

City of Pompano Beach

**AGREEMENT
FOR COMMISSIONED ARTWORK**

with

DONALD GIALANELLA

TABLE OF CONTENTS

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

TABLE OF CONTENTS, cont.

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

INDEX OF EXHIBITS

Exhibit 1	A Call To Artists
Exhibit 2	Proposed Design and Materials List
Exhibit 3	Background Check Policy
Exhibit 4	Copyright Assignment
Exhibit 5	Catalogue Form
Exhibit 6	Insurance Requirements

AGREEMENT

THIS AGREEMENT, entered into this ____ day of _____, 2019, 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

DONALD GIALANELLA, an independent contractor whose address is 910 Southern Pine Court NE, St. Petersburg, FL 33703 (hereinafter "ARTIST").

WHEREAS, on July 2, 2018, the CITY issued a Call To Artists, a copy of which is attached hereto and made a part hereof as Exhibit 1, which sought to commission an artist to design, fabricate and install a sculpture for display on land and ultimately submersion in the ocean for attachment to the Lady Luck in Shipwreck Park (the "Project"); and

WHEREAS, 98 artists submitted responses to the foregoing Call To Artists which the CITY's Public Art Committee reviewed on August 16, 2018; and

WHEREAS, at its meeting on August 16, 2018, the CITY's Public Art Committee selected Donald Gialanella to design, fabricate and install the sculpture for the Project (the "Artwork") further described in his Proposed Design and Materials List attached hereto and made a part hereof as Exhibit 2 (the "Scope of Services"); and

WHEREAS, in accordance with the terms and conditions set forth herein, Donald Gialanella is able and prepared to provide the services and insurance described in the Call To Artists, the Scope of Services and this Agreement (the "Work"); and

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

WHEREAS, the City Commission 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.

ARTICLE 1 REPRESENTATIONS

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

1. This Agreement is a valid, binding and permissible activity within the power and authority of the CITY and does not violate any CITY Code, Charter provision, rule, resolution, ordinance, policy or agreement of the CITY or constitute a default of any agreement or contract to which the CITY is a party.

2. The individuals executing the Agreement on behalf of the CITY are duly authorized to take such action, which action shall be, and is, binding upon the CITY.

3. ARTIST shall be entitled to rely upon the accuracy and completeness of any information or reports supplied by CITY or by others authorized by the CITY'S Public Art Program Manager.

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

1. ARTIST'S execution, delivery, consummation and performance under this Agreement will not violate or cause ARTIST to be in default of any covenants, rules and regulations (as applicable) or any other agreement to which ARTIST is a party or constitute a default thereunder or cause acceleration of any obligation of ARTIST thereunder.

2. The individual executing this Agreement and related documents on behalf of ARTIST is duly authorized to take such action which action shall be, and is, binding on ARTIST.

3. There are no legal actions, suits or proceedings pending or threatened against or affecting ARTIST that ARTIST is aware of which would have any material effect on ARTIST'S ability to perform its obligations under this Agreement.

4. ARTIST represents it has the ability, skill and resources to complete its responsibilities under this Agreement and that the Artwork shall be designed and fabricated to withstand the outdoor climate of South Florida for a minimum of one (1) year and permanent submersion in the Atlantic Ocean off Pompano Beach without maintenance. ARTIST further represents that the Lady Luck will be a suitable site for permanent submersion.

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

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

7. 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 Work 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 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. ARTIST agrees to design and fabricate the Artwork in accordance with the provisions of the Call to Artists, the Scope of Services and this Agreement.

ARTICLE 3
CONTRACT ADMINISTRATOR

The CITY's Public Art Program Manager or his/her written designee shall serve as the CITY's Contract Administrator during the performance of services under this Agreement.

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

ARTICLE 4
RESPONSIBILITIES OF ARTIST

1. ARTIST shall perform all services and furnish all supplies, personnel, materials and equipment for the design, execution, and fabrication of the Artwork; pay all necessary taxes, insurance, and consultants; purchase all supplies, materials, tools, equipment, lighting requirements and all other items incidental to designing and fabricating the Artwork.

2. 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 written acceptance of the Artwork after Artist installs it (i) at the land location ("Temporary Acceptance") and (ii) onto the Lady Luck after submersion ("Final Acceptance").

3. 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.

4. Before commencing any Work hereunder, ARTIST and any and all of ARTIST's subcontractors or other agents shall have complied with the background check procedures of Article 10 herein, a copy of the form for which is attached hereto and made a part hereof as Exhibit 3.

5. Upon the CITY's Temporary Acceptance of the Artwork, ARTIST shall provide CITY a fully-executed original Copyright Assignment of Artwork and a Catalogue Form, copies

of the forms for which are respectively attached hereto and made a part hereof as Exhibit 4 and 5.

6. 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 his 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 the Work under this Agreement.

7. 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.

8. Within two weeks of the full execution of this Agreement, ARTIST shall inspect the land location and the Lady Luck (collectively the "Site") to verify that the existing conditions, dimensions, and substrates will support installation of the Artwork. Within fourteen (14) calendar days of the inspections, ARTIST shall notify the CITY's Contract Administrator in writing of any Site condition that would render it unsuitable for installation of the Artwork.

9. ARTIST shall complete the fabrication, transportation, and installation of the Artwork in conformity with the Design Proposal described in the Scope of Services which has been approved by both the CITY's Public Art Committee and the City Commission as ARTIST is solely responsible for Artwork storage pending delivery to the Site(s).

10. After fabrication of the Artwork is completed and ARTIST has received any applicable permits, other jurisdictional approval(s), and written approval from the CITY's Contract Administrator, ARTIST shall deliver the Artwork to the Site(s). ARTIST shall coordinate access to the Site(s) for Artwork delivery with the CITY's Contract Administrator.

11. To the extent applicable, ARTIST shall cooperate with CITY's Contract Administrator or other agents as well as any third parties at the Site(s) to oversee installation of the Artwork. ARTIST agrees that the CITY's Contract Administrator shall have the authority to resolve any scheduling conflicts between the CITY and ARTIST and such resolution shall be binding on the parties.

12. ARTIST shall have an ongoing obligation to report in writing any discrepancy or defect at the Site(s) 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 of the Artwork until written notice from the CITY's Contract Administrator that installation should resume. ARTIST's failure to timely report any apparent discrepancy or defect in writing to the CITY shall waive any related objection ARTIST has to the installation and ARTIST shall be solely responsible for any expenses associated with remedying any discrepancy or defect that hinders or impairs installation or damages the Artwork.

13. 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 on the Site, keep the premises free from waste materials and rubbish. At the completion of the Artwork, ARTIST shall, at his sole expense, remove any waste materials, rubbish, tools,

equipment, machinery, and surplus materials from the Site(s) attributable to ARTIST or the Artwork. The CITY's Contract Administrator may withhold final compensation until receipt of any necessary clean-up payment from ARTIST, deduct the clean-up charge from final payment to ARTIST, or charge the applicable cost of the cleanup to ARTIST.

14. Title to the Artwork passes to CITY upon the CITY's Contract Administrator's Final Acceptance of same. Upon transfer of title, CITY shall be responsible for any and all subsequent damage to the Artwork except damage caused by ARTIST or any subcontractors or other agents of 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 his 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

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.

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.** This Agreement shall be for no more than a two (2) year term commencing two weeks after this Agreement is fully executed by both parties and ending upon the CITY's Final Acceptance, 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. Renegotiation shall commence at least sixty (60) days prior to normal termination.

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 of the Work.

4. **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.

5. **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 that he shall fabricate and install the Artwork in accordance with the specifications set forth in the Call to Artists and Scope of Services.

Major modification shall mean more than a 25% overall change from the Design Proposal set forth in the Scope of Services and is prohibited without the formal written approval of the CITY's Public Art Committee and its City Commission. 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 both the CITY's Public Art Committee and its City Commission.

Minor modifications may be submitted and approved by the CITY's Contract Administrator only when necessary to facilitate the Work. ARTIST understands and agrees that 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 the fabrication and installation of each Artwork at the five (5) intervals described below to ensure compliance with the Design Proposal set forth in the Scope of Services.

- 1st Inspection - 10% completion (beginning phases of Artwork fabrication)
- 2nd Inspection - 25% completion (Artwork fabrication is 25% complete)
- 3rd Inspection - 50% completion (Artwork is completed and ready for installation)
- 4th Inspection - 75% completion (Artwork installed at land location)
- 5th Inspection - 100% completion (Artwork installed on Lady Luck)

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

A. 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 Artwork in accordance with the Call to Artists, Scope of Services and this Agreement and CITY agrees to pay ARTIST a maximum not-to-exceed total amount of Thirty Five Thousand Dollars (\$ 35,000.00) payable in five (5) installments as follows:

- (1) \$4,000.00 within two weeks after the City Commission approves this Agreement;
- (2) \$5,500.00 when the fabrication of the Artwork is 50% complete;
- (3) \$8,000.00 within 10 business days of the CITY's Temporary Acceptance;
- (4) \$7,500.00 when the ARTIST begins coordination with the CITY's Contract Administrator and Shipwreck Park for the relocation, sinking and attachment of the Artwork to the Lady Luck; and
- (5) \$10,000.00 within 10 business days of the CITY's Final Acceptance.

1. 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.

2. Notwithstanding any provision of this Agreement to the contrary, CITY may withhold, in whole or in part, payment to the extent necessary to protect itself from loss on account of inadequate, defective or otherwise unacceptable Artwork that has not been remedied or from loss due to fraud or reasonable evidence indicating fraud by the ARTIST. When the above 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.

3. CITY shall pay ARTIST within thirty (30) calendar days of receipt of ARTIST's 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 based on ARTIST's failure to comply with any term, condition, or requirement of this Agreement. The parties hereto agree that any amounts so withheld shall not be subject to payment of any interest by CITY.

4. 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 hereunder based on ARTIST's failure to comply with any term, condition, or requirement of this Agreement. The parties hereto agree that any amounts so withheld shall not be subject to payment of any interest by CITY.

B. 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.

C. Background Check Procedures. ARTIST and any of his subcontractors hereunder shall comply with the CITY'S Background Screening Policy as set forth in Exhibit 6. At least one week prior to ARTIST or any of his subcontractors 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 his subcontractors to provide services under this Agreement based upon the grounds for disqualification set forth in the CITY's Background Screening Policy.

D. 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:

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

2. Upon request from the CITY'S custodian of public records, provide the CITY with a copy of requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law.

3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement's term and following completion of the Agreement if the ARTIST does not transfer the records to the CITY.

