE IT ENACTED BY THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. That an Agreement For Commissioned Artwork between the City of Pompano Beach and Sonata Kazimieraitiene, for the public art project known as Mosaic Team 3, a copy of which Agreement is attached hereto and incorporated herein by reference as if set forth in full, is hereby approved.

SECTION 2. That the proper City officials are hereby authorized to execute said Agreement.

SECTION 3. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of

this Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

SECTION 4. This Ordinance shall become effective upon passage.

PASSED FIRST READING this 10th day of January, 2023.

PASSED SECOND READING this 24th day of January, 2023.

DocuSigned by:
Rex Hardin
502CB780EB3F480...

REX HARDIN, MAYOR

ATTEST:

DocuSigned by:
Kervin Alfred
D1C913A8ED334CA...

KERVIN ALFRED, CITY CLERK

/mcm
10/27/22
L:ord/2023-32f



City of Pompano Beach

AGREEMENT FOR COMMISSIONED ARTWORK

with

SONATA KAZIMIERAITIENE

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AGREEMENT

THIS AGREEMENT, entered into this 26th day of January, 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

SONATA KAZIMIERAITIENE, an independent contractor whose address is 14364 Canalview Dr., Unit A, Delray Beach, FL 33484 (hereinafter "ARTIST").

WHEREAS, on March 31, 2022, the CITY issued Request for Qualifications: Mosaic Team 3 ("RFQ"), 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 abstract mosaic murals (the "Artwork") on the front and back of the 27 overpass columns under Interstate 95 over Dr. Martin Luther King Jr. Boulevard (the "Site") owned by the Florida Department of Transportation (the "Project"); and

WHEREAS, the CITY received seven (7) responses to the foregoing RFQ, one of which was submitted by Sonata Kazimieraitiene 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 June 6, 2022, PAC reviewed the foregoing seven (7) responses and recommended the City Commission approved Sonata Kazimieraitiene as the selected 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 this Agreement, inclusive of Exhibits, particularly the RFQ (Exhibit 1), Artist's Response (Exhibit 2) and the Scope of Services attached hereto and made a part hereof as Exhibit 3 (collectively the "Work" more particularly defined below); 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; and

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

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

WHEREAS, the City Commission 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 final detailed designs for the mosaic murals formally approved by the PAC, City Commission and FDOT which shall set forth in detail the artistic expression, scope, design, color, size, material, texture and location of the mosaic murals as well as a schedule for the Work and a statement that ARTIST has inspected the Site and the proposed locations for each mosaic installation is suitable.

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

FDOT – Florida Department of Transportation

Project - The Scope of Services described in the RFQ, Artist's Response and this Agreement, inclusive of Exhibits.

Site – The front and back of the 27 overpass columns under Interstate 95 over Dr. Martin Luther King, Jr. Boulevard which are owned by FDOT.

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, particularly Exhibits 1-3 .

ARTICLE 1 REPRESENTATIONS

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

a. 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.

b. 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.

c. 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.

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

a. 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.

b. 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.

c. 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.

d. ARTIST represents it has the ability, skill and resources to complete its responsibilities under this Agreement and that the mosaic murals shall be designed, fabricated and installed as a permanent piece to withstand the outdoor climate of South Florida for a minimum of twenty (20) years and require low routine maintenance.

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

f. 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.

g. ARTIST represents that each person or entity to provide services hereunder is duly qualified to perform such services and is sufficiently experienced and skilled in the area(s) for which such person or entity will render services. ARTIST agrees that all services under this Agreement shall be performed in a skillful and respectful manner, and that the quality of all such services shall equal or exceed prevailing industry standards for the provision of such services.

ARTICLE 2
SCOPE OF SERVICES

ARTIST shall perform all Work and provide the insurance coverage specified hereunder, inclusive of the Exhibits. Unless stated otherwise in this Agreement, the Work required of ARTIST includes all 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 Arts Program Manager shall serve as the CITY's Contract Administrator during the performance of services under this Agreement.

Sonata Kazimieraitiene shall serve as ARTIST's Contract Administrator during the performance of services under this Agreement.

ARTICLE 4
RESPONSIBILITIES OF ARTIST

1. Within thirty (30) days from the effective date of this Agreement, ARTIST shall provide the CITY's Contract Administrator her initial design sketch for the mosaic murals for review and recommendation by the PAC at their next scheduled monthly meeting. Unless the PAC approves the initial design sketch as the selected Design Proposal, within thirty (30) days from the PAC's review/determination of the initial design sketch, ARTIST shall provide the CITY's Contract Administrator a revised or new second design sketch for the mosaic murals for review and recommendation by the PAC at their next scheduled monthly meeting. Unless the PAC approves the second design sketch as the selected Design Proposal, within thirty (30) days from the PAC's review/determination of the second design sketch, ARTIST shall provide the CITY's Contract Administrator a revised or new third design sketch for the mosaic murals for review and recommendation by the PAC at their next scheduled monthly meeting.

2. ARTIST shall perform all services and furnish all supplies, personnel, materials and equipment for the design, execution, fabrication and installation of the Artwork; pay all necessary taxes, insurance, and consultants; purchase all supplies, materials, tools, equipment,

lighting requirements and all other items incidental to performing the Work, including transporting and installing the mosaic murals to the Site.

3. ARTIST shall be responsible for the quality and timely completion of the Work and shall, without additional compensation, correct any errors, omissions, or other deficiencies in the Artwork identified by the Contract Administrator prior to CITY's Final Acceptance.

4. ARTIST shall perform the Work in accordance with standards of care, skill, training, diligence, and judgment provided by highly competent professionals who perform work of a similar nature and also develop and adhere to written protocols to ensure public resources are properly tracked and appropriated.

5. ARTIST shall be responsible to select and thereafter supervise five (5) Apprentices to work under her sole direction in accordance with the following provisions:

- a. Apprentices shall be eighteen years of age or older;
- b. Apprentices shall be either students, residents or work in Pompano Beach;
- c. Apprentices shall undergo and successfully pass a background check;
- d. Apprentices shall work with ARTIST for a minimum of five (5) hours per week;
- e. Apprentices must be enthusiastic about learning the mosaic and ceramic craft;

6. ARTIST and the five Apprentices shall be entitled to non-exclusive first-come first served studio space and use of a kiln at the Bailey Contemporary Arts building ("BACA") located at 41 NE 1st Street, Pompano Beach to design and fabricate the Artwork.

7. ARTIST shall not at any time transport any of the five (5) Apprentices in ARTIST's personal vehicle.

8. Before commencing any Work hereunder, ARTIST and the five (5) Apprentices shall have complied with the background check procedures of Article 10 herein and also provide CITY a fully-executed original Waiver and Release, a copy of the form for which is attached hereto and made a part hereof as Exhibit 4.

9. All Work performed by ARTIST hereunder shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing under this Agreement. ARTIST shall, at her sole expense, secure the services of an appropriately licensed general contractor, subcontractor, engineer, and/or any other professional(s) necessary to obtain all licenses and approvals required to perform under this Agreement.

10. ARTIST shall not issue any public information releases through any media, including social media, regarding the Work performed hereunder without prior written approval of the CITY's Contract Administrator.

11. ARTIST shall inspect the Site(s) with CITY to verify that the existing Site conditions, dimensions, and substrates will support installation of the Artwork. Within fourteen

(14) calendar days of the inspection, ARTIST shall notify the CITY's Contract Administrator in writing of any Site condition that would render the Site unsuitable for the Artwork.

12. ARTIST shall complete the fabrication, transportation, and installation of the mosaic murals in conformity with the Design Proposal approved by PAC, the City Commission and FDOT. ARTIST is solely responsible for storage of the fabricated mosaic murals pending delivery to the Site.

13. After fabrication of the mosaics murals are completed and ARTIST has received any applicable permits, other jurisdictional approval(s), and written approval from the CITY's Contract Administrator, ARTIST shall deliver said mosaic murals to the Site in accordance with the direction and written approval of the CITY's Contract Administrator.

14. 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 mosaic murals. 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.

15. 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) calendar 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 impairs installation of, or causes damage to, the mosaic murals.

16. ARTIST shall work in a manner and time so as not to interfere with any of the operations, construction, or maintenance of CITY or its agents. ARTIST shall, when working at BACA or the Site, keep the premises free from waste materials and rubbish. At the completion of the Work, ARTIST shall, at her sole expense, remove any waste materials, rubbish, tools, equipment, machinery, and surplus materials from BACA or the Site(s) occasioned by the actions of ARTIST or the Apprentices hereunder. 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.

17. Title to the Artwork passes to CITY upon Final Acceptance by the CITY's Contract Administrator. Upon transfer of title, CITY shall be responsible for any and all subsequent damage to the Artwork except damage caused by ARTIST, the Apprentices or other agents of the ARTIST. At any time prior to title transfer, 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 her sole expense, fully repair and restore the Artwork as to any destruction or damage that occurs before title has transferred from ARTIST to the CITY.

ARTICLE 5
RESPONSIBILITIES OF CITY

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.
2. CITY shall provide ARTIST and the Apprentices non-exclusive studio space at the Bailey Art Center on a first-come first-served basis to fabricate the mosaic murals required hereunder.
3. CITY shall be responsible to routinely perform low maintenance on the mosaic murals after Final Acceptance at which time CITY also becomes responsible for any damage to said murals.
4. CITY shall be responsible to submit the Community Aesthetic Feature Agreement "(CAFA)" attached hereto and made a part hereof as Exhibit 5 for formal approval by FDOT within thirty (30) business days after this Agreement is approved by the City Commission.

ARTICLE 6
NON-ASSIGNABILITY AND SUBCONTRACTING

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 result in CITY'S immediate cancellation of this Agreement. Specifically, no assignment of any right or obligation under this Agreement shall be binding on the CITY without the written consent of the City Commission of Pompano Beach.

In addition, this Agreement and the rights and obligations therein shall not be assignable or transferable by any process or proceeding in court, or by judgment, execution, proceedings in insolvency, bankruptcy or receivership, and 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.

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

1. Term and Renewal. The Term of this Agreement shall be for two (2) years commencing the date this Agreement is fully executed by both parties and subject to earlier termination as provided herein. The CITY reserves the right to extend this Agreement for one (1) year provided both parties agree in writing to said extension.

2. Fiscal Year. The continuation of this Agreement beyond the end of any CITY fiscal year shall be subject to both the appropriation and the availability of funds, in accordance with Chapter 129, Florida Statutes.

3. Notice to Proceed. ARTIST shall commence each phase of the Artwork within the time period stated in the CITY's written Notice to Proceed. All duties, obligations, and responsibilities of ARTIST required for each phase shall be completed by the deadline set forth in the Notice to Proceed. The Notice to Proceed is defined as a written document issued by the CITY's Contract Administrator which authorizes the ARTIST to begin a particular phase for the Work as set forth in Article 9 below.

3. 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. The CITY's Contract Administrator may grant ARTIST an extension of time if he/she deems it appropriate in his/her sole discretion.

4. Time is of the Essence. Time is of the essence for all performance required under this Agreement.

ARTICLE 8
DESIGN AND MODIFICATION

ARTIST understands and agrees the mosaic murals to be created hereunder are subject to approval by PAC, the City Commission and FDOT. ARTIST also understands and agrees that CITY has the right to request a total of three (3) design sketches for the murals and that if the PAC does not approve a Design Proposal after a total of three (3) design sketches have been submitted over a consecutive three (3) month period, the CITY has the right to terminate this Agreement with ARTIST.

Major modification shall mean more than a 25% overall change from the Design Proposal originally submitted to, and approved by both the PAC, City Commission and FDOT which is prohibited without the formal written approval of all of the foregoing entities. ARTIST understands and agrees that CITY's Contract Administrator has sole discretion to approve the modification "as is" or require a formal review and approval by the PAC, City Commission and FDOT.

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 the CITY's Contract Administrator has sole discretion to approve the modification "as is" and/or determine whether said modification is necessary to facilitate the Work.

ARTICLE 9
INSPECTIONS BY CITY

The CITY's Contract Administrator shall inspect fabrication and installation of each floor mosaic Artwork at the seven (7) intervals described below to ensure compliance with the Design Proposal.

- 1st Inspection – Artwork fabrication is 10% complete
- 2nd Inspection – Artwork fabrication is 25% complete
- 3rd Inspection – Artwork fabrication is 50% complete
- 4th Inspection – Artwork fabrication 75% complete
- 5th Inspection – Artwork fabrication 100% complete
- 6th Inspection – Artwork installation is 50% complete
- 7th Inspection – Artwork installation is 100% installed

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

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 design, fabricate and install the mosaic murals at the Site for CITY and CITY agrees to pay ARTIST a maximum not-to-exceed total amount of One Hundred Twenty-Five Thousand Dollars (\$125,000.00) payable in seven (7) installments as set forth below.

- Invoice 1 \$5,000.00 payable within fifteen (15) business days after this Agreement is fully executed by both parties;
- Invoice 2 \$5,000.00 payable within ten (10) business days of the Public Art Committee's recommendation of the Design Proposal, for City Commission approval;
- Invoice 3 \$22,760.00 payable within ten (15) business days after the Design Proposal has been approved by the City Commission and FDOT;
- Invoice 4 \$22,760.00 payable when fabrication of Artwork is 50% complete;
- Invoice 5 \$22,760.00 payable when fabrication of Artwork is 75% complete;
- Invoice 6 \$22,760.00 payable when fabrication of Artwork and Site Prep is 100% complete;
- Invoice 7 \$23,960.00 payable within fifteen (15) business days after City's Final Acceptance of the Artwork installed at the Site, receipt of a proper invoice for the Work, and satisfactory completion of the Catalogue Form and Copyright Assignment attached as Exhibits 6 and 7, respectively.

TOTAL PAYMENT TO ARTIST FOR WORK EQUALS \$125,000.00

Within ten business days of ARTIST's receipt of payment for Invoices 3-7, ARTIST shall pay each Apprentice \$600.00 so that completion of the Project each of the five (5) Apprentices shall have received a total of \$3,000.00 for a total of \$15,000.00 for all five (5) Apprentices.

Upon every payment ARTIST makes to each Apprentice, ARTIST shall have the Apprentice sign on a Payment Receipt Form to attest payment was received. The Payment Receipt Form shall have the Apprentice's name; date payment was made; amount paid; type of payment (check, auto deposit, etc.) and shall also have a signature line for the Apprentice to print and sign their name. This Form shall be submitted to the City with each invoice that Artist submits for payment beginning with Invoice 3.

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. These maximum amounts do not constitute a limitation of any sort upon ARTIST's obligation to perform all Work required hereunder.

In addition, if one of the five (5) Apprentices abandons the Project or ARTIST removes same for good cause as determined by ARTIST, ARTIST shall be responsible to thereafter replace said Apprentice(s) within thirty (30) days. The intent of these provisions is that ARTIST shall be required to supervise and pay five (5) Apprentices a total of \$15,000.00 to perform the Work hereunder.

CITY shall pay ARTIST in accordance with the payment schedule set forth above in this Article upon receipt of a proper invoice after any required approvals. 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. CITY shall have the right to withhold payment of the invoice in whole or in part to protect itself from loss due to unacceptable or defective Work or ARTIST's failure to comply with any term, condition, or requirement of this Agreement. 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.

2. Recordkeeping, Inspection and Audit Procedures.

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 activities and revenues generated under this Agreement for a period of five (5) years after its termination or as otherwise required by applicable law(s), including the required retention period of the Florida Public Records Act, Chapter 119, Florida Statutes, 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.

3. Background Check Procedures. ARTIST and the five (5) Apprentices providing services hereunder shall comply with the CITY'S Background Screening Policy as set forth in Exhibit 8. At least one week prior to ARTIST or any of the Apprentices providing services hereunder, ARTIST shall provide the CITY'S Contract Administrator a completed and fully-executed Release on all such persons so that CITY, at its sole cost, can conduct the background checks required hereunder. CITY reserves the right to refuse to permit ARTIST or any of the Apprentices to provide services under this Agreement based upon the grounds for disqualification set forth in the CITY's Background Screening Policy.

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:

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

b. 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.

c. 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.

d. 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
954-545-7800, ext. 3813
954-545-7810 fax

For ARTIST

Sonata Kazimieraitiene
14364 Canalview Drive, Unit A
Delray Beach, Florida 33484
sonataka2000@yahoo.com
manotiles@gmail.com
708-420-1721 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 and that this Agreement shall not constitute or make the parties a partnership or joint venture. ARTIST shall have no authority to employ any person as an employee or agent on behalf of CITY for any purpose.

Neither ARTIST, any Apprentice nor any person 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, an Apprentice or any other agent or employee of LEAD AGENT are employees or agents 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

1. ARTIST shall at all times indemnify, hold harmless and defend the CITY and its agents hereunder from and against any and all claims, demands, suit, damages, attorneys' fees, fines, penalties, defense costs or liabilities arising directly or indirectly out of or in connection with ARTIST'S actions, negligence, misconduct or provision of Work hereunder except that ARTIST shall not be liable under this Article for damages arising out of injury to persons or property arising from the negligence, gross negligence or willful misconduct of CITY or any of its officers, employees or authorized agents. ARTIST agrees to investigate, handle, respond to, provide defense for, and defend any such claims at its sole expense and to bear all other costs and expenses related thereto, even if the claim(s) is/are groundless, false or fraudulent. The foregoing indemnification shall not be operative as to any claims by ARTIST for any causes of action ARTIST has or may have for breaches or defaults by CITY under this Agreement.

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.

3. ARTIST acknowledges and agrees that CITY assumes no responsibility whatsoever for any personal property, stock or inventory of ARTIST or the Apprentices placed at BACA or the Site 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 presence at BACA, the Site, or performance of Work hereunder.

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.

ARTICLE 16
GOVERNMENTAL IMMUNITY

Each party agrees to be fully responsible for the acts and omissions of its agents to the extent permitted by law. 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.

CITY is a political subdivision of the State of Florida and nothing contained in this Agreement is intended to serve as a waiver of sovereign immunity by CITY.

ARTICLE 17
PUBLIC ENTITY CRIMES ACT

Through execution of this Agreement and in accordance with Section 287.133, Florida Statutes, ARTIST certifies that it is not listed on the convicted vendors list maintained by the State of Florida, Department of General Services.

ARTICLE 18
INSURANCE

ARTIST shall maintain insurance in the amounts and subject to all conditions set forth in Exhibit 9 and provide. 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 additional insureds 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

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.

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.

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.

4. 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

1. Termination for Cause. Breach or default of any of the covenants, duties, or terms of this Agreement shall be cause for termination of this Agreement. 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.

2. Termination for Convenience of CITY. Upon thirty (30) calendar days written notice delivered by certified mail, return receipt requested, to ARTIST, CITY may without cause and without prejudice to any other right or remedy, terminate this Agreement for convenience whenever it determines that such termination is in the best interest of the CITY. If the Agreement is terminated for the CITY's convenience, the notice of termination to ARTIST shall state so and also define the extent of the termination. Upon receipt of such notice, ARTIST shall use commercially reasonable efforts to discontinue all services hereunder to the extent indicated on the notice of termination. CITY shall be responsible to pay ARTIST any monies to which ARTIST is entitled for the WORK satisfactorily completed through the date of termination. ARTIST acknowledges that ARTIST has received good, valuable and sufficient consideration from CITY, the receipt and adequacy of which are, hereby acknowledged by ARTIST, for CITY's right to terminate this Agreement for convenience and ARTIST hereby waives any and all rights to challenge the adequacy of such consideration or the validity of CITY's right to terminate for convenience.

ARTICLE 21
NO DISCRIMINATION AND AMERICAN WITH DISABILITIES ACT

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

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 further 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.

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 the 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

Failure to insist upon strict compliance with any terms, covenants or conditions 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 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.

