

# **City of Pompano Beach**

## **AGREEMENT TO PURCHASE ARTWORK**

**with**

**LINDA SERRAO**

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## **AGREEMENT**

**THIS AGREEMENT** for artwork entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2020, 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

**LINDA SERRAO**, an individual whose address is 20833 Fuertes Drive, Walnut, California 91789 (hereinafter "ARTIST").

**WHEREAS**, on May 21, 2019, the CITY issued the Call To Artists attached hereto and made a part hereof as Exhibit 1 that sought to purchase or commission a unique piece of art for installation at the historic Ali Cultural Arts Center (the "Project"); and

**WHEREAS**, the CITY received several responses to the foregoing Call To Artists, one of which was submitted by ARTIST and is attached hereto and made a part hereof as Exhibit 2; and

**WHEREAS**, the CITY's Public Art Committee ("PAC") reviewed the foregoing responses to the Call To Artists and recommends the City Commission purchase the LeCoursaire sculpture on a mounting bar created by ARTIST for the Project as depicted in Exhibit 3 attached hereto and made a part hereof; 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 inclusive of exhibits (collectively the "Work"); and

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

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

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

## **DEFINITIONS**

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

**Artwork** - ARTIST's provision of the final physical artistic expression of the LeCoursaire sculpture and mounting bar delivered to CITY in satisfactory condition in accordance with this Agreement inclusive of exhibits as evidenced by CITY's Final Acceptance.

**Contract Administrator** - The primary responsibilities of the Contract Administrators are to manage and supervise execution and completion of the Work and the terms and conditions of this Agreement. 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

**Contract Price** - The amount established in Article 10 of this Agreement.

**Design Proposal** – ARTIST's proposed design for the Artwork as described in Exhibits 2 and 3 which is approved by the PAC and City Commission pursuant to this Agreement.

**Final Acceptance** – The CITY Contract Administrator's written acceptance of the Artwork upon delivery to CITY in satisfactory condition pursuant to the terms of this Agreement.

**Project** - The Work described in this Agreement as more particularly defined in Exhibits 1-3 attached hereto and made a part hereof.

**Site** – The location where the Artwork is to be installed as defined in the Call To Artists attached as Exhibit 1.

**Work** - The Work includes all labor, materials, equipment, services, data, photographs and all other documentation provided or to be provided by ARTIST to fulfill ARTIST's obligations under this Agreement.

## **ARTICLE 1** **REPRESENTATIONS**

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

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

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

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

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

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

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

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

1.2.4 ARTIST represents it has the ability, skill and resources to complete its responsibilities under this Agreement and that the Artwork shall be designed and fabricated as a permanent piece, made to withstand the outdoor climate of South Florida for a minimum of three (3) years and require minimal routine maintenance.

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

1.2.6 ARTIST represents and warrants it has and shall continue to maintain all licenses and approvals required to provide the Work hereunder.

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

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

ARTIST shall perform all Work specified in this Agreement, inclusive of the exhibits herein which contain, among other things, specifications for the Design Proposal, a timeline for the Work and a payment schedule.

## **ARTICLE 3** **CONTRACT ADMINISTRATOR**

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

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

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

4.1 Unless otherwise stated in this Agreement, the parties agree its terms, inclusive of exhibits, describe ARTIST's obligations and responsibilities hereunder and is deemed to include preliminary considerations and prerequisites, and all labor, materials, equipment, tasks, data, photographs and other documentation which are such an inseparable part of the Work hereunder that exclusion would render performance by ARTIST impractical, illogical, or unconscionable.

4.2 The Design Proposal shall set forth in detail the artistic expression, scope, design, color, size, material and texture of the Artwork to be installed at the Site.

4.3 ARTIST, at ARTIST's sole cost, shall provide all supplies, materials, equipment and insurance necessary to deliver the Artwork to CITY in satisfactory condition and also transfer title to CITY.

4.4 In the event ARTIST is unable to timely perform hereunder due to death, physical, other incapacity or circumstances beyond ARTIST's control, CITY may terminate this Agreement for cause. All Work performed by ARTIST prior to death, incapacity or other circumstances beyond the ARTIST's control will be compensated as provided in this Agreement.

4.5 The personal skill, judgment, and creativity of ARTIST is an essential element of this Agreement. Therefore, although the parties recognize that ARTIST may employ qualified personnel to work under ARTIST's supervision, ARTIST shall not assign, transfer or subcontract the creative and artistic portions of the Work to another party without CITY's prior written consent. Failure to conform to this provision may be cause for termination at the sole option of the CITY.

4.6 ARTIST shall faithfully perform the Work with the standards of care, skill, training, diligence, and judgment provided by highly competent professionals who perform work of a similar nature, the quality of which shall be comparable to the best local and national standards.

4.7 ARTIST shall not make any public information release in connection with services performed pursuant to this Agreement without prior written permission of the CITY's Contract Administrator.

4.8 ARTIST shall be responsible for the quality and timely completion of the Work in conformity with this Agreement and the Design Proposal. Also, prior to CITY's Final Acceptance, ARTIST shall, without additional compensation, correct any errors, omissions, or other deficiencies in the Artwork or be required to make revisions for other practical or non-aesthetic reasons, as identified by the Contract Administrator.

4.9 To the extent applicable, ARTIST shall cooperate with CITY's Contract Administrator or other agents as well as any third parties to oversee and ensure timely delivery of the Artwork to CITY in satisfactory condition. With the exception of the Default and Dispute Resolution procedures set forth in Article 19 herein, ARTIST agrees that the CITY's Contract Administrator shall have the authority to resolve any scheduling conflicts between the CITY and ARTIST and such resolution shall be binding on the parties.

4.10 Risk of Loss, Invoice and Transfer of Title To CITY. At any time prior to CITY's Final Acceptance, all risk of destruction or damage to the Artwork or any part thereof from any cause whatsoever shall be borne by ARTIST. ARTIST shall, at ARTIST'S sole expense, rebuild, repair, restore, and make good all such damage to any portion of the Artwork that occurs prior to CITY's Final Acceptance after which time, CITY shall be responsible for any and all subsequent damage to the Artwork.



ARTIST agrees to provide CITY an invoice for the Artwork at the time it is delivered to CITY and to complete and within one week after Final Acceptance, to complete and email the CITY's Contract Administrator the Catalogue Form attached hereto and made a part hereof as Exhibit 4.

Upon ARTIST's receipt of CITY's \$30,000.00 payment hereunder all rights and title to the Artwork passes to CITY who, as the exclusive owner of the Artwork, may display, publish, reproduce and tag the Artwork for any purpose in any media which serves the CITY's interest. In addition, within one week of ARTIST's receipt of the foregoing payment, ARTIST shall satisfactorily complete and forward the Absolute Bill of Sale attached hereto and made a part hereof as Exhibit 5 via email and FedEx to the CITY's Contract Administrator.

Notwithstanding the above, ARTIST and CITY are not intending to create a work for hire relationship. ARTIST retains all rights as the recognized author of the Artwork, including copyright and the right to enforce said copyright.

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

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

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

5.3 CITY shall give ARTIST prompt written notice whenever CITY observes or otherwise becomes aware of any matter that affects the scope or timing of ARTIST's Work and provide all public information pertaining to the Project to ARTIST without cost.

#### **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.

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

## **ARTICLE 7**

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

7.1 Term and Renewal. This Agreement shall be for a term of six (6) months beginning with the date this Agreement is fully executed by both parties although it is subject to earlier termination as provided herein. CITY, at its sole discretion, reserves the right to extend the completion deadline for the Project as provided herein.

7.2 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.

7.3 Time is of the Essence. Time is of the essence in performing the duties, obligations, and responsibilities required by this Agreement.

7.3.1 In the event ARTIST is unable to timely complete the Work because of delays which are not the fault of ARTIST, the CITY's Contract Administrator may grant a reasonable extension of time for completion. The determination of whether a delay is the fault of ARTIST shall be made by the CITY's Contract Administrator and the ARTIST agrees to abide by such decision. It shall be the responsibility of ARTIST to notify CITY promptly in writing whenever a delay is anticipated or experienced and to inform CITY of all facts and details related to the delay.

7.3.2 The CITY's Contract Administrator may grant ARTIST a reasonable extension of time if there is a delay caused by CITY or third parties or if conditions beyond ARTIST's control or Acts of God render timely performance of ARTIST's services impossible or unduly burdensome. Failure to fulfill contractual obligations due to conditions beyond either party's control will not be considered a breach of this Agreement provided that such obligations shall be suspended only for the duration of such conditions.

## **ARTICLE 8**

### **DESIGN AND MODIFICATION**

ARTIST understands and agrees that the Artwork to be created hereunder shall be in full compliance this Agreement inclusive of exhibits.

In terms of the Design Proposal, major modification shall mean more than a 25% overall change from the Design Proposal and is prohibited without the approval of both the PAC and City Commission. Minor modifications may be submitted and approved by the CITY's Contract Administrator only when necessary to facilitate the Work. ARTIST understands and agrees that CITY's Contract Administrator has sole discretion to approve the modification "as is," or require formal review and approval by both the PAC and City Commission and to determine whether said modification is necessary to facilitate the Work.

**ARTICLE 9**  
**DELIVERY, INSPECTION AND FINAL ACCEPTANCE OF THE ARTWORK**

ARTIST, at ARTIST's sole expense and risk, shall deliver the Artwork to CITY for inspection at 1190 NE 3<sup>rd</sup> Avenue, Pompano Beach, Florida, in accordance with the terms and conditions set forth herein. CITY's Contract Administrator shall promptly inspect the Artwork upon delivery and, upon a determination that it is in satisfactory condition and form, issue Final Acceptance.

**ARTICLE 10**  
**COMPENSATION, INSPECTION, BACKGROUND CHECK AND**  
**PUBLIC RECORDS PROCEDURES**

10.1 Compensation and Delivery of Catalogue Form and Absolute Bill of Sale. For and in consideration of the mutual covenants and obligations herein as well as other good and valuable consideration received, ARTIST agrees to provide the Work required hereunder and CITY agrees to pay ARTIST a maximum not-to-exceed total amount of Thirty Thousand Dollars (\$30,000.00) in U.S. currency which CITY shall wire transfer to ARTIST within two weeks after CITY's Final Acceptance.

10.1.1 All payments shall be made only for Work actually performed, completed and accepted by CITY pursuant to this Agreement in accordance with the foregoing payment schedule which shall be accepted by ARTIST as full compensation for all such Work. This maximum amount does not constitute a limitation of any sort upon ARTIST's obligation to perform all Work required hereunder and CITY shall not be obligated to reimburse ARTIST for any expenses unless specifically agreed to in this Agreement.

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

10.2 Background Check Procedures. Prior to commencing any Work, hereunder ARTIST shall provide the CITY'S Contract Administrator a completed and fully executed Release so that CITY, at its sole cost, can conduct a background check on ARTIST in accordance with its Background Screening Policy as set forth in Exhibit 6. CITY reserves the right to refuse to permit ARTIST to provide Work hereunder based upon the grounds for disqualification set forth in the CITY's Background Screening Policy.

10.3 Public Records. CITY is a public agency subject to Chapter 119, Florida Statutes. The ARTIST shall comply with Florida's Public Records Law, as amended. Specifically, the ARTIST shall:

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

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

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

10.3.4 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 Work. 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. Upon request from the CITY'S custodian of public records, all records stored electronically by ARTIST must be provided to the CITY 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](mailto: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](mailto:Laura.Atria@copbfl.com)  
954-545-7800 ext.3813 office

**For ARTIST**

Linda Serrao  
20833 Fuerte Drive  
Walnut, California 91789  
[Lindaserra0@aol.com](mailto:Lindaserra0@aol.com)  
510-219-2195

**ARTICLE 12**  
**GOVERNING LAW AND VENUE**

The Agreement shall be governed by the laws of the State of Florida, both as to interpretation and performance. CITY and ARTIST submit to the jurisdiction of Florida courts and federal courts located in Florida. The parties agree that proper venue for any suit at law or in equity attendant to this Agreement shall be instituted and maintained only in courts of competent jurisdiction in Broward County, Florida.

No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and in addition to every other remedy given herein, now or hereafter existing at law or in equity or by statute or otherwise.

**ARTICLE 13**  
**INDEPENDENT CONTRACTOR**

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

Neither ARTIST nor any of its agents engaging in any Work hereunder shall be deemed an employee or agent of CITY nor shall they represent themselves to others as an employee or agent of CITY. Should any person indicate by written or verbal communication that they believe

ARTIST or one of its agents is an employee or agent of the CITY, ARTIST shall use its best efforts to correct said mistaken belief both verbally and in writing.

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

#### **ARTICLE 14** **ATTORNEY FEES AND COSTS**

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

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

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

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

15.2 ARTIST acknowledges and agrees that CITY would not enter into this Agreement without this indemnification of CITY by ARTIST. The parties agree that one percent (1%) of the total compensation paid to ARTIST hereunder shall constitute specific consideration to ARTIST for the

indemnification provided under this Article. The provisions and obligations of this Article shall survive expiration or early termination of this Agreement. To the extent considered necessary by the CITY's legal counsel, in his or her reasonable discretion, any sums due ARTIST hereunder may be retained by CITY until all claims subject to this indemnification obligation have been resolved. Any sums so withheld shall not be subject to the payment of interest by CITY.

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

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

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

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

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

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

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

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

**ARTICLE 18**  
**INSURANCE**

ARTIST shall bear all responsibility, including the cost of any insuring the LeCoursaire sculpture on a mounting bar, until such time as the CITY's Contract Administrator provides CITY's Final Acceptance of same.

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

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

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

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

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, it shall be lawful for CITY to immediately terminate this Agreement.

**ARTICLE 20**  
**TERMINATION**

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

In the event of a breach or default, the defaulting party shall be given written notice which describes in reasonable detail the alleged breach or default and ten (10) calendar days to cure same, and either party may avail itself of the informal Default and Dispute Resolution Procedures set forth in Article 19 above or seek other remedies as provided hereunder or by law.



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29.1 In case there is conflict between the terms of this Agreement and Exhibits 1-3, the terms of this Agreement shall prevail.

29.2 The LeCorsaire sculpture installed on a mounting bar shall be delivered to CITY who shall have exclusive property rights to the Artwork upon receipt of CITY's \$30,000.00 payment hereunder. ARTIST understands and agrees that CITY has the right to deaccession the Artwork three (3) years after CITY's Final Acceptance of same.

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

29.4 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.

29.5 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.

29.6 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 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, REPAIR AND STANDARDS**

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

31.2 Repairs. After Final Acceptance of the Artwork, CITY shall be responsible to ensure the Artwork is properly maintained and protected, taking into account the recommendations of ARTIST. However, ARTIST shall be given the right of first refusal to perform repairs and shall be paid a reasonable fee for such services. ARTIST and CITY shall agree in writing upon the fee before commencement of such services. If the parties cannot come to agreement for repair services, ARTIST is unable or unwilling to perform any necessary repairs, or the CITY cannot locate ARTIST, CITY will cause such work to be performed at the CITY's expense in accordance with recognized principles of conservation.

31.3 Warranty of Quality. ARTIST warrants the Artwork shall be free of defects in material and workmanship, including without limitation any defects consisting of "inherent vice" or qualities accelerating deterioration of the Artwork, and that ARTIST shall correct, at ARTIST's sole expense, any such defects which appear within a period of one (1) year from CITY's Final Acceptance.

ARTIST understands and agrees the Artwork shall be designed and fabricated as a permanent piece and warrantied to withstand the outdoor climate of South Florida for a minimum of three (3) years after CITY's Final Acceptance of same. Further, ARTIST understands and agrees that CITY is entitled to rely upon the foregoing durability provision such that if any part(s) of the Artwork substantially deteriorates or is otherwise found to be defective, as determined solely by the CITY's Contract Administrator, ARTIST shall be responsible to repair or replace same at ARTIST's sole cost. However, CITY (not ARTIST) shall be solely responsible to bear all costs associated with the repair of any damage to the Artwork caused by vandalism after CITY's Final Acceptance.

Should the Artwork deteriorate to the point that it no longer represents ARTIST's intent during ARTIST's lifetime and/or poses a safety hazard due to its deteriorated state and CITY chooses to have the Artwork restored rather than deaccession ARTIST shall be given the first right

of refusal to perform the restoration. If funds for such restoration are not available, CITY shall have the right to destroy the Artwork upon notifying ARTIST in writing by certified mail, return receipt requested, sent to ARTIST's last known address, that ARTIST has the right of consultation regarding the Artwork's removal or destruction. "Restore" means to effect repairs to the Artwork necessitated by extensive damage or deterioration which require ARTIST's artistic talents to ensure the restored Artwork reflects the qualities and artistic integrity of the Artwork at Final Acceptance by the CITY.

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

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

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

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

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

## **ARTICLE 32**

### **RIGHTS IN ARTWORK**

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

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

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

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

32.1.4 ARTIST has the exclusive right to copyright the Artwork.

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

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

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

32.2 Copyrights. ARTIST agrees that all Work performed under this Agreement shall comply with all applicable patent, trademark and copyright laws, rules, regulations, and codes. ARTIST further agrees the Work will not utilize any protected patent, trademark or copyright unless ARTIST has obtained proper permission and all releases and other necessary documents.

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

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

The provisions of Article 10.3 pertaining to the Florida Public Records Act shall survive the expiration or earlier termination of this Agreement for at least a period of five (5) years after such expiration or termination or longer if required by the Florida Public Records Act as may be amended from time to time.

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

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

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

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

**"CITY":**

Witnesses:

**CITY OF POMPANO BEACH**

\_\_\_\_\_

By: \_\_\_\_\_  
REX HARDIN, 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 \_\_\_\_\_, 2020, by **REX HARDIN** as Mayor, **GREGORY P. HARRISON** as City Manager and **ASCELETA HAMMOND** as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who are personally known to me.

NOTARY'S SEAL:

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF FLORIDA

\_\_\_\_\_  
(Name of Acknowledger Typed, Printed or Stamped)

\_\_\_\_\_  
Commission Number



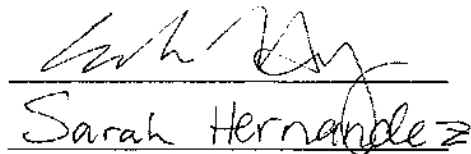
"ARTIST":

Witnesses:



Helen Lu

Print Name



Print Name

BY:

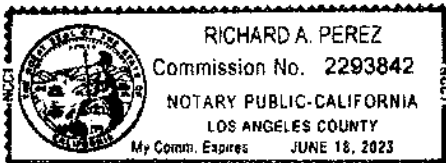
  
LINDA SERRAO

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

The foregoing instrument was acknowledged before me this 16th day of DECEMBER, 2020, by LINDA SERRAO, an individual who is personally known to me or who <sup>2019</sup> has produced the following identification CALIFORNIA DRIVER LICENSE (type of identification).

NOTARY'S SEAL:



  
NOTARY PUBLIC, STATE OF CALIFORNIA

RICHARD A. PEREZ  
Name of Acknowledger Typed, Printed or Stamped

2293842  
Commission Number

# Exhibit: 1

## Call to Artists: Ali Cultural Arts Sculpture

**BUDGET:** \$30,000.00

**DEADLINE:** July 16, 2019

The City of Pompano Beach is looking to purchase a sculpture to be located in front of the Ali Cultural Arts building. The sculpture can be a prefabricated artwork or a commissioned design that the artist will fabricate and install. The sculpture can be a prefabricated artwork or a commissioned design that the artist will fabricate and install. The sculpture can be a free standing or pedestal based artwork.

### THEME & REQUIREMENTS

The City of Pompano Beach is looking to purchase a sculpture to be located in front of the Ali Cultural Arts building. The sculpture should have a performing arts theme. The sculpture can be a prefabricated artwork or a new design that will be commissioned to be created. If the artwork is prefabricated, a list of where the artwork has been exhibited must be provided. The sculpture can be pedestal based. If the sculpture is on a pedestal, the artist is responsible for the fabrication of the pedestal.

The materials and design of the sculpture must stand up to South Florida weather conditions, meet Florida Building Code requirements and be amenable to ongoing maintenance.

If artist is submitting a prefabricated artwork for purchase, the artwork provided in the application is the artwork for purchase and examples of past works do not need to be supplied.

If the artist is submitting a new design to be commissioned for purchase, the artist is to supply a sketch of the new design and examples of past works.

### PROJECT LOCATION

The location for the memorial is the Ali Cultural Center located at 353 Dr. Martin Luther King, Jr. Blvd. Pompano Beach, Florida.

Built in the 1930s, Ali Cultural Arts is a rare surviving example of early 20th century architecture that once comprised a thriving commercial district along Dr. Martin Luther King, Jr. Boulevard (historically named Rock Road). The Mission of the Historic Ali Cultural Arts is to both celebrate the history and culture of the African American community in Pompano Beach and to enhance local access to the cultural arts, with a focus on dance, music and the spoken word, including poetry, storytelling and theater, as part of the Downtown Pompano Creative Arts District.

Ali Cultural Arts is a platform to enrich the community through visual and performing arts. Visual art exhibitions feature the best in local, regional, national artists, while intimate receptions will engage patrons in creative dialogue as they enjoy eclectic

musical programs. For more information on the Ali Cultural Arts, visit <http://aliarts.org/pages/about>.

Link to the exact Location: <https://pbpublicart.com/assets/docs/files/Location.pdf>.

### **ARTWORK PURCHASE BUDGET**

The purchase budget established for the project is \$30,000.00. The price will include all insurance, taxes, fees, permits, delivery and installation. Applicants must submit a detailed budget list.

### **PERMITS**

It shall be the artist's responsibility, where applicable, to obtain all necessary permits prior to fabrication and installation. The artist will ensure that the design will be code compliant and can stand up to South Florida weather conditions and wind load requirements.

### **INSURANCE**

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

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

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

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

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

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

B. Liability Insurance.

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

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

Type of Insurance	Limits of Liability
<b>GENERAL LIABILITY:</b>	Minimum 1,000,000 Per Occurrence and \$2,000,000 Per Aggregate
* Policy to be written on a claims incurred basis	
XX comprehensive form	bodily injury and property damage
XX premises - operations	bodily injury and property damage
— explosion & collapse hazard	
— underground hazard	
XX products/completed operations hazard	bodily injury and property damage combined
XX contractual insurance	bodily injury and property damage combined
XX broad form property damage	bodily injury and property damage combined
XX independent LICENSEEs	personal injury
XX personal injury	
— sexual abuse/molestation	Minimum \$1,000,000 Per Occurrence and Aggregate
— liquor legal liability	Minimum \$1,000,000 Per Occurrence and Aggregate
<b>AUTOMOBILE LIABILITY:</b>	Minimum \$1,000,000 Per Occurrence and \$3,000,000 Per Aggregate. Bodily injury (each person) bodily injury (each accident), property damage, bodily injury and property damage combined.
XX comprehensive form	

XX owned  
XX hired  
XX non-owned

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**REAL & PERSONAL PROPERTY**

\_\_\_ comprehensive form                      Agent must show proof they have this coverage.

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<b>EXCESS LIABILITY</b>		Per Occurrence	Aggregate
___ other than umbrella	bodily injury and property damage combined	\$2,000,000	\$2,000,000

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<b>PROFESSIONAL LIABILITY</b>		Per Occurrence	Aggregate
___ * Policy to be written on a claims made basis		\$1,000,000	\$1,000,000

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(3) If Professional Liability insurance is required, LICENSEE agrees the indemnification and hold harmless provisions set forth in the Agreement shall survive the termination or expiration of the Agreement for a period of three (3) years unless terminated sooner by the applicable statute of limitations.

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

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

- (1) Certificates of Insurance evidencing the required coverage;
- (2) Names and addresses of companies providing coverage;
- (3) Effective and expiration dates of policies; and

(4) A provision in all policies affording CITY thirty (30) days written notice by a carrier of any cancellation or material change in any policy.

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

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

## **APPLICATION**

Artist must submit the following as part of the application:

1. Resume
2. Artist Statement
3. Proposed Design/Proposed Prefabricated sculpture
4. If Prefabricated, a list of where the artwork has been exhibited
5. Material list
6. If Proposed Design, examples of past work

## **TENTATIVE SCHEDULE**

Call to Artist will be posted.	May 21, 2019
Deadline for submissions.	July 16, 2019
Artist will be selected.	August 2019
City Commission approval.	September/October 2019

## **ELIGIBILITY**

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

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

#### **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**

**CaFÉ Event Artist Citation**

**Ali Cultural Arts Sculpture Artist Citation**

Linda Serrao

**CONTACT**

Contact via Cell Phone

Email [lindaserrao@aol.com](mailto:lindaserrao@aol.com)

Phone 510 219-2195

Cell 510 219-2195

Web Site <http://lindaserrao.com>

Mailing 20833 Fuerte Dr.  
Walnut CA () USA  
91789-

**EVENT SPECIFIC DATA**

Status Received

Booth # 0

Wait List # 0

**CUSTOM ANSWERS**

Please upload your proposed design sketch if you are proposing a new sculpture to be commissioned.

If you are proposing a prefabricated sculpture, please upload an image of the already fabricated artwork.

**Corsaire9024a.jpg (download)**

Please list the materials used/to be used in this sculpture.

Bronze sculpture on concrete pedestal.

If you are proposing a prefabricated sculpture, please provide a list of exhibition locations the sculpture has been displayed. If you are proposing a new commissioned sculpture, please type in N/A.

Le Corsaire was created in 2018. It has been shown at the following exhibits:  
55th Annual Newport Beach Art Exhibition, Newport Beach, California, 2019  
Art Venture, Segerstrom Concert Hall, Costa Mesa, California, 2018  
Pasadena Society of Artists, La Canada, California, Award of Merit, 2018



Please provide your artist resume.

#### Artist Statement

My work is figurative and realistic, meant to capture a moment in time and to reflect our relationships to other peoples, other creatures, and to the environment which we all share. Beauty comes in many forms in the world around us—in people of all sizes, sexes, colors, ages, and cultures, in animals both familiar and unusual, and in creatures both real and imagined. I use this rich variety to create unique, expressive sculptures. I believe that art should reveal a little about the times and values in which it is created, and I strive to subtly imply a symbol or story or situation within my figures.

#### Awards

Certificate of Recognition from California Senate for my contribution to public art, 2016  
Cultural Arts Commission Award, Costa Mesa, California, 2018  
Award of Merit, Hollis Goodall, Curator LACMA (Los Angeles County Museum of Art)  
First Place Sculpture, Cassandra Coblentz, Senior Curator, Director of Orange County Museum of Art.

#### Public Installations

City of Sebastopol, Sebastopol, California  
City of Santa Clara by Levi's Stadium, Santa Clara, California  
Life Chiropractic College West, Hayward, California  
Barcelona, Spain, College of Chiropractic  
New Zealand College of Chiropractic, Auckland, New Zealand  
Palmer College of Chiropractic, Dandenong, Victoria, Australia  
Walnut Fire Station, Walnut, California  
Los Angeles Arboretum, Arcadia, California  
Los Angeles County Fire Museum, Hollywood, California  
Santa Clara City Hall, Santa Clara, California  
Mendocino Sculpture Garden, Fort Bragg, California  
Dominion Sculpