

City of Pompano Beach

AGREEMENT FOR ARTWORK

with

Hola Mundo!, LLC

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INDEX OF EXHIBITS

Exhibit 1	Photo of Artwork
Exhibit 2	Scope of Services

AGREEMENT

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

CITY OF POMPANO BEACH, a municipal corporation organized in the state of Florida whose address is 100 West Atlantic Boulevard, Pompano Beach, Florida 33060 (hereinafter "CITY")

and

HOLA MUNDO!, LLC, a Florida limited liability company, whose mailing address is 3125 Estates Drive, Pompano Beach, FL 33069 (hereinafter "ARTIST").

WHEREAS, pursuant to Section 160.04 of the CITY's Code of Ordinances, the Public Art Committee ("PAC") is authorized to make recommendations to the City Commission on public art, artist selection and artwork location; and

WHEREAS, ARTIST has created artistic panels representing waves from recycled materials found on the CITY's beaches (the "Artwork" depicted in Exhibit 1 attached hereto and made a part hereof); and

WHEREAS, ARTIST has expressed an interest in allowing the CITY to take temporary possession of the Artwork for the purpose of public display; and

WHEREAS, PAC has recommended the CITY install the Artwork to the outside of the beach restroom pavilion located at 100 West Pompano Beach Boulevard in Pompano Beach, Florida, for a minimum of four (4) months (the "Project"); and

WHEREAS, in accordance with the terms and conditions set forth herein, ARTIST is able and prepared to provide the services described in this Agreement and the Scope of Services attached hereto and made a part hereof as Exhibit 2 (collectively the "Work"); and

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

WHEREAS, the City Commission 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, CITY and ARTIST agree as set forth herein.

DEFINITIONS

Agreement - This document and other terms and conditions included in the exhibits and documents that are expressly incorporated by reference.

Artwork - The artistic panels depicted in Exhibit 1 which ARTIST owns but wishes to temporarily provide to the City for the Project.

Contract Administrator- The primary responsibilities of the Contract Administrator(s) for the CITY and ARTIST are to manage and supervise execution and completion of the Scope of Services and the terms and conditions of this Agreement as set forth herein. In the administration of this Agreement, as contrasted with matters of policy, all parties may rely on the instructions or determinations made by the CITY's Contract Administrator; provided, however, that such instructions and determinations do not change the Scope of Services.

Final Acceptance by CITY – The CITY's Contract Administrator's written acceptance of the Artwork when the City initially takes possession of it for the Project.

Final Acceptance by ARTIST – The ARTIST's Contract Administrator's written acceptance of the Artwork when the City returns it to ARTIST's possession at the Project's completion.

Project - The Scope of Services described in this Agreement and Exhibit 2 attached hereto.

Site - The outside of the beach restroom pavilion located at 100 West Pompano Beach Boulevard in Pompano Beach, Florida, where the CITY will install and display the Artwork.

ARTICLE 1 **REPRESENTATIONS**

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

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

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

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

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

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

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

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

1.2.4. ARTIST represents it has the ability, skill and resources to complete its responsibilities under this Agreement.

ARTICLE 2

SCOPE OF SERVICES

ARTIST shall perform all Work specified in this Agreement, inclusive of the exhibits, particularly Exhibit 2 entitled, "Scope of Services." Unless stated otherwise in this Agreement, the Work required of ARTIST includes all services, 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 hereunder impractical, illogical, or unconscionable.

ARTICLE 3

CONTRACT ADMINISTRATOR

The CITY's Development Services Director or his/her written designee shall serve as the CITY's Contract Administrator during the performance of services under this Agreement.

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

ARTICLE 4

RESPONSIBILITIES OF ARTIST

4.1 ARTIST shall not make any public information release in connection with services performed pursuant to this Agreement without prior written permission of the CITY's Contract Administrator but shall be allowed to otherwise promote the Artwork.

4.2 ARTIST agrees that all Work performed hereunder shall comply with all applicable laws, ordinances, codes and regulations as may be amended from time to time.

4.3 To the extent applicable, ARTIST shall (a) cooperate with the CITY's Contract Administrator and other CITY agents involved in the Project to facilitate the CITY's pick-up and return (if ever) of the Artwork; (b) timely provide CITY written clarification regarding whether ARTIST desires to extend the term of this Agreement and/or CITY is authorized to dispose of

the Artwork; and (c) repair any damage to the Artwork occasioned by CITY's temporary use of it for the Project. Further, ARTIST agrees the CITY's Contract Administrator shall have the authority to resolve any conflicts between the CITY and ARTIST and such resolution shall be binding on the parties.

ARTICLE 5

RESPONSIBILITIES OF CITY

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

5.2 The CITY shall be responsible to pick-up the Artwork from ARTIST from Hola Mundo!, LLC headquarters located at 310 North Pompano Beach Boulevard in Pompano Beach, Florida ("Hola Mundo! Headquarters"); transport the Artwork to the Site; install the Artwork at the Site; remove the Artwork from the Site and return it to ARTIST at Hola Mundo! headquarters after it is on display at the Site for a maximum of four (4) months or otherwise dispose of it in accordance with the provisions of this Agreement.

ARTICLE 6

NON-ASSIGNABILITY AND SUBCONTRACTING

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

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

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

ARTICLE 7

TERM

The term of this Agreement shall be for a maximum of four (4) months. The term shall commence upon Final Acceptance by CITY and terminate upon Final Acceptance by ARTIST

unless both parties' Contract Administrator(s) agree in writing that CITY has the right to dispose of the Artwork as CITY deems appropriate in which case the term shall end immediately.

ARTICLE 8

COMPENSATION AND PUBLIC RECORDS PROCEDURES

8.1 **Compensation.** For and in consideration of the mutual covenants and obligations contained herein as well as other good and valuable consideration received, ARTIST agrees to provide the Work required hereunder for CITY and CITY agrees to install a plaque at the Site that credits ARTIST as the creator of the Artwork. CITY also agrees that all references to the Artwork and all reproductions of it shall credit ARTIST.

CITY shall not be obligated to reimburse ARTIST for its expenses to restore or repair the Artwork after Final Acceptance by CITY.

8.2 **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:

8.2.1. Keep and maintain public records required by the CITY in order to perform the Work.

8.2.2. 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.

8.2.3. 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.

8.2.4. 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 9
NOTICES AND DEMANDS**

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

For CITY

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

With a copy to:

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

For ARTIST

Adriana M. Chambliss
3125 Estates Drive
Pompano Beach, FL 33069
Holamundocamp@comcast.net
(754) 235-0895

**ARTICLE 10
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 11

INDEPENDENT CONTRACTOR

It is expressly understood between the parties that ARTIST'S relationship to CITY hereunder is that of an independent contractor. Work provided by ARTIST hereunder shall be subject to supervision of ARTIST. No partnership, joint venture or other joint relationship is created by this Agreement. ARTIST and its agents shall have no authority to employ any person as an employee or agent on behalf of CITY for any purpose or otherwise bind CITY in any respect.

Neither ARTIST nor any of its agents engaging in any Work hereunder shall be deemed an employee or agent of CITY nor shall they represent themselves to others as an employee or agent of CITY. Should any person indicate by written or verbal communication that they believe ARTIST or one of its agents is an employee or agent of the CITY, ARTIST shall use its best efforts to correct said mistaken belief both verbally and in writing.

ARTIST shall be deemed an independent contractor for all purposes, and any of its agents, contractors, subcontractors and the employees thereof, shall not in any manner be deemed to be employees of the CITY. As such, the agents or employees of the ARTIST, its contractors or subcontractors, shall not be subject to any withholding for tax, Social Security or other purposes by CITY, nor shall such person be entitled to sick leave, pension benefits, vacation, medical benefits, life insurance, workers or unemployment compensation or the like from the CITY.

ARTICLE 12

ATTORNEY'S FEES AND COSTS

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

ARTICLE 13

ARTIST'S INDEMNIFICATION OF CITY

13.1 ARTIST shall at all times indemnify, hold harmless and defend the CITY, its officials, employees and other authorized agents hereunder from and against any and all claims, losses, demands, suit, damages, attorneys' fees, fines, penalties, expenditures, defense costs, liabilities or causes of action of any nature whatsoever arising directly, indirectly or in connection with ARTIST or ARTIST's authorized agents actions, negligence, misconduct, omission or provision of Work hereunder without limitation, even if the claim(s) is/are groundless, false or fraudulent. The foregoing indemnification of CITY by ARTIST shall not be operative as to any claims by ARTIST for any causes of action ARTIST has or may have for breaches, defaults,

negligence, gross negligence or willful misconduct of CITY or any of its officers, employees or authorized agents.

In the event any lawsuit or other proceeding is brought against CITY by reason of any such claim, cause of action or demand, ARTIST shall, upon written notice from CITY, resist and defend such claim(s) by counsel satisfactory to CITY or, at CITY's option, pay for an attorney selected by the City Attorney for the CITY and bear all costs and expenses related thereto to investigate, handle, respond to, and provide defense for any such claim(s) even if the claim(s) is/are groundless, false or fraudulent. The provisions and obligations of this Article shall survive the expiration or earlier termination of this Agreement.

13.2 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 in-kind advertising services and plaque at the Site which will credit ARTIST for the Artwork as set forth in Article 10.2 above shall constitute specific consideration to ARTIST for the indemnification provided under this Article.

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

13.4 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.

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

ARTICLE 14

GOVERNMENTAL IMMUNITY

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. 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.

ARTICLE 15

PUBLIC ENTITY CRIMES ACT

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

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

ARTICLE 16

DEFAULT AND DISPUTE RESOLUTION

16.1 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.

16.2 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 9 herein.

16.3 If the party receiving written notice of default provides written notice denying same within ten (10) calendar days of receipt or the alleged default has not been remedied within ten (10) calendar days after receipt of written notice and is continuing, either party may appeal in writing to the City Manager for the CITY in accordance with Article 9 herein.

Upon receipt of said written appeal or demand, the City Manager for the CITY may request additional information relating to the dispute from either or both parties which shall be provided within a reasonable time. Upon the City Manager's receipt and timely review of the disputed matter, the City Manager may make a decision regarding the alleged default as he/she deems appropriate under the circumstances. If the City Manager's decision is not implemented within the deadline set forth therein, the forty-five (45) day advance written notice provision set forth in Article 9 herein shall not apply and it shall be lawful for CITY to immediately terminate this Agreement and in addition to any other remedies provided by law, CITY may possess itself of all rights and privileges heretofore enjoyed by ARTIST.

ARTICLE 17

TERMINATION

17.1 Termination for Cause. Breach or default of any of the covenants, duties, or provisions hereunder 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 16 above or seek other remedies as provided hereunder or by law.

17.2.1 Notice of termination shall be provided in accordance with Article 9 above.

ARTICLE 18
NO DISCRIMINATION AND AMERICAN WITH DISABILITIES ACT

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

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

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

ARTICLE 19
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 20
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 21

WAIVER AND MODIFICATION

CITY and ARTIST agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and is therefore a material term hereof. Failure to insist upon strict compliance with any term, covenant or condition of this Agreement shall not be deemed a waiver of such, nor shall any waiver or relinquishment of such right or power at any time be taken to be a waiver of any other breach.

ARTICLE 22

RELATIONSHIP BETWEEN THE PARTIES

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

ARTICLE 23

SEVERABILITY

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

ARTICLE 24

APPROVALS

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

ARTICLE 25

ABSENCE OF CONFLICTS OF INTEREST

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

25.2 During the term of this Agreement, ARTIST agrees that neither ARTIST nor any of ARTIST's agents hereunder shall serve as an expert witness against CITY in any legal or

administrative proceeding in which he, she, or ARTIST is not a party unless compelled by court process. Further, ARTIST agrees that such persons shall not give sworn testimony or issue a report or writing as an expression of his or her expert opinion which is adverse or prejudicial to the CITY's interests in connection with any such pending or threatened legal or administrative proceeding unless compelled by court process. The limitations of this Article shall not preclude ARTIST or any persons in any way from representing themselves, including giving expert testimony in support thereof, in any action or in any administrative or legal proceeding.

ARTICLE 26

MISCELLANEOUS TERMS AND CONDITIONS

26.1 The ARTIST has exclusive property rights in the Artwork and is merely transferring temporary possession of it to the CITY for the Project contemplated herein.

26.2 After Final Acceptance by CITY, ARTIST (not CITY) shall be solely responsible to bear all costs associated with the repair of any damage to the Artwork caused by accident, vandalism or otherwise. However, if in CITY's sole discretion, the Artwork deteriorates or is otherwise damaged after Final Acceptance by CITY such that the Artwork is no longer esthetically pleasing for display purposes, CITY reserves the right to return the Artwork to ARTIST at Hola Mundo? headquarters or dispose of it as CITY deems appropriate upon written notice to ARTIST in accordance with the requirements of Article 9 herein.

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

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

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

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

ARTICLE 27
BINDING EFFECT

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

ARTICLE 28
WARRANTIES AND STANDARDS

28.1 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) 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;
- (c) 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 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;
- (d) ARTIST was not acting within the scope of employment of any third party when conceiving or creating the Artwork;
- (e) ARTIST agrees 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 after Final Acceptance by CITY;

ARTIST agrees to immediately notify CITY in writing of any facts or circumstances arise that would make any of the foregoing representations inaccurate.

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

28.3 ARTIST'S Rights and Waiver. CITY agrees that all references to the Artwork and all reproductions of the Artwork shall credit ARTIST.

28.4 ARTIST, at ARTIST's sole cost, shall be given the right of first refusal to perform repairs after Final Acceptance by CITY. However, if the parties cannot come to agreement for repair

services or ARTIST is unable or unwilling to perform any necessary repairs, CITY shall have the right to terminate the Project in accordance with the provisions of this Agreement.

ARTICLE 29
SURVIVAL

The following provisions shall survive the expiration or earlier termination of this Agreement: Article 10, "Governing Law and Venue"; Article 13, "ARTIST's Indemnification of City"; Article 28, "Warranties and Standards"; and this Article 30, "Survival".

ARTICLE 30
ENTIRE AGREEMENT AND INTERPRETATION

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

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

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

"CITY":

Witnesses:

CITY OF POMPANO BEACH

By: _____
LAMAR FISHER, MAYOR

By: _____
GREGORY P. HARRISON, CITY MANAGER

Attest:

ASCELETA HAMMOND, CITY CLERK

(SEAL)

Approved As To Form:

MARK E. BERMAN, CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

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

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

"ARTIST"

Witnesses:

HOLA MUNDO!, LLC

Matthew R. Edge
Matthew R. Edge
Print Name

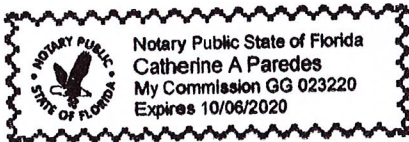
BY: [Signature]
Adriana M. Chambliss, Managing Member

[Signature]
Laura Atria
Print Name

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 3rd day of July, 2018, by Adriana M. Chambliss as the Managing Member of Hola Mundo!, LLC, who is personally known to me or who has produced FL Drivers License (type of identification) as identification.

NOTARY'S SEAL:



[Signature]
NOTARY PUBLIC, STATE OF FLORIDA
Catherine A. Paredes
Name of Acknowledger Typed, Printed or Stamped
GG 023220
Commission Number

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EXHIBIT: 1

Image of Artwork



Super-imposed image of artwork at site:



EXHIBIT: 2

Scope of Services

Hola Mundo is required to complete the following services.

- Hola Mundo arts teacher Carrie Bennett will coordinate with the City of Pompano Beach's Public Art Manager and Public Works Department to meet at Hola Mundo's headquarters located at 310 N Pompano Beach Blvd, Pompano Beach, FL 33062 for the City to pick up the artwork.
- The City of Pompano Beach will install the artwork at the location, 100 Pompano Beach Blvd., Pompano Beach, FL 33062.
- The City will provide a plaque stating the artwork is created by "The Hola Mundo Green Team Camp" along with a description of the importance of not littering.
- Upon the completion of the exhibit, the City will deliver the artwork to the Hola Mundo headquarters.