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

ARTIST agrees that neither it nor its employees or Apprentices presently have or will acquire any interest, employment or contractual relationship, direct or indirect, that would conflict in any manner with their loyal and conscientious performance of the Work required hereunder.

ARTIST further agrees that during the term of this Agreement, unless compelled by court process, neither ARTIST nor any of its agents or Apprentices shall serve as an expert witness against CITY in any legal or administrative proceeding in which they are not a party or give sworn testimony or issue a report or writing as an expression of their expert opinion which is adverse or prejudicial to the interests of CITY in connection with any such pending or threatened legal or administrative proceeding. The limitations of this paragraph shall not preclude ARTIST or any person from in any way representing themselves, including giving expert testimony in support thereof, in any administrative or legal proceeding. ARTIST agrees that any written agreements ARTIST has with any person or entity performing under this Agreement shall contain substantively identical language to ensure that said persons or entities meet the obligations contained in this paragraph.

ARTICLE 29
MISCELLANEOUS TERMS AND CONDITIONS

1. In case there is conflict between the terms of the Scope of Services, the Design Proposal and this Agreement, the terms of this Agreement shall prevail.
2. ARTIST shall utilize the space at BACA exclusively for the activities described herein and not allow any part thereof to be used for any immoral or illegal purposes. ARTIST

shall not allow, suffer or permit BACA to be used for any purpose, business, activity, use or function to which the CITY objects, including gambling.

3. The mosaic murals designed, fabricated and installed by ARTIST hereunder shall be permanent Artwork created solely for the CITY. In addition, ARTIST understands and agrees that CITY has the right to de-access the Artwork five (5) years after Final Acceptance.

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.

5. CITY and ARTIST agree there are no third-party beneficiaries to this Agreement.

6. Truth-In-Negotiation Representation. ARTIST's compensation under this Agreement is based upon representations supplied to CITY by ARTIST. 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 such representation is untrue.

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**

1. Original Art. ARTIST warrants that the Artwork being commissioned is the original product of her own creative efforts, and, unless otherwise expressly stated herein, the Artwork is original and is a single edition.

2. Warranty of Quality. ARTIST warrants that the Artwork shall be free of defects in material and workmanship, including without limitation any defects consisting of "inherent vice" or qualities accelerating the deterioration of the Artwork, and that LEAD shall correct, at ARTIST's sole expense, any such defects which appear within a period of three (3) years from Final Acceptance of the Artwork. Further, ARTIST understands and agrees that the Artwork created hereunder shall be designed, fabricated and installed as a permanent piece to withstand the outdoor climate of South Florida for a minimum of twenty (20) years after Final Acceptance. However, CITY (not ARTIST) shall be solely responsible to bear all costs associated with the repair of any damage to the Artwork caused by vandalism after CITY's Final Acceptance.

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 the 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 commissioned Artwork. 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 the life of ARTIST plus fifty (50) years and shall be binding on ARTIST's successors, heirs and assigns.

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

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

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.

ARTICLE 32 **RIGHTS IN DOCUMENTS AND WORK**

1. 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 property of CITY. 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 property of the CITY and shall be delivered by ARTIST to the CITY's Contract Administrator within seven (7) days of termination or expiration of this Agreement.

2. The provisions of this Agreement shall control over the provisions of 17 U.S.C. § 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 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 that the provisions of this Agreement shall control and shall 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.

3. Artwork may become an integral part to the architecture of the applicable building, structure, or site, and installation and integration of the Artwork may subject the Artwork to future removal, destruction, or other modifications including, without limitation, in connection with the renovation, destruction, or redevelopment of the applicable building, structure, or site or change

of use. ARTIST consents to the incorporation of the Artwork into the building or structure or at the site, and waives any rights in the Artwork granted by 17 U.S.C. § 106A or any other applicable law.

4. 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.

5. 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 de-accession. Any lack of notice to ARTIST shall not impede CITY's ability to proceed with any modification, repair, or removal.

ARTICLE 33 **SURVIVAL**

The following provisions shall survive the expiration or earlier termination of this Agreement: Article 10.2, "Recordkeeping, Inspection and Audit Procedures"; Article 12, "Governing Law and Venue"; Article 15, "ARTIST's Indemnification of City"; Article 31, "Warranties and Standards"; Article 32, "Rights in Documents and Artwork"; and this Article 33, "Survival".

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.

Regardless of which party or party's counsel prepared the original draft and subsequent revisions of this Agreement, both CITY and ARTIST 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 shall not be more strictly 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.

“CITY”:

CITY OF POMPANO BEACH

DocuSigned by:
Rex Hardin
By: 502CB780EB3F480...

REX HARDIN, MAYOR

DocuSigned by:
Gregory P. Harrison
By: 7052A67F15A44C8...

GREGORY P. HARRISON, CITY MANAGER

Attest:

DocuSigned by:
Kervin Alfred
D1C913A8ED334CA...

KERVIN ALFRED, CITY CLERK

(SEAL)

Approved As To Form:

DocuSigned by:
Mark E. Berman
343B0B2C81D9424...

MARK E. BERMAN, CITY ATTORNEY



"ARTIST"

Witnesses:

[Signature]

Sophia Williams-Evey
Print Name

[Signature]

Vij Sennecca
Print Name

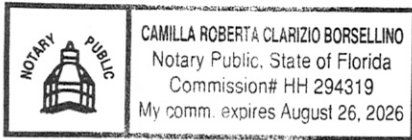
[Signature]

SONATA KAZIMIERAITIENE

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 31 day of OCTOBER, 2022, by **SONATA KAZIMIERAITIENE** who is personally known to me or who has produced IL DL (type of identification) as identification.

NOTARY'S SEAL:



Camilla Roberta Clarizio Borsellino
NOTARY PUBLIC, STATE OF FLORIDA

CAMILLA ROBERTA CLARIZIO BORSELLINO
Name of Acknowledger Typed, Printed or Stamped

HH 294319
Commission Number

Request for Qualifications: Mosaic Team 3

BUDGET: \$125,000.00

DEADLINE: May 6, 2022 1:59 AM EST

INTRODUCTION

The City of Pompano Beach, FL is looking to commission an artist for the design and fabrication for a work for hire mosaic mural project to be completed over one (1) year for the gateway into the Innovation District. The selected artist will be considered the Lead Artist and is required to select five (5) apprentices to teach and help in the process of fabrication and installation. The mosaic project will be located on the front and back of the overpass columns under Interstate 95 (I-95) over Dr. Martin L. King, Jr. Blvd. Necessary permits from the Florida Department of Transportation (FDOT) must be acquired by the Lead Artist.

Additional details on project requirements will be provided once the Lead Artist is chosen. The theme for the project is *Patterns of Pompano*. The designs should be representative of Pompano Beach and colorful and bright. There are 27 columns under the overpass. They measure 137.5 inches in diameter and are 12 feet tall. Paint can be incorporated into the design. If paint is incorporated, an anti-graffiti coating must be applied.

The Public Art Committee and the City must approve all designs before fabrication. Staff and the Public Art Committee must inspect and approve the project during the following phases of completion: 10%, 25%, 50%, and 90%.

The Call is open to all artists with experience in creating mosaic artwork who are residents of South Florida. Teaching experience is preferred, but not required. Selected artist should demonstrate expertise in knowledge of artistic excellence within the mosaic, tile making, and ceramic discipline. Selected artist is also required to have Specialty Insurance Coverage. Apprentices must be covered under the Lead Artist's insurance and are required to be covered up to one million dollars and indemnify the City of Pompano Beach. The City will also need to be additionally insured by the artist. A background check on the Lead Artist will be performed.

REQUIREMENTS FOR APPRENTICES

The Lead Artist must select five (5) apprentices that will assist the Lead Artist in the installation and fabrication of the mosaic murals. The selection of the apprentices will take place after the Lead Artist has been chosen and must be covered under the Lead Artist's General Liability Insurance. The City must approve the selected apprentices. The Lead Artist will teach the apprentices about the process of mosaics and tile/ceramic making. The Lead Artist is required to spend at least five (5) hours a week dedicated to working with the apprentices during the project. Apprentices will also be assisting the Lead Artist in the fabrication and installation of the projects. It is important to note that the Lead Artist will be in charge of the over-all design of the murals, scheduling, and development of the teaching program and payment schedule. Apprentices must meet these requirements:

- Apprentices must be 18 and over;
- All five (5) apprentices selected must be either students, residents, or work in Pompano Beach;
- Apprentices are required to assist the Lead Artist in the creation and installation of the mosaic murals;

- Apprentices should be enthusiastic about learning the mosaic and ceramic craft and should convey this enthusiasm during Lead Artist interviews for apprentices; and,
- Due to policies and procedures, apprentices will be subject to a background check.

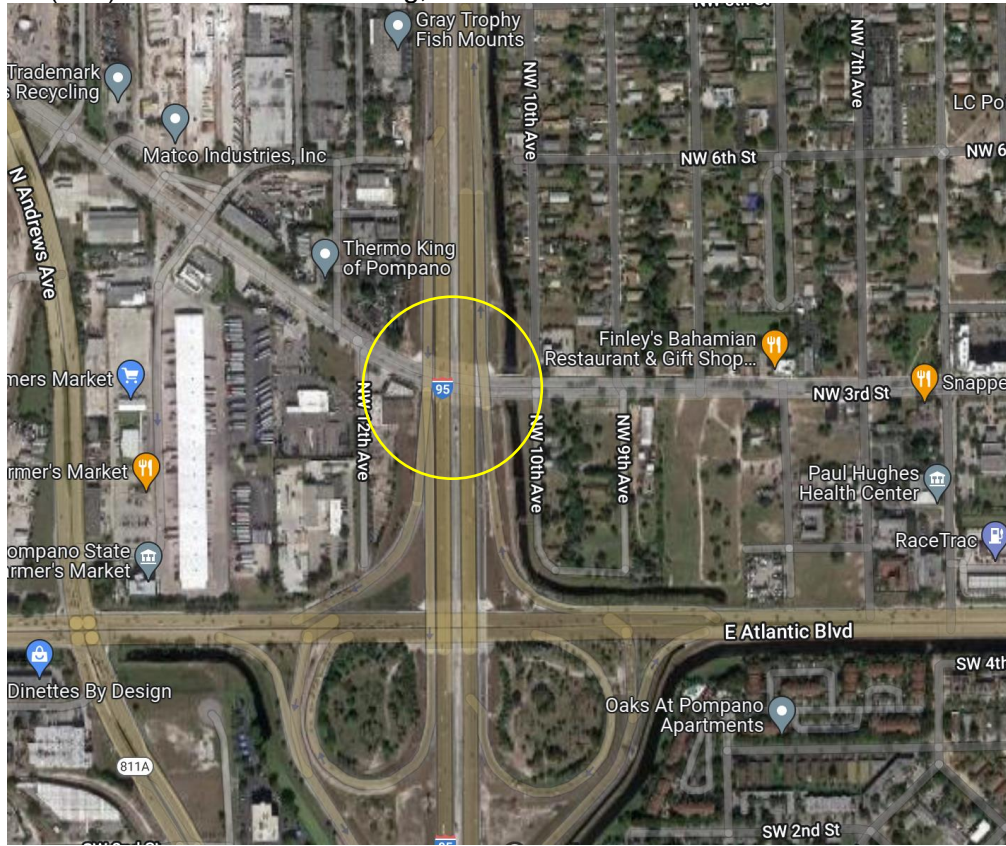
The apprentices must be paid by the Lead Artist a total budget for all five (5) apprentices of \$15,000.00.

MATERIALS

The Lead Artist is responsible for the purchasing of materials. The City will provide studio space at the Bailey Contemporary Arts Center for the Lead Artist and apprentices in which to work. The mosaic discipline includes a wide variety of materials, dimensions, shapes, and sizes. A range of materials includes ceramic mosaic, glass mosaic, cut granite, porcelain enamel, stainless steel, aluminum, faceted or laminated glass or any other material that is durable, maintenance free, impervious to elements and vandalism and is able to retain its form and color. These materials may be used individually or in combination with each other within a wider latitude of possibilities. Paint may also be used in combination with the mosaic materials. If paint is used, an anti-graffiti coating must be applied. All materials and fabrication techniques must meet the challenges of the climate, such as heat and rain. The finished mosaics must be flat on the surface with no sharp edges and all edges are to be sanded down. These mosaic murals will create a sense of continuity and connection. Small ceramic sculptures and objects are also allowed.

LOCATION

The mosaic project will be located on the front and back of the overpass columns under Interstate 95 (I-95) over Dr. Martin L. King, Jr. Blvd.





ARTWORK PURCHASE BUDGET

The purchase budget established for the project is \$125,000.00. The price will include all apprentice payments, supplies, insurance, permits, taxes and fees. Within the fee, the artist will

make recommendations to the City regarding permanent installation sites. A payment schedule will be provided to the Lead Artist once the Lead Artist has been selected.

SUBMITTAL REQUIREMENTS

All submissions should be submitted through CaFE. Submissions received after 1:59 am on May 6, 2022 will not be accepted. Submissions for this request for Qualifications must include:

- Resume (this should include experience you have in teaching and mosaic and ceramic work);
- Digital Images of portfolio / previous artwork (Maximum of 5 digital images which relate in material and/or general approach to this project); and
- Mosaic Approach Statement – limited to 1000 words describing general approach to the mosaic aspect of the project including possible design and overall themes; and,
- Teaching Approach Statement – limited to 1000 words describing the general approach to the teaching curriculum.

Three (3) artists will be shortlisted to create a more detailed proposal. The shortlisted artists will be paid a \$200.00 honorarium.

PROPOSAL SELECTION CRITERIA

The artist will be selected based on the following criteria:

- Experience in mosaics and teaching;
- Quality of past artwork;
- Teaching plan/curriculum; and,
- Proposed design.

ELIGIBILITY

The project is open to all professional teaching artists living or working in South Florida. Apprentices are required to be residents, students or work in Pompano Beach. While teaching experience is preferred, it is not required. Experience in kindred projects is required. Artists and apprentices are NOT eligible who are immediate family or business partners of members of the Public Art Committee or program staff.

INSURANCE

LICENSEE shall not commence services under the terms of this Agreement until certification or proof of insurance detailing terms and provisions has been received and approved in writing by the CITY's Risk Manager. If you are responding to a bid and have questions regarding the insurance requirements hereunder, please contact the City's Purchasing Department at (954) 786-4098. If the contract has already been awarded, please direct any queries and proof of the requisite insurance coverage to City staff responsible for oversight of the subject project/contract.

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

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

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

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

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

B. Liability Insurance.

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

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

Type of Insurance	Limits of Liability
GENERAL LIABILITY:	Minimum 1,000,000 Per Occurrence and \$2,000,000 Per Aggregate
* Policy to be written on a claims incurred basis	
XX comprehensive form	bodily injury and property damage
XX premises - operations	bodily injury and property damage
___ explosion & collapse hazard	
___ underground hazard	
XX products/completed operations hazard	bodily injury and property damage combined
XX contractual insurance	bodily injury and property damage combined
XX broad form property damage	bodily injury and property damage combined
XX independent LICENSEEs	personal injury
XX personal injury	
___ sexual abuse/molestation	Minimum \$1,000,000 Per Occurrence and Aggregate
___ liquor legal liability	Minimum \$1,000,000 Per Occurrence and Aggregate

AUTOMOBILE LIABILITY:	Minimum \$1,000,000 Per Occurrence and \$3,000,000 Per Aggregate. Bodily injury (each person) bodily injury

(each accident), property damage, bodily injury and property damage combined.

- XX comprehensive form
- XX owned
- XX hired
- XX non-owned

REAL & PERSONAL PROPERTY

___ comprehensive form Agent must show proof they have this coverage.

EXCESS LIABILITY

Per Occurrence Aggregate

___ other than umbrella	bodily injury and property damage combined	\$2,000,000	\$2,000,000
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PROFESSIONAL LIABILITY

Per Occurrence Aggregate

___ * Policy to be written on a claims made basis		\$1,000,000	\$1,000,000
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(3) If Professional Liability insurance is required, LICENSEE agrees the indemnification and hold harmless provisions set forth in the Agreement shall survive the termination or expiration of the Agreement for a period of three (3) years unless terminated sooner by the applicable statute of limitations.

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

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

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

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

F. Waiver of Subrogation. LICENSEE hereby waives any and all right of subrogation against the CITY, its officers, employees and agents for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, then LICENSEE shall notify the insurer and request

the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy which includes a condition to the policy not specifically prohibiting such an endorsement, or voids coverage should LICENSEE enter into such an agreement on a pre-loss basis.

ARTIST SELECTION PROCESS

The selection process is managed by the City of Pompano Beach. The Pompano Beach Public Art Committee will create a sub-committee that will serve as the selection committee and interview the Lead Artist and approve the apprentices. The subcommittee will recommend their selection to the City Commission. The City Commission will either approve or deny the subcommittee's selection. Final purchase approval is contingent upon inspection ensuring long-term conservation of the artwork.

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 for all questions and information.

The selected artist is required to give one talk or workshop concerning working as a public artist and the mosaic process after the completion of the project.

QUESTIONS

Contact: Laura Atria, Public Art Program Manager
Phone: 954-545-7800 ext. 3813
E-mail: Laura.Atria@copbfl.com

BACKGROUND ON POMPANO BEACH

Pompano Beach is a city located in Broward County along the southeast coast of the Atlantic Ocean, just north of Ft. Lauderdale. The nearby Hillsboro Inlet forms part of the Atlantic Intracoastal Waterway. In 2013, the City adopted the Pompano Beach Cultural Arts Master Plan (Note: it was updated in 2021). The plan supported cultural arts for the Public Beach Cultural Center, the Bailey Contemporary Arts Center, the Ali Cultural Arts Center and the Pompano Beach Amphitheater. The Cultural Arts Master Plan sets as an objective public art projects at all cultural facilities. The Public Art Master Plan proposes public art at a majority of facilities.

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, please refer to the Public Art Masterplan that is located at http://pompanobeachfl.gov/index.php/pages/public_art/public_art.

Sonata Kazimieraitiene
Delray Beach
Score: 2.8333

Aycock: Yes
Botscheller: Yes
Harmon: Yes
Johnson: Maybe
Jones: Yes
Miller: Yes

Teaching Approach:

My teaching approach, with regard to the creative process, is to accept every individual's unique and specific skills, talents, and abilities - the goal being to create an environment where each student will flourish and grow those qualities. A crucial element of this approach is to be receptive to the creative ideas and input of the group. I encourage open communication and the free exchange of opinions. In creating this welcoming environment, my experience is that students who feel safe and appreciated flourish to their full potential.

On the business side my leadership role allows me to teach time and project management skills, the value in working as a team, and the importance of material prep, resources acquisition, equipment arrangement tool and supplies management. All necessary components in a successful art (or any) business in the future.

Mosaic Approach Statement:

I find mosaic art as a perfect metaphor for life, where colors, shapes, patterns and textures create a whole which has value itself, but each element of the mosaic carries its own meaning. Life is a composition of unique precious moments as well. Mosaics offer combinations of various techniques producing unique visual effects. This technique allows for the intermingling of realistic and abstract images with playfulness and ease.

My goal is to develop a design that could, abstractly, represent the many ethnicities of the City of Pompano Beach. The abstract design would be drawn from and based upon the traditional colors and patterns used by the people of these different cultures. These abstract patterns would be complimented with more representational painted scenes of elements of nature.

Mixing mosaics together with brightly painted surfaces, will allow us to represent the colors and flavors of Pompano Beach through the collaboration of various artistic mediums.



Exhibit 1 Scope of Services

A. Introduction

A Call to Artists for a work-for-hire mosaic mural design, fabrication and installation project with a *Patterns of Pompano* theme to serve as the gateway into the Innovation District was posted March 31, 2022, with a deadline of May 6, 2022. Seven (7) artists submitted applications which were reviewed at the Public Art Committee (“PAC”) meeting held on June 6, 2022, wherein Sonata Kazimieraitiene was recommended as the selected artist.

The City of Pompano Beach is commissioning Sonata Kazimieraitiene (“ARTIST”) to design, fabricate and install mosaic murals (the “Artwork”) on the front and back of the 26 overpass columns under Interstate 95 over Dr. Martin L. King, Jr. Blvd (the “Site”) over a two (2) year term as part of the Mosaic Team Term 3 Apprentice Program (the “Project”).

ARTIST will submit her initial design sketch for the Project to the City’s Contract Administrator within 30 days after the City Commission approves the Agreement for Commissioned Artwork between the parties (the “Agreement”). ARTIST understands she is responsible to submit up to three (3) design sketches for the Project and that the Design Proposal is subject to approval by the PAC, City Commission, and Florida Department of Transportation (FDOT), in that order. The total budget for the Project is \$125,000.00 and the City retains copyright and ownership of the design sketch(es) and/or Design Proposal.

B. Objective

For at least five (5) hours a week, the ARTIST will teach the mosaic craft and tile/ceramic making to five (5) approved Apprentices by working alongside them as they participate in the fabrication and installation of the Design Proposal. to teach them the mosaic craft. ARTIST will design, fabricate and install a design proposed and approved Artwork by the Public Art Committee and City Commission at a later date (“the “ARTWORK”). Apprentices will work directly with the ARTIST. ARTIST and Apprentices will fabricate and install the approved Artwork at the Site.

C. Proposal

The Design Proposal for Term 3 shall set forth in detail the artistic expression, scope, design, color, size, material, texture and location of the Artwork and is subject to final approval by the PAC, City Commission and FDOT. The Design Proposal shall also include a statement that ARTIST has inspected the Site and determined that it is suitable for the ARTWOOK. The Design Proposal shall also include a schedule for completion of the Artwork.

Exhibit 1

Scope of Services

D. Summary Schedule

The Term of the Agreement is two (2) years with the City's option to extend it for up to one (1) year provided both parties agree in writing to said extension. A draft schedule for the Term is summarized below.

- Within 30 days from the effective date of the Agreement ARTIST shall provide the CITY's Contract Administrator her initial design sketch for review and recommendation by the PAC at their next scheduled monthly meeting
- Within 30 days from the PAC's review/determination of the initial design sketch, unless PAC approves it as the Design Proposal, ARTIST shall provide the CITY's Contract Administrator a revised or new second design sketch for review and recommendation by the PAC at their next scheduled monthly meeting.
- Within 30 days from the PAC's review/determination of the second design sketch, unless it is approved the PAC as the Design Proposal, ARTIST shall provide the CITY's Contract Administrator a revised or new third design sketch for review and recommendation by the PAC at their next scheduled monthly meeting.
- Within 30 days of the PAC's approval of a Design Proposal, the City's Contract Administrator shall schedule the Design Proposal for formal approval by the City Commission
- Within 30 days of the City Commission's approval of the Design Proposal, the City's Contract Administrator shall submit the Community Aesthetic Feature Agreement ("CAFA") attached as Exhibit 5 to FDOT for formal approval
- Within 30 days of FDOT's approval of the CAFA, ARTIST shall commence fabrication of the Artwork and thereafter install it at the Site, achieve Final Acceptance and complete all Work due under the Agreement within the time remaining under the two (2) year Term unless both parties agree in writing to extend it for another year.

E. Compensation

ARTIST agrees to design, fabricate, and install the Artwork at the Site and CITY agrees to pay ARTIST a maximum not-to-exceed total amount of One Hundred Twenty-Five Thousand Dollars (\$125,000.00) payable in seven (7) installments as set forth below except that the City's Contract Administrator shall not allow any work to begin for payments #3 through # 7 until after the City Commission and FDOT have issued their formal approval of the Design Proposal.

- Invoice #1 for \$5,000.00 payable within fifteen (15) business days after the Agreement is fully executed by both parties;
- Invoice #2 for \$5,000.00 payable within fifteen (15) business days of the PAC's recommendation of a selected design sketch to serve as the Design Proposal for the Project;
- Invoice #3 for \$22,760.00 payable within fifteen (15) business days after the Design

Exhibit 1 Scope of Services

Proposal has been approved by the City Commission and FDOT;

- Invoice #4 for \$22,760.00 payable when fabrication of Artwork is 50% complete;
- Invoice #5 for \$22,760.00 payable when fabrication of Artwork is 75% complete;
- Invoice #6 for \$22,760.00 payable when fabrication and Site prep is 100% complete;
- Invoice #7 for \$23,960.00 payable within fifteen (15) business days after City's Final Acceptance of Artwork installation at the Site, receipt of a proper invoice for the Work, and satisfactory completion of the Catalogue Form attached as Exhibit 6.

ARTIST shall promptly pay each Apprentice \$600.00 upon receipt of each payment for Invoices #3-#7 so that by completion of the Project each of the Apprentices shall receive a total of \$3,000.00 for a total of \$15,000.00 for all five (5) Apprentices.

F. Inspections by the City

The CITY's Contract Administrator shall inspect the fabrication and installation of the Artwork at the seven (7) Completion Phases described below to ensure compliance with the Design Proposal approved by the PAC, City Commission and FDOT.

- 1st Inspection – Artwork fabrication is 10% complete
- 2nd Inspection – Artwork fabrication is 25% complete
- 3rd Inspection – Artwork fabrication is 50% complete
- 4th Inspection – Artwork fabrication 75% complete
- 5th Inspection – Artwork fabrication 100% complete
- 6th Inspection – Artwork installation is 50% complete
- 7th 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.

G. Studio Space

The City will provide the ARTIST with studio space and use of a kiln at Bailey Contemporary Arts, 41 NE 1st St, Pompano Beach, FL 33060. The ARTIST must obey all rules stated under the Bailey Contemporary Arts Artist in Residence Program.

H. PROJECT SITE

The Artwork is to be installed on the front and back of the overpass columns under Interstate 95 (I-95) over Dr. Martin L. King, Jr. Boulevard as depicted below.

Exhibit 1 Scope of Services

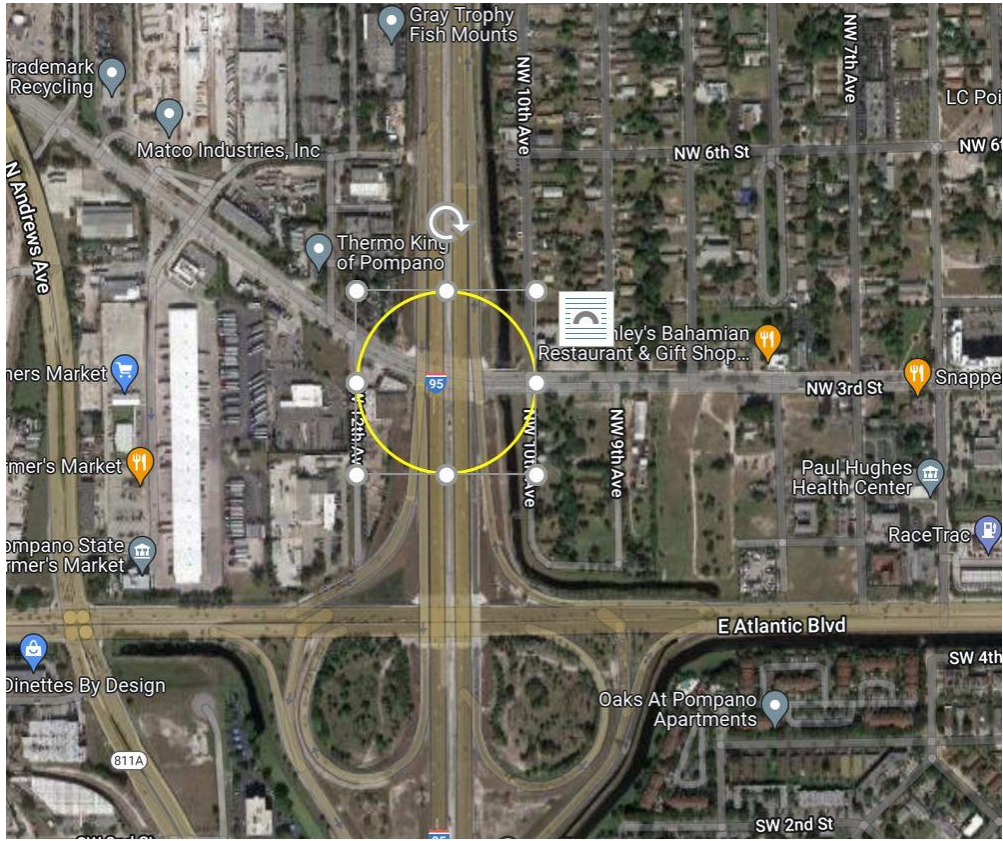


Exhibit 1 Scope of Services



Exhibit 1
Scope of Services



APPROVED *Thorpe*
By Danielle Thorpe at 8:34 am, Nov 08, 2022

WAIVER AND RELEASE

STATE OF FLORIDA
COUNTY OF PALM BEACH

ACTIVITY: Mosaic Team Project

BEFORE ME, this day, the undersigned authority, personally appeared SONATA KAZIMIERAITIENE who first being duly sworn deposes and says:

1. I, SONATA KAZIMIERAITIENE ("PARTICIPANT") am participating in Mosaic Team Project activity.

2. I, the undersigned, WAIVE, RELEASE, DISCHARGE AND COVENANT NOT TO SUE THE CITY OF POMPANO BEACH, its employees, Commissioners, officers and agents (hereinafter collectively "RELEASEE") for BODILY INJURY DEATH OR PROPERTY DAMAGE AND WAIVE ANY AND ALL CLAIMS that PARTICIPANT, his/her personal representatives, assigns, heirs and next of kin may have as a result of bodily injury, death, or property damage due to the negligence of RELEASEE.

3. The undersigned expressly ACKNOWLEDGES, UNDERSTANDS AND AGREES that the activities involved in the Mosaic Team Project may involve the risk of injury, death and/or property damage. Accordingly, the undersigned ACKNOWLEDGES that RELEASEE is not responsible for any injury, death or property damage sustained while participating in said activity. The undersigned COVENANTS NOT TO SUE RELEASEE and HEREBY RELEASES, WAIVES AND DISCHARGES RELEASEE from any and all liability to PARTICIPANT, his/her personal representatives, assigns, heirs and next of kin for any and all loss or damage, and any claims or demands therefore whether caused by the negligence of RELEASEE or otherwise while participating in the Mosaic Team Project.

4. In the event PARTICIPANT sustains physical injury while participating in the Mosaic Team Project, I hereby authorize and request that I receive emergency treatment from the City of Pompano Beach's attending physician or from any individual(s) licensed by the State of Florida as a Medical Service Unit as well as any hospital in the State of Florida.

5. The UNDERSIGNED further expressly agrees that the foregoing AGREEMENT, WAIVER AND RELEASE is intended to be as broad and inclusive as is permitted by the laws of Florida and Broward County and that if any portion thereof is held invalid, it is agreed that the balance shall notwithstanding continue in full legal force and effect.

6. THE UNDERSIGNED HAS READ AND VOLUNTARILY signs this AGREEMENT, WAIVER AND RELEASE and further agrees that no oral representatives, statements or inducements apart from the foregoing written agreement have been made."

[Signature] 10/31/2022
Signature Date

SONATA KAZIMIERAITIENE
Print Name

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 31 day of OCTOBER, 2022 by SONATA KAZIMIERAITIENE, who is personally known to me or who has produced IL DL (type of identification) as identification.

NOTARY'S SEAL:
 CAMILLA ROBERTA CLAZIO BORSSELLINO
Notary Public, State of Florida
Commission# HH 294319
My comm. expires August 26, 2026

Camilla Roberta Clarizio Borsellino
NOTARY PUBLIC, STATE OF FLORIDA
CAMILLA ROBERTA CLAZIO BORSSELLINO
(Name of Acknowledger Typed, Printed or Stamped)

EXHIBIT
2

COMMUNITY AESTHETIC FEATURE AGREEMENT

State Road/Local Road overpass columns under Interstate 95 (I-95) over Dr. Martin L. King, Jr. Blvd. Section No. _____ CAFA No. _____

This Community Aesthetic Feature Agreement ("Agreement") is entered into this _____ day of _____, between the State of Florida, Department of Transportation ("Department") and City of Pompano Beach ("Agency"). The Department and the Agency are sometimes referred to in this Agreement as a "Party" and collectively as the "Parties."

RECITALS

- A. The Agency has requested permission from the Department to install a [CHOOSE ONE: Public Art, Local Identification Marker] community aesthetic feature on that certain right-of-way owned by the Department which is located on State Road/Local Road the overpass columns under Interstate 95 (I-95) over Dr. Martin L. King, Jr. Blvd. at MP _____ in Broward County, Florida ("Project").
- B. The Department agrees that transportation facilities enhanced by community aesthetic features can benefit the public, result in positive economic development, and increase tourism both locally and throughout Florida.
- C. The Parties agree to the installation and maintenance of the Project, subject to the terms and conditions in this Agreement.

AGREEMENT

1. **TERM.** The term of this Agreement shall commence upon full execution of this Agreement ("Effective Date") and continue through 20 years, which is determined as the lifespan of the Project, unless terminated at an earlier date as provided in this Agreement. If the Agency does not complete the installation of the Project within one (1) year (365) days of the Effective Date of this Agreement, the Department may immediately terminate this Agreement. This Agreement may only be renewed for a term no longer than the original term of this Agreement upon a writing executed by both Parties to this Agreement.

2. **PROJECT DESCRIPTION.** The Project is a [CHOOSE ONE: Public Art, Local Identification Marker], as more fully described in the plans in Exhibit "A", attached and incorporated in this Agreement.

3. **FUNDING OF THE PROJECT.** The Agency has agreed by resolution to approve the Project and to fund all costs for the design, installation, and maintenance of the Project, and such resolution is attached and incorporated in this Agreement as Exhibit "D". The Department shall not be responsible for any costs associated with the Project. All improvements funded, constructed, and installed by the Agency shall remain the Agency's property. However, this permissive use of the Department's right-of-way where the Project is located does not vest any property right, title, or interest in or to the Agency for the Department's right-of-way.

4. **DESIGN AND CONSTRUCTION STANDARDS AND REQUIRED APPROVALS.**

- a. The Agency is responsible for the design, construction, and maintenance of the Project in accordance with all applicable federal, state and local statutes, rules and regulations, including the Department standards and specifications. A professional engineer, registered in Florida, shall provide the certification that all design and construction for the Project meets the minimum construction standards established by the Department and applicable Florida Building Code construction standards. The Agency shall submit all plans or related construction documents, cost estimates, project schedule, and applicable third party agreements to the Department for review and approval prior to installation of the Project. The Agency is responsible for the preparation of all design plans for the Project, suitable for reproduction on 11 inch by 17 inch sheets, together with a complete set of specifications covering all construction requirements for the Project. A copy of the design plans shall be provided to the Department's District Design Engineer, located at 3400 West Commercial Blvd. • Ft. Lauderdale. FL 33309. The Department will review the plans for conformance to the Department's requirements and feasibility. The Department review shall not be considered an adoption of the plans nor a substitution for the engineer's responsibility for the plans. By review of the plans, the Department signifies only that such plans and improvements satisfies the Department's requirements, and the Department expressly

disclaims all other representations and warranties in connection with the plans, including, but not limited to the integrity, suitability, or fitness for the intended purpose or whether the improvements are constructed in accordance with the plans. The Department's review of the plans does not relieve the Agency, its consultants or contractors of any professional or other liability for the plans. All changes required by the Department shall be made by the Agency and final corrected plans shall be provided to the Department within thirty (30) days.

- b. The Agency shall be responsible for locating all existing utilities, both aerial and underground, and for ensuring that all utility locations be accurately documented on the construction plans. All utility conflicts shall be fully resolved directly with the applicable utility. Section 337.403, Florida Statutes, shall determine whether the utility bears the costs of utility work. The Agency shall bear the costs of utility work not required to be borne by the utility by Section 337.403, Florida Statutes.
- c. The Agency shall be responsible for monitoring construction operations and the maintenance of traffic ("MOT") throughout the course of the Project in accordance with the latest edition of FDOT Standard Specifications, Section 102. The Agency is responsible for the development of a MOT plan and making any changes to that plan as necessary. The MOT plan shall be in accordance with the latest version of FDOT Design Standards, Index 600 series. Any MOT plan developed by the Agency that deviates from FDOT Design Standards must be signed and sealed by a professional engineer. MOT plans will require approval by the Department prior to implementation.
- d. The Agency is responsible for obtaining all permits that may be required by any federal, state, or local agency.
- e. Prior to commencing the Project, the Agency shall request a Notice to Proceed from the Department's Construction Project Manager, _____, at (____) ____ - ____ or from an appointed designee.
- f. The Agency is authorized, subject to the conditions in this Agreement, to enter Department's right-of-way to install the Project (see attached Exhibit "B" Special Provisions). The Parties agree that this Agreement creates a permissive use only. Neither the granting of permission to use Department's right-of-way nor the placing of facilities upon Department's right-of-way shall operate to create or vest any property right in or to the Agency. The Agency shall not acquire any right, title, interest, or estate in the Department's right-of-way, of any nature or kind whatsoever, by virtue of the execution, operation, effect, or performance of this Agreement including, but not limited to, the Agency's use, occupancy or possession of the Department's right-of-way.
- g. The Department shall have the right, but not the obligation, to perform independent assurance testing during the course of construction and throughout the maintenance term of the Project. If the Department determines that a condition exists which threatens the public's safety, the Department may, at its discretion, cause the Project to cease and/or immediately have any potential hazards removed from its right-of-way at the sole cost, expense, and effort of the Agency. Should the Agency fail to remove the safety hazard within thirty (30) days, the Department may remove the safety hazard at the Agency's sole cost, expense, and effort.
- h. The Agency shall be responsible to ensure that construction of the Project is performed in accordance with the approved construction documents, and that it will meet all applicable federal, state, and local standards and that the work is performed in accord with the Terms and Conditions contained in Exhibit "C".
- i. The Agency shall notify the Department a minimum of forty eight (48) hours before beginning the Project within the Department's right-of-way. The Agency shall notify the Department should installation be suspended for more than five (5) working days.
- j. Upon completion of the Project, the Agency shall notify the Department in writing of the completion of the installation of the Project. For all design work that originally required certification by a Professional Engineer, the notification shall contain a Responsible Professional's Certification of Compliance, signed and sealed by the responsible professional for the project, the form of which is attached to this

Agreement as Exhibit "E". The certification shall state that work has been completed in compliance with the Project construction plans and specifications. If any deviations are found from the approved plans, the certification shall include a list of all deviations along with an explanation that justifies the reason to accept each deviation. The Agency and its contractors shall remove their presence, including, but not limited to, all of the Agency or its contractor's/ subcontractor's/ consultant's/ subconsultant's property, machinery, and equipment from the Department's right-of-way and shall restore those portions of the Department's right-of-way disturbed or otherwise altered by the Project to substantially the same condition that existed immediately prior to the commencement of the Project, at Agency's sole cost and expense.

- k. If the Department determines that the Project is not completed in accordance with the provisions of this Agreement, the Department shall deliver written notification to the Agency. The Agency shall have thirty (30) days from the date of receipt of the Department's written notice to complete the Project and provide the Department with written notice of the same ("Notice of Completion"). If the Agency fails to timely deliver the Notice of Completion, or if it is determined that the Project is not properly completed after receipt of the Notice of Completion, the Department may: 1) provide the Agency with written authorization granting additional time as the Department deems appropriate to correct the deficiency(ies); or 2) correct the deficiency(ies) at the Agency's sole cost and expense, without Department liability to the Agency for any resulting loss or damage to property, including but not limited to machinery and equipment. If the Department elects to correct the deficiency(ies), the Department shall provide the Agency with an invoice for the costs incurred by the Department and the Agency shall pay the invoice within thirty (30) days of the date of the invoice.
- l. Upon completion of the Project, the Agency shall be responsible for the perpetual maintenance of the Project, including all costs. The maintenance schedule shall include initial defect, instantaneous damage and deterioration components. The initial defect maintenance inspection should be conducted, and any required repairs performed during the construction phase. The instantaneous damage maintenance inspection should be conducted sixty (60) to ninety (90) days after placement and is intended to identify short term damage that does not develop over longer time periods. The deterioration maintenance inspection shall be conducted on regular, longer term intervals and is intended to identify defects and damages that occur by naturally occurring chemical, physical or biological actions, repeated actions such as those causing fatigues, normal or severe environmental influences, abuse or damage due to other causes. Deterioration maintenance shall include, but is not limited to, the following services:
- The Agency shall be responsible for the maintenance of the artwork as described in Exhibit "A". All maintenance of the equipment will remain the responsibility of the maintaining agency and the respective owners and covered by a separate agreement between such owners and FDOT.
- m. The Agency shall, within thirty (30) days after expiration or termination of this Agreement, remove the Project and restore the right-of-way to its original condition prior to the Project. The Agency shall secure its obligation to remove the Project and restore the right-of-way by providing a removal and restoration deposit, letter of credit, or performance bond in the amount of \$ 0.00. The removal and restoration deposit, letter of credit, or bond shall be maintained by the Agency at all times during the term of this Agreement and evidence of the deposit, letter of credit, or bond shall be submitted to the Department on an annual basis. A waiver of the deposit, letter of credit, or bond requirement is permitted with approval from the District Maintenance Engineer for those installations with estimated restoration/removal costs less than or equal to \$2000.00.
- District Maintenance Engineer, _____ Date: _____.
- n. The Department reserves its right to cause the Agency to relocate or remove the Project, in the Department's sole discretion, and at the Agency's sole cost.

5. INDEMNITY AND INSURANCE.

- a. The Agency agrees to include the following indemnification in all contracts with contractors, subcontractors, consultants, and subconsultants, who perform work in connection with this Agreement:

"The contractor/ subcontractor/ consultant/ subconsultant shall indemnify, defend, save and hold harmless the State of Florida, Department of Transportation and all of its officers, agents or employees from all suits, actions, claims, demands, liability of any nature whatsoever arising out of, because of, or due to any negligent act or occurrence of omission or commission of the contractor/ subcontractor/ consultant/ subconsultant, its officers, agents or employees."

- b. The Agency shall carry or cause its contractor/ subcontractor/ consultant/ subconsultant to carry and keep in force during the period of this Agreement a general liability insurance policy or policies with a company or companies authorized to do business in Florida, affording public liability insurance with combined bodily injury limits of at least \$1,000,000 per person and \$5,000,000 each occurrence, and property damage insurance of at least \$100,000 each occurrence, for the services to be rendered in accordance with this Agreement. Additionally, the Agency or its contractor/ subcontractor/ consultant/subconsultant shall cause the Department to be an additional insured party on the policy or policies, and shall provide the Department with certificates documenting that the required insurance coverage is in place and effective. In addition to any other forms of insurance or bonds required under the terms of the Agreement, when it includes construction within the limits of a railroad right-of-way, the Agency must provide or cause its contractor to obtain the appropriate rail permits and provide insurance coverage in accordance with Section 7-13 of the Department's current Standard Specifications for Road and Bridge Construction, as amended.
- c. The Agency shall also carry or cause its contractor/ subcontractor/ consultant/ subconsultant to carry and keep in force Worker's Compensation insurance as required by the State of Florida under the Worker's Compensation Law.

6. NOTICES. All notices pertaining to this Agreement are in effect upon receipt by either Party, shall be in writing, and shall be transmitted either by personal hand delivery; United States Post Office, return receipt requested; or, overnight express mail delivery. E-mail and facsimile may be used if the notice is also transmitted by one of the preceding forms of delivery. The addresses set forth below for the respective parties shall be the places where notices shall be sent, unless prior written notice of change of address is given.

STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION
DISTRICT FOUR PROGRAM MANAGER

District Four Maintenance Engineer
3400 W. Commercial Blvd Ft. Lauderdale FL 33309

Phone: 954-486-1400

Fax: 954-777-4223

City of Pompano Beach COUNTY [OR CITY], FLORIDA

Laura Atria
50 W. Atlantic Blvd.

Pompano Beach, Florida 33060

Phone: 954-545-7800 ext. 3813

Fax:

7. TERMINATION OF AGREEMENT. The Department may terminate this Agreement upon no less than thirty (30) days notice in writing delivered by certified mail, return receipt requested, or in person with proof of delivery. The Agency waives any equitable claims or defenses in connection with termination of the Agreement by the Department pursuant to this Paragraph 7.

8. LEGAL REQUIREMENTS.

- a. This Agreement is executed and entered into in the State of Florida and will be construed, performed, and enforced in all respects in strict conformity with local, state, and federal laws, rules, and regulations. Any and all litigation arising under this Agreement shall be brought in a state court of appropriate jurisdiction in Leon County, Florida, applying Florida law.
- b. If any term or provision of the Agreement is found to be illegal or unenforceable, the remainder of the Agreement will remain in full force and effect and such term or provision will be deemed stricken.
- c. The Agency shall allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the Agency in conjunction with this Agreement. Failure by the Agency to grant such public access shall be grounds for immediate unilateral cancellation of this Agreement by the Department.
- d. The Agency and the Department agree that the Agency, its employees, contractors, subcontractors, consultants, and subconsultants are not agents of the Department as a result of this Agreement.
- e. The Agency shall not cause any liens or encumbrances to attach to any portion of the Department's right-of-way.

9. PUBLIC ENTITY CRIME. The Agency affirms that it is aware of the provisions of Section 287.133(2)(a), Florida Statutes. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of thirty six (36) months from the date of being placed on the convicted vendor list. The Agency agrees that it shall not violate Section 287.133(2)(a), Florida Statutes, and further acknowledges and agrees that any conviction during the term of this Agreement may result in the termination of this Agreement.

10. UNAUTHORIZED ALIENS. The Department will consider the employment of unauthorized aliens, by any contractor or subcontractor, as described by Section 274A(e) of the Immigration and Nationalization Act, cause for termination of this Agreement.

11. NON-DISCRIMINATION. The Agency will not discriminate against any employee employed in the performance of this Agreement, or against any applicant for employment because of age, ethnicity, race, religious belief, disability, national origin, or sex. The Agency shall provide a harassment-free workplace, with any allegation of harassment given priority attention and action by management. The Agency shall insert similar provisions in all contracts and subcontracts for services by this Agreement.

12. DISCRIMINATORY VENDOR LIST. The Agency affirms that it is aware of the provisions of Section 287.134(2)(a), Florida Statutes. An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity. The Agency further agrees

that it shall not violate Section 287.134(2)(a), Florida Statutes, and acknowledges and agrees that placement on the list during the term of this Agreement may result in the termination of this Agreement.

13. **ATTORNEY FEES.** Each Party shall bear its own attorney's fees and costs.

14. **TRAVEL.** There shall be no reimbursement for travel expenses under this Agreement.

15. **PRESERVATION OF REMEDIES.** No delay or omission to exercise any right, power, or remedy accruing to either Party upon breach or default by either Party under this Agreement, will impair any such right, power or remedy of either party; nor will such delay or omission be construed as a waiver of any breach or default or any similar breach or default.

16. **MODIFICATION.** This Agreement may not be modified unless done so in a writing executed by both Parties to this Agreement.

17. **NON-ASSIGNMENT.** The Agency may not assign, sublicense, or otherwise transfer its rights, duties, or obligations under this Agreement without the prior written consent of the Department. Any assignment, sublicense, or transfer occurring without the required prior written approval of the Department will be null and void. The Department will at all times be entitled to assign or transfer its rights, duties, or obligations under this Agreement to another governmental agency in the State of Florida, upon giving prior written notice to the Agency. In the event that the Department approves transfer of the Agency's obligations, the Agency remains responsible for all work performed and all expenses incurred in connection with this Agreement.

18. **BINDING AGREEMENT.** This Agreement is binding upon and inures to the benefit of the Parties and their respective successors and assigns. Nothing in this Agreement is intended to confer any rights, privileges, benefits, obligations, or remedies upon any other person or entity except as expressly provided for in this Agreement.

19. **INTERPRETATION.** No term or provision of this Agreement shall be interpreted for or against any party because that party or that party's legal representative drafted the provision.

20. **ENTIRE AGREEMENT.** This Agreement, together with the attached exhibits and documents made a part by reference, embodies the entire agreement of the Parties. There are no provisions, terms, conditions, or obligations other than those contained in this Agreement. This Agreement supersedes all previous communication, representation, or agreement, either verbal or written, between the Parties. No amendment will be effective unless reduced to writing and signed by an authorized officer of the Agency and the authorized officer of the Department or his/her delegate.

21. **DUPLICATE ORIGINALS.** This Agreement may be executed in duplicate originals.

The remainder of this page is intentionally left blank.

Section No. _____ CAFA No. _____

AGENCY

CITY OF POMPANO BEACH

By: _____

Print Name: REX HARDIN

Title: MAYOR

As approved by the Council, Board, or

Commission on: _____

Attest: _____

Legal Review:

City or County Attorney

DEPARTMENT

State of Florida, Department of Transportation

By: _____

Print Name: _____

Title: _____

Date: _____

Legal Review:

Section No. _____ CAFA No. _____

EXHIBIT "A"

PROJECT DESCRIPTION

I. SCOPE OF SERVICES

[Provide a description of the improvements proposed within the Department's right-of-way]

II. PROJECT PLANS

The Agency is authorized to install the Project in accordance with the attached plans prepared by _____, P.E./R.L.A./Architect and dated _____. Any revisions to these plans must be approved by the Department in writing.

Section No. _____ CAFA No. _____

EXHIBIT "B"

SPECIAL PROVISIONS

Section No. _____ CAFA No. _____

EXHIBIT "C"

TERMS AND CONDITIONS FOR INSTALLATION OF THE PROJECT

Section No. _____ CAFA No. _____

EXHIBIT "D"

AGENCY RESOLUTION

Section No. _____ CAFA No. _____

EXHIBIT "E"

NOTICE OF COMPLETION AND RESPONSIBLE PROFESSIONAL'S
CERTIFICATE OF COMPLIANCE

NOTICE OF COMPLETION

COMMUNITY AESTHETIC FEATURE AGREEMENT
Between
THE STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION
and _____

PROJECT DESCRIPTION: _____

In accordance with the Terms and Conditions of the Community Aesthetic Feature Agreement, the undersigned provides notification that the work authorized by this Agreement is complete as of _____, 20_____.

By: _____

Name: _____

Title: _____

RESPONSIBLE PROFESSIONAL'S CERTIFICATION OF COMPLIANCE

In accordance with the Terms and Conditions of the Community Aesthetic Feature Agreement, the undersigned certifies that all work which originally required certification by a Professional Engineer has been completed in compliance with the Project construction plans and specifications. If any deviations have been made from the approved plans, a list of all deviations, along with an explanation that justifies the reason to accept each deviation, will be attached to this Certification. Also, with submittal of this certification, the Agency shall furnish the Department a set of "as-built" plans certified by the Engineer of Record.

By: _____

SEAL:

Name: _____

Date: _____

THE CITY OF POMPANO BEACH PUBLIC ART CATALOGUING FORM

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

I. Artist Information

A. 1. Name:

2. Name you want to use to label and PR materials, if differs from above:

B. Date of Birth:

C. Place of Birth:

D. Address, e-mail, web-site:

E. Phone:

F. One paragraph biography of artist:

II. Work of Art

A. Title:

B. Description of materials:

C. Dimensions in inches:

D. Inscription marks:

E. Artwork with electronic components used:

-Name of item:

-Manufacturer info (address, telephone, e-mail):

-Supplier info (address, telephone, e-mail):

G. Artist's statement:

III. Fabrication Information

A. Material(s) used in Artwork:

B. Material Finish:

C. Material Suppliers:

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

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

F. Fabrication method (attach diagrams or drawings):

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

IV. Installation

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

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

C. Date of Installation:

V. External Factors

A. Describe physical positioning of the artwork:

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

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

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

A. Short-term:

B. Long-term:

C. Note desired appearance of the artwork:

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

VIII. Documentation

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

COPYRIGHT ASSIGNMENT OF ARTWORK TO THE CITY OF POMPANO BEACH

This Copyright Assignment (the "Assignment") is made and effective as of October 31, 2022 ("Effective Date") pursuant to a Service Contract for Artwork dated January 26, 2023 (the "Agreement") between Sonata Kazieraitiene ("Artist") and the City of Pompano Beach, a Florida municipal corporation ("City"), concerning the Public Art project described below.

RECITALS

WHEREAS, the City commissioned an Artist to design, fabricate and install abstract mosaic murals (the "Artwork") on the front and back of the 27 overpass columns under Interstate 95 over Dr. Martin Luther King Jr. Boulevard, Pompano Beach, FL 33060 (the "Site") as depicted in the Design Proposal attached hereto and made a part hereof as Exhibit A (the "Artwork"); and

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

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

1. Assignment of the Artwork

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

2. Consideration

As consideration for assignment of the Artwork and Artist's representation and warranties in this Assignment, City has promised to pay Artist a total fixed fee of One Hundred Twenty-Five Thousand Dollars (\$125,000.00) payable after the work has been verified and completed.

3. Artist's Representations, Warranties and Waiver

Artist hereby represents and warrants to City that:

- (a) Artist is the sole owner of all right, title, and interest in and to the Artwork;

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

modification by reason of its integration onto the City's display. Notwithstanding the foregoing, Artist does hereby consent to incorporation of the Artwork onto the City's display and waives any rights in the Artwork granted by 17 U.S.C. Section 106A (a), Visual Artists Rights Act of 1990.

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

4. Documentation

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

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

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

5. No Further Use of Artwork

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

6. Successors and Assigns

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

7. Notice

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

If to City:

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

With a copy to:

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

If to the Artist:

Sonata Kazimieraitiene
14364 Canalview Drive, Unit A
Delray Beach, Florida 33484
sonataka2000@yahoo.com
manotiles@gmail.com

8. Severability

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

9. Entire Assignment

This Assignment, together with Exhibit 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. Headings

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

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

"ARTIST":

Witnesses:

[Signature]
Sonia Williams-Ivey
Print Name

[Signature]
SONATA KAZIMIERAITIENE

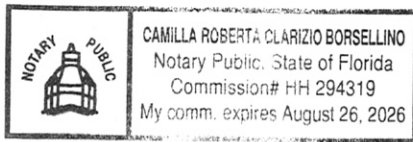
[Signature]
Ny SenneCA
Print Name

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me, by means of physical presence or online notarization, on this 31 day of OCTOBER, 2022, by **SONATA KAZIMIERAITIENE**, who is personally known to me or who has produced IL DL (type of identification) as identification.

NOTARY'S SEAL:



Camilla Roberta Clarizio Borsellino
NOTARY PUBLIC, STATE OF FLORIDA

CAMILLA ROBERTA CLARIZIO BORSELLINO
Name of Acknowledger Typed, Printed or Stamped

HH 294319
Commission Number

**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



Important Information

Here are your Policy Identification Cards
We've provided two (2) cards for each vehicle on your policy.

Need additional ID cards?

The GEICO Mobile app is the quickest way to get additional ID cards. You can also send a copy of your ID cards to anyone that needs them right from the app!

If your address changes, update it using the app or log in to geico.com. By keeping your information up-to-date, you'll continue to receive important policy documents.

INDRE ROKE
4374 LEGACY CT
DELRAY BEACH FL 33445

APPROVED *Thorpe*
By Danielle Thorpe at 8:14 am, Nov 08, 2022

Cut Along the Dotted Line

Cut Along the Dotted Line

Florida Automobile Insurance Identification Card

GEICO GEICO CASUALTY COMPANY

Policy Number / Florida Code No. 6098-44-48-77/ 01026
Effective Date 09/03/22

Personal Injury Protection Benefits/Property Damage Liability
 Bodily Injury Liability

Named Insured(s) Indre Roke

2017 TOYOTA SIENNA
Vehicle ID No. 5TDYZ3DC3HS872793

Not valid more than one year from the effective date
FOLD HERE FOLD HERE FOLD HERE FOLD HERE FOLD HERE FOLD HERE

2017 TOYOTA SIENNA

Additional Drivers
Sonata Kazimieraitiene

Florida Automobile Insurance Identification Card

GEICO GEICO CASUALTY COMPANY

Policy Number / Florida Code No. 6098-44-48-77/ 01026
Effective Date 09/03/22

Personal Injury Protection Benefits/Property Damage Liability
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2017 TOYOTA SIENNA

Additional Drivers
Sonata Kazimieraitiene



Need another form of proof of insurance?

You may need the Insurance Binder for most finance companies, dealerships or vehicle registrations.

Scan this code to get another form of proof of insurance immediately!



Cut Along the Dotted Line

2017 TOYOTA SIENNA



Coverage, including collision, may extend to rental vehicles that qualify as temporary substitutes or non-owned autos in your policy. Misrepresentation of insurance is a first degree misdemeanor.

FOLD HERE FOLD HERE FOLD HERE FOLD HERE FOLD HERE FOLD HERE

If you're in an accident:

- Stay at the scene and find a safe area.
- Do not admit fault or disclose your coverage limits.
- Call the police, and gather driver and vehicle information.
- Find any witnesses and get their contact information.

To report a claim

Go to geico.com/claims, use the GEICO Mobile app or call 1-800-841-3000.

U4FL (06-20)

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If your address changes, update it using the app or log in to geico.com. By keeping your information up-to-date, you'll continue to receive important policy documents.

INDRE ROKE
4374 LEGACY CT
DELRAY BEACH FL 33445

APPROVED *Thorpe*
By Danielle Thorpe at 8:14 am, Nov 08, 2022

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Vehicle ID No. 5TDYZ3DC3HS872793

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Additional Drivers
Sonata Kazimieraitiene



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U4FL (06-20)

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U4FL (06-20)



Sonata Kazimieraitiene
14364 Canalvien Dr. Unit A
Delray Beach, FL 33484

APPROVED

Thorpe

By Danielle Thorpe at 8:32 am, Nov 08, 2022

Dear Sonata Kazimieraitiene,

You have elected not to purchase Workers' Compensation insurance. The State of Florida allows you 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/SUBCONTRACTORS MUST AGREE TO BE RESPONSIBLE FOR THE EMPLOYMENT, CONTROL AND CONDUCT OF THEIR EMPLOYEES/SUBCONTRACTORS AND FOR ANY INJURY SUSTAINED BY SUCH EMPLOYEES/SUBCONTRACTORS IN THE COURSE OF THEIR EMPLOYMENT/CONTRACT.**

Please sign the area below acknowledging your compliance with the above requirements. Return this original letter to me at ATTN: Laura Atria 50 West Atlantic Blvd, Pompano Beach, 33060. If you have any questions about this letter please telephone me at 954-545-7800 ext. 3813.

Very truly yours,

Laura Atria
Public Art Program Manager

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

M. Kazimieraitiene
Signature

10/31/2022
Date

SONATA KAZIMIERAITIENE ARTIST
Name and Title (print)