4. Upon completion of the Agreement, transfer, at no cost to the CITY, all public records in possession of the ARTIST, or keep and maintain public records required by the CITY to perform the service. If the ARTIST transfers all public records to the CITY upon completion of the Agreement, the ARTIST shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the ARTIST keeps and maintains public records upon completion of the Agreement, the ARTIST shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CITY, upon request from the CITY'S custodian of public records in a format that is compatible with the information technology systems of the CITY.

Failure of the ARTIST to provide the above described public records to the CITY within a reasonable time may subject ARTIST to penalties under 119.10, Florida Statutes, as amended.

PUBLIC RECORDS CUSTODIAN
IF THE ARTIST HAS QUESTIONS
REGARDING THE APPLICATION OF
CHAPTER 119, FLORIDA STATUTES, TO
THE ARTIST'S DUTY TO PROVIDE PUBLIC
RECORDS RELATING TO THIS
AGREEMENT, CONTACT THE CUSTODIAN
OF PUBLIC RECORDS AT:

CITY CLERK
100 W. Atlantic Blvd., Suite 253
Pompano Beach, Florida 33060
(954) 786-4611
RecordsCustodian@copbfl.com

ARTICLE 11
NOTICES AND DEMANDS

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

For CITY

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

With a copy to:

Laura Atria, Public Art Program Manager
50 West Atlantic Boulevard
Pompano Beach, Florida 33060
laura.atria@copbfl.com
(954) 545-7800, ext. 3813 office
(954) 786-4666 fax

For ARTIST

Donald Gialanella
910 Southern Pine Dr. NE
St. Petersburg, Florida 33703
livesteel@gmail.com
(607) 547-1071 phone

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 nor any person or entity engaging in any Work hereunder shall be deemed an employee or agent of CITY nor shall they represent themselves to others as an employee or agent of CITY. Should any person indicate by written or verbal communication that they believe ARTIST or any his agents, employees or subcontractors are employees or agents of the CITY, ARTIST shall use its best efforts to correct said mistaken belief both verbally and in writing.

ARTIST, its employees, subcontractors or any other agents of ARTIST providing services hereunder shall be deemed independent contractors for all purposes and shall not in any manner be deemed employees of the CITY. As such, any contractors, sub-contractors or other agents of ARTIST providing services hereunder 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 placed at the Site(s) 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 the Site(s) or the 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 6. ARTIST shall not commence operations under this Agreement until certification or proof of insurance detailing terms and provisions of coverage has been received and approved by the CITY'S Risk Manager. In addition, the CITY shall be named as an additional insured on the Certificate of Insurance.

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 .

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 written 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 in his/her written decision, it shall be lawful for either party to terminate this Agreement in addition to any other remedies provided by law.

ARTICLE 20 TERMINATION

A. 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.

B. 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

A. 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.

B. 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.

C. 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 represents it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with its performance hereunder. ARTIST further represents no person having any interest shall be employed or engaged by it for said performance.

ARTICLE 29
MISCELLANEOUS TERMS AND CONDITIONS

1. In case there is conflict between the terms of the Call To Artists, the Scope of Services and this Agreement, the terms of this Agreement shall prevail.

2. The sculpture designed, fabricated and installed by ARTIST hereunder shall be permanent Artwork created solely for the CITY. Pursuant to the Copyright Assignment attached as Exhibit 4, CITY has exclusive property rights to the Artwork created hereunder. In addition, ARTIST understands and agrees that CITY has the right to de-access the Artwork five (5) years after CITY accepts same as 100% complete at Final Acceptance.

4. ARTIST understands and agrees that the Artwork it creates hereunder shall be fabricated and installed to withstand the outdoor climate of South Florida for a minimum of one (1) year after CITY's Temporary Acceptance of same. Further, ARTIST understands and agrees that CITY is entitled to rely upon the foregoing durability provision such that if any part(s) of the Artwork substantially deteriorates or is otherwise found to be defective, as determined solely by the CITY's Contract Administrator, ARTIST shall be responsible to repair or replace same at ARTIST's sole cost. However, CITY (not ARTIST) shall be solely responsible to bear all costs

associated with the repair of any damage to the Artwork caused by vandalism after CITY's Temporary or Final Acceptance.

5. 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 that there are no third party beneficiaries to this Agreement.

6. Conflicts. ARTIST agrees that neither it nor its employees will have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with ARTIST's loyal and conscientious exercise of the judgment and care required to perform under this Agreement. ARTIST further agrees that during the term of this Agreement, neither ARTIST nor any of its agents providing services hereunder shall serve as an expert witness against CITY in any legal or administrative proceeding in which he, she, or ARTIST is not a party, unless compelled by court process. Further, such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of CITY in connection with any such pending or threatened legal or administrative proceeding unless compelled by court process. The limitations of this section 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.

7. Joint Preparation. This Agreement has been jointly prepared by the parties hereto and shall not be construed more strictly against either party.

8. 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.

10. 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 by either party.

11. 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.

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 ARTIST shall correct, at ARTIST's sole expense, any such defects which appear while the Artwork is installed at the land location. However, ARTIST shall not be responsible to correct any defects that arise after the CITY's Final Acceptance of the Artwork once it attached to the Lady Luck upon submersion in the Atlantic Ocean.

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 ARTWORK

1. 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.

2. 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.

3. 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.

4. CITY shall make a reasonable effort to notify ARTIST of any proposed action that will remove, destroy, or otherwise modify the Artwork by providing notice to ARTIST in accordance with the "Notices" section of this Agreement, including, if applicable, notice of any planned Deaccession. Any lack of notice to ARTIST shall not impede CITY's ability to proceed with any modification, repair, or removal.

ARTICLE 33 SURVIVAL

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

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 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.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

"CITY":

Witnesses:

CITY OF POMPANO BEACH

By: _____
REX HARDIN, MAYOR

By: _____
GREG HARRISON, CITY MANAGER

Attest:

ASCELETA HAMMOND, CITY CLERK

(SEAL)

Approved As To Form:

MARK E. BERMAN, CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF PINELLAS COUNTY

The foregoing instruments were acknowledged before me this _____ day of _____, 2019, by REX HARDIN as Mayor, GREG HARRISON as City Manager and ASCELETA HAMMOND as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who are personally known to me.

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

"ARTIST"

Witnesses:

Diana R.

Diana Rivera

Print Name

[Signature]

Theodora Traychev

Print Name

[Signature]

DONALD GIALANELLA

STATE OF FLORIDA
COUNTY OF Pinellas

The foregoing instrument was acknowledged before me this 8 day of February,
2019, by DONALD GIALANELLA who is personally known to me or who has produced CA DL
(type of identification) as identification.

NOTARY'S SEAL:



Natalie Sova

NOTARY PUBLIC, STATE OF FLORIDA

Natalie Sova

Name of Acknowledger Typed, Printed or Stamped

GG 130982

Commission Number

FP:jnz
1/30/19
l:\agr\dev-srves\2019-56f

EXHIBIT: A

Call to Artists: Underwater Reef Sculpture

BUDGET: \$35,000
DEADLINE: July 2, 2018

INTRODUCTION

The City of Pompano Beach is looking to commission an artist/artist team to design and fabricate a sculpture that will be displayed at the beach for a one year. After a year, it will be submerged into the ocean and attached to *Lady Luck* in shipwreck Park.

OVERALL PROJECT

An artist/artist team will design and fabricate a sculpture that will be displayed at the beach for a one year. After a year, it will be submerged into the ocean and attached to *Lady Luck* in shipwreck Park. Artist will need to provide and work with an engineer if necessary. Artist will also need to contact Shipwreck Park for details on connecting the artwork as part of the final approval process.

THEME

There is no specific theme for this project.

SHIPWRECK PARK

Shipwreck Park is a not-for-profit organization dedicated to the creation of an underwater park system establishing artificial reefs, utilizing public art to raise awareness of the need to preserve and conserve our natural coral reef system. The purpose of Shipwreck Park Pompano is to develop and protect our coral reefs. For more information on Shipwreck Park, visit <http://shipwreckparkflorida.org/>.

"LADYLUCK"

Lady Luck is a 324 foot tanker vessel that was sunk on July 23rd, 2016 as an artificial reef 1 1/2 miles off Pompano Beach's shore. This ship is one of the biggest contributions to Florida's artificial reef system and one of the most easily accessible major dive sites in the nation. The ship is the centerpiece of what is known as Shipwreck Park, surrounded by 16 other existing wrecks covered with marine life. Shipwreck Park is a unique underwater cultural arts park with rotating underwater art exhibits. The ship includes specific themes, exciting underwater events, artwork and rotating art exhibits to create a unique dive experience for local and international tourists.

MATERIALS & SPECIFICATIONS

Since the artwork will be submerged in the ocean permanently and used as an artificial reef, specific materials must be used. Materials that are permitted are concrete, ferrous and/or aluminum-alloy metals 1/4 inch or more in thickness, clean steel and limestone boulders and must be clean from contaminants. Contaminant free-dye concrete tiles are permitted.

The sculpture must weigh more than 500 pounds. It must be clean and free from asphalt, petroleum, other hydrocarbons and toxic residues.

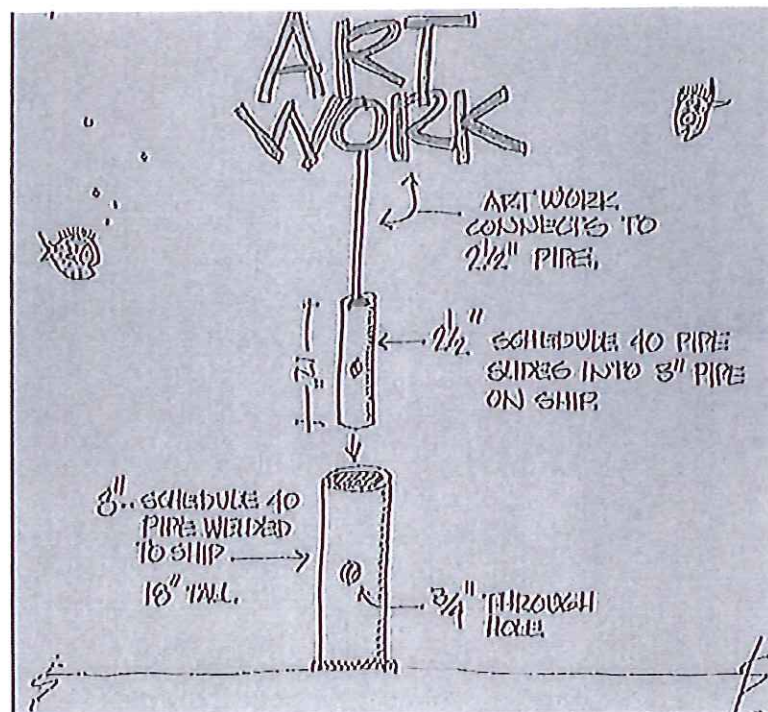
PROJECT LOCATION

The sculpture will be displayed on a location to be determined for a period of one year before it is sunk and attached to *Lady Luck* at Shipwreck Park.

INSTALLATION

After the artwork has been displayed for one year, it will be sunk and attached to The *Lady Luck* at Shipwreck Park. The City will cover sinking fees and permits. In order for the artwork to be attached to the ship, a 12" 2-1/2" d. schedule 40 S.S. pipe should be connected in/on the sculpture so that it can be attached to the 3" receivers. There must be a 3/4" through hole in the middle of the pipe for a bolt to pass through receiver and attachment.

Connecting the Sculpture: There are 50 plus 18" x 3"d pipes welded on the decks of Lady Luck. Artwork needs to attach to a 2.5" pipe that will slide into the 3" pipes already on the ship. It is suggested to provide a 12" long 2.5" pipe with a 3/4" through hole at 8" from the top. A through bolt will secure the assembly to complete the installation. See the attached diagram. Artist will need to provide and work with an engineer if necessary. Artist will also need to contact Shipwreck Park for details on connecting the artwork as part of the final approval process.



PROHIBITED CONTENT STANDARDS

Artists should bear in mind that the audience will be broad-based and of all ages, and designs should be appropriate for public display. Designs that are religious, political or sexual in nature will not be accepted. The structure may not display messages with text or contain any words or alpha-numeric characters. Additionally, neither corporate logos nor advertising is allowed. Designs will be evaluated to ensure they conform to these standards. The City of Pompano Beach may reject any design that, in its sole discretion, does not adhere to these standards.

INSURANCE

CONTRACTOR 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.

CONTRACTOR 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. Such policy or policies shall be issued by United States Treasury approved companies authorized to do business in the State of Florida. The policies shall be written on forms acceptable to the City's Risk Manager, meet a minimum financial A.M. Best and Company rating of no less than Excellent, and be part of the Florida Insurance Guarantee Association Act. No changes are to be made to these specifications without prior written approval of the City's Risk Manager.

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

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

Throughout the term of this Agreement, CONTRACTOR and all subcontractors or other agents hereunder, shall, at their sole expense, maintain in full force and effect, the following Insurance 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, regardless of the size of the company (number of employees) or the state in which the work is to be performed or of the state in which Contractor is obligated to pay compensation to employees engaged in the performance of the work. Contractor 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 Contractor's negligent acts or omissions in connection with Contractor's performance under this Agreement.

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

Type of Insurance

Limits of Liability

GENERAL LIABILITY:

Minimum \$1,000,000 Per Occurrence and
\$2,000,000 Per Aggregate

* Policy to be written on a claims incurred basis

XX	comprehensive form	bodily injury and property damage
XX	premises - operations	bodily injury and property damage
—	explosion & collapse	
—	hazard	
—	underground hazard	
XX	products/completed	bodily injury and property damage combined
	operations hazard	
XX	contractual insurance	bodily injury and property damage combined
XX	broad form property damage	bodily injury and property damage combined
XX	independent contractors'	personal injury
XX	personal injury	
—	sexual abuse/molestation	Minimum \$1,000,000 Per Occurrence and Aggregate

AUTOMOBILE LIABILITY:

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

XX comprehensive form
— owned
— hired
— 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	\$1,000,000	\$1,000,000
---	---------------------	---	-------------	-------------

PROFESSIONAL LIABILITY

Per Occurrence Aggregate

XX * Policy to be written on a claims made basis \$1,000,000 \$1,000,000

(3) If Professional Liability Insurance is required, Contractor agrees the Indemnification and hold harmless provisions of Section 12 of 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. CONTRACTOR 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 CONTRACTOR, the CONTRACTOR shall promptly provide the following:

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

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

A Workers Compensation Exemption will also be provided.

TENTATIVE SCHEDULE
Call to Artists is Posted
Deadline
Selection

May 8, 2018
July 2, 2018
July 2018

Tentative Delivery of Completed Sculpture January 2019

ELIGIBILITY

This project is open to all professional artists. Artists are NOT eligible who are immediate family or business partners of members of the Public Art Committee or program staff.

SUBMITTAL REQUIREMENTS

All submissions should be submitted through CaFE. Submissions received after 5:00 pm on April 4, 2017 will not be accepted. Submissions must include:

- Artist statement – a brief description of yourself and the design;
- Examples of previous artwork (minimum 1; maximum 3); and
- Design – Designs must meet requirements for underwater
- Budget

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

PROPOSAL SELECTION CRITERIA

The artist will be selected based on the following criteria:

- Design;
- Statement;
- Examples of previous artwork;
- Materials to be used; and
- Preference to artists who have previously worked in underwater art.

ARTIST SELECTION PROCESS

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

Other Selection Issues:

- 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.

QUESTIONS

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

BACKGROUND ON POMPANO BEACH

Pompano Beach is a city located in Broward County along the coast of the Atlantic Ocean, just north of Ft. Lauderdale. The nearby Hillsboro Inlet forms part of the Atlantic Intracoastal Waterway. In 2013, the City

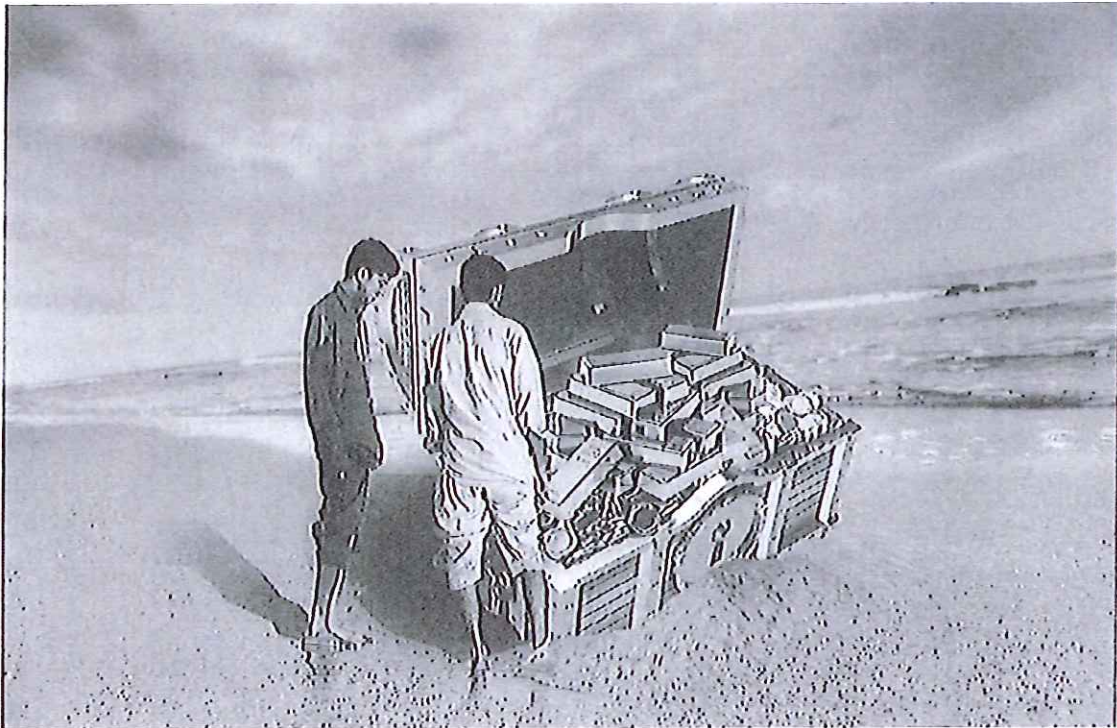
adopted the Pompano Beach Cultural Arts Master Plan. Pompano Beach is a Cultural Arts destination in north Broward County, featuring innovative arts programming. The City's and CRA's cultural facilities include the All Cultural Arts, Bailey Contemporary Arts, the Cultural Center of Pompano Beach and the Pompano Beach Amphitheater.

BACKGROUND ON POMPANO BEACH PUBLIC ART PROGRAM

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

EXHIBIT 2

Proposed design and materials list



Pirates Treasure Chest concept image

Made of anodized aluminum. 72" x 36" x 48"

Donald Gialanella 2019

EXHIBIT: 3

CITY OF POMPAÑO 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 Prosequere, 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 POMPAÑO 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 position 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

COPYRIGHT ASSIGNMENT OF ARTWORK TO THE CITY OF POMPANO BEACH

This Copyright Assignment (the "Assignment") is made and effective as of _____, 2018 ("Effective Date") pursuant to an Agreement For Commissioned Artwork dated _____, 2019 (the "Agreement") between Donald Gialanella ("Artist") and the City of Pompano Beach, a Florida municipal corporation ("City") concerning the public art project described below.

RECITALS

WHEREAS, pursuant to the aforesaid Agreement, the City commissioned Artist to design, fabricate and install the sculpture depicted in the Design Proposal attached hereto and made a part hereof as Exhibit 1 (the "Artwork") for display on land and ultimately submersion in the Atlantic Ocean for attachment to the Lady Luck in Shipwreck Park (collectively the "Design Location"); and

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

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

1. Assignment of the Artwork

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

2. Consideration

As consideration for assignment of the Artwork and Artist's representation and warranties in this Assignment, City has promised to pay Artist a maximum not-to-exceed total amount of Thirty Five Thousand Dollars (\$35,000.00) payable in five (5) installments in accordance with Article 10 of the Agreement.

3. Artist's Representations, Warranties and Waiver

Artist hereby represents and warrants to City that:

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

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

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

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

4. Documentation

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

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

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

5. No Further Use of Artwork

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

6. Successors and Assigns

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

7. Notice

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

For City

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

With a copy to:

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

For Artist

Donald Gialanella
910 Southern Pine Dt. NE
St. Petersburg, Florida 33703
livesteel@gmail.com
607-547-1-71 phone

8. Severability

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

9. Entire Assignment

This Assignment, together with Exhibit 1, constitutes the final, complete, and exclusive statement of the agreement between the Parties with respect to the subject matter hereof and supersedes any and all other prior and contemporaneous agreements and understandings, both written and oral.

10. Severability

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

11. Headings

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

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

Witnesses:

ARTIST

Diana R

Diana Rivera

Print Name

Theodora Traynel

Print Name

BY: Donald Gialanella

Signature of Artist

DONALD GIALANELLA

Print Artist Name

STATE OF FLORIDA
COUNTY OF PINELLAS COUNTY

The foregoing instrument was acknowledged before me this 8 day of February, 2019, by Donald Gialanella who is personally known to me or who has produced CA DL (type of identification) as identification.

NOTARY'S SEAL:

Natalie Sova
NOTARY PUBLIC, STATE OF FLORIDA

Natalie Sova
Name of Acknowledger Typed, Printed or Stamped

GG 130982
Commission Number



FP:jnz
02/07/19
I: Agr/Dev Svc/2019-305f

EXHIBIT: 5

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: Donald Gialanella

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

B. Date of Birth: 06/09/1956

C. Place of Birth: Plainfield, NJ

D. Address, e-mail, web-site: 910 Southern Pine Ct NE St Pete, FL 33703
livesteel@gmail.com DonSculpture.com

E. Phone: 607.547.1071

F. One paragraph biography of artist: Donald specializes in public art. He has sculpture installed in twelve cities from California to New York. He is known for his larger-than-life sculptures in public and private collections across the United States.

II. Work of Art

A. Title: Treasure!

B. Description of materials: Anodized aluminum

C. Dimensions in inches: 72" x 36 x 48

D. Inscription marks: Signed and dated by artist

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: I believe that public art should compliment and focus interest on the site. Effective public art will make the viewer's experience memorable, and create a lasting bond that ties that engagement to the artwork and its environment.

III. Fabrication Information

A. Material(s) used in artwork: Aluminum

B. Material Finish: Hard anodizing

C. Material Suppliers: TBD

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): TIG welding

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

IV. Installation

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

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

C. Date of Installation: TBD

V. External Factors

A. Describe physical positioning of the artwork:
Standing on the bottom of the chest in an upright position.

B. Describe existing environmental factors which may affect the condition of the artwork:
Sea water and barnacle deposition will effect the surface of the sculpture after being placed underwater.

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:

Occasional cleaning to remove bird droppings and sand while installed at the beach for 1 year.

B. Long-term:

After being installed on the deck of the shipwreck, the piece will need to be cleaned to avoid buildup of barnacles.

C. Note desired appearance of the artwork:

An aged appearance, patina, will enhance the illusion that the chest is ancient pirate's treasure.

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

VIII. Documentation

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

EXHIBIT: 6

INSURANCE REQUIREMENTS : UNDERWATER REEF SCULPTURE

CONTRACTOR 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.

CONTRACTOR 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. Such policy or policies shall be issued by United States Treasury approved companies authorized to do business in the State of Florida. The policies shall be written on forms acceptable to the City's Risk Manager, meet a minimum financial A.M. Best and Company rating of no less than Excellent, and be part of the Florida Insurance Guarantee Association Act. No changes are to be made to these specifications without prior written approval of the City's Risk Manager.

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

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

Throughout the term of this Agreement, CONTRACTOR and all subcontractors or other agents hereunder, shall, at their sole expense, maintain in full force and effect, the following insurance 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, regardless of the size of the company (number of employees) or the state in which the work is to be performed or of the state in which Contractor is obligated to pay compensation to employees engaged in the performance of the work. Contractor 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 Contractor's negligent acts or omissions in connection with Contractor'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 contractors'	personal injury
XX	personal injury	

— sexual abuse/molestation Minimum \$1,000,000 Per Occurrence and
Aggregate

AUTOMOBILE LIABILITY:

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

XX comprehensive form
— owned
— hired
— 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	\$1,000,000	\$1,000,000
-------------------------	---	-------------	-------------

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

(3) If Professional Liability Insurance is required, Contractor agrees the indemnification and hold harmless provisions of Section 12 of 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. CONTRACTOR 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 CONTRACTOR, the CONTRACTOR shall promptly provide the following:

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

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

10/15/2018

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

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

PRODUCER Zinc Insurance 3505 E Royalton Rd #110 Broadview Hts OH 44147		CONTACT NAME: Allen Jenkins PHONE (A/C, H/o, Ext): (440) 526-2661 FAX (A/C, H/o): (440) 546-1344 E-MAIL: allen@zincinsurance.com ADDRESS:															
INSURED Zinc Creative Program and Donald Gialanella 3505 E Royalton Rd #110 Broadview Hts OH 44147		<table border="1"> <thead> <tr> <th>INSURER(S) AFFORDING COVERAGE</th> <th>LINE #</th> </tr> </thead> <tbody> <tr> <td>INSURER A: Westfield Insurance</td> <td></td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER G:</td> <td></td> </tr> <tr> <td>INSURER I:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </tbody> </table>		INSURER(S) AFFORDING COVERAGE	LINE #	INSURER A: Westfield Insurance		INSURER D:		INSURER G:		INSURER I:		INSURER E:		INSURER F:	
INSURER(S) AFFORDING COVERAGE	LINE #																
INSURER A: Westfield Insurance																	
INSURER D:																	
INSURER G:																	
INSURER I:																	
INSURER E:																	
INSURER F:																	

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

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

EXCLUSIONS AND CONDITIONS OF SUCH COVERS, LIMITS AND DEDUCTIBLES		POLICY NUMBER		POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
INSR LYR	TYPE OF INSURANCE	ADDC INSTR	SUBR VEND				
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER <input type="checkbox"/> POLICY <input type="checkbox"/> PRO- <input checked="" type="checkbox"/> NOT <input checked="" type="checkbox"/> LOG	Y		CWP1069240	2018-10-15	2019-10-01	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Each occurrence) \$ 100,000 RENT EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMMOD AGG \$ 2,000,000 \$
	AUTOMOBILE LIABILITY HIR/AUTO ALL OWNED SCHEDULED AUTOS AUTOS HIRED AUTOS AUTOS						COMBINED SINGLE LIMIT (Each accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	<input type="checkbox"/> UNDERWRITTEN OCCUR <input type="checkbox"/> EXCESS UNDERWRITTEN CLAIMS MADE DEED DETERMINED \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/OWNER EXCLUDED (Mandatory in Ill) YES, DATE REQUIRED DESCRIPTION OF OPERATIONS (SIC)	Y III	III A				<input type="checkbox"/> NO STATUS <input type="checkbox"/> TORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ E.L. DISEASE - EACH EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	BUSINESS PROPERTY COVERAGE			CWP1057629	2018-10-15	2019-10-01	LIMIT: \$ 10,000 DEDUCTIBLE: \$ 500

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES (Attach ACD 101, Additional Remarks Schedule, if more space is required)

Certificate Holder The City of Pompano Beach

LOCATION: 2255 2nd Ave S
Saint Petersburg, FL 33712

APPROVED

By Danlollo Thorpo at 9:41 am, Oct 10, 2010

CERTIFICATE HOLDER

CANCELLATION

City of Pompano Beach
100 West Atlantic Blvd.
Pompano Beach, FL 33060

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

AUTHORIZED REPRESENTATIVE

© 1998-2010 ACORD CORPORATION. All rights reserved.

GEICO FLORIDA AUTOMOBILE INSURANCE
geico.com IDENTIFICATION CARD
GEICO GENERAL INSURANCE COMPANY

Policy Number/Florida Code No. Effective Date
4442970135/01288 06-16-18
[X]PERSONAL INJURY PROTECTION BENEFITS/PROPERTY DAMAGE LIABILITY
[X]BODILY INJURY LIABILITY

Named Insured: DONALD GEORGE GIALANELLA

Year Make Model Vehicle ID No.
2012 MAZDA MAZDA3 JM1BL1V8XC1671047

Phone Number: 1-800-841-3000

Not valid more than one year from effective date.

Important Information

Here are your Policy Identification Cards. Please destroy your old cards when the new cards become effective.

Due to space limitations on the ID card, only the Named Insured and the Co-insured are listed. For a full list of drivers covered under this policy, please reference the Drivers section of your Declarations Page, which is included with your insurance packet.

Please notify us promptly of any change in your address to be sure you receive all important policy documents. Prompt notification will enable us to service you better.

Your policy is recorded under the name and policy number shown on the card.

If you would like additional ID cards, you can go online to geico.com call us at 1-800-841-3000.

APPROVED

By Danielle Thorpe at 9:53 am, Oct 16, 2018

What to do at the time of an accident.

- Do not admit fault
- Do not reveal the limits of your liability coverage to anyone
- Exchange contact information; get year, make, model, plate number, insurance carrier and policy number of all involved. Also, identify witnesses and collect contact information.
- Contact the police or 911 if applicable
- Contact GEICO by calling 1-800-841-3000 or visit geico.com to report the accident.

Need a tow or roadside assistance?

Call 1-800-424-3426 to reach GEICO's Emergency Road Service (ERS).

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

U-4-FL (04-14)

GEICO FLORIDA AUTOMOBILE INSURANCE
geico.com IDENTIFICATION CARD
GEICO GENERAL INSURANCE COMPANY

Policy Number/Florida Code No. Effective Date
4442970135/01288 06-16-18
[X]PERSONAL INJURY PROTECTION BENEFITS/PROPERTY DAMAGE LIABILITY
[X]BODILY INJURY LIABILITY

Named Insured: DONALD GEORGE GIALANELLA

Year Make Model Vehicle ID No.
2004 DODGE RAM PU1500 1D7HU16N44J226919

Phone Number: 1-800-841-3000

Not valid more than one year from effective date.

Important Information

Here are your Policy Identification Cards. Please destroy your old cards when the new cards become effective.

Due to space limitations on the ID card, only the Named Insured and the Co-insured are listed. For a full list of drivers covered under this policy, please reference the Drivers section of your Declarations Page, which is included with your insurance packet.

Please notify us promptly of any change in your address to be sure you receive all important policy documents. Prompt notification will enable us to service you better.

Your policy is recorded under the name and policy number shown on the card.

If you would like additional ID cards, you can go online to geico.com call us at 1-800-841-3000.

APPROVED

By Danielle Thorpe at 8:23 am, Feb 20, 2019

What to do at the time of an accident.

- Do not admit fault
- Do not reveal the limits of your liability coverage to anyone
- Exchange contact information; get year, make, model, plate number, insurance carrier and policy number of all involved. Also, identify witnesses and collect contact information.
- Contact the police or 911 if applicable
- Contact GEICO by calling 1-800-841-3000 or visit geico.com to report the accident.

Need a tow or roadside assistance?

Call 1-800-424-3426 to reach GEICO's Emergency Road Service (ERS).

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

U-4-FL (04-14)



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

August 9, 2018

Donald Gialanella
910 Southern Pine Ct NE
St. Petersburg, FL
33703

APPROVED

By Danllo Thorpe at 2:49 pm, Aug 21, 2018

Dear Mr. Gialanella,

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

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

Please sign the area below acknowledging your compliance with the above requirements. Return this original letter to me at 100 West Atlantic Blvd. Attn. Laura Atria, Pompano Beach, 33060. If you have any questions or concerns, feel free to contact me at 954-786-4310 or email me at Laura.Atria@copbfl.com.

Sincerely,

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

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

Signature

8/9/2018
Date

Donald Gialanella
Name & Title (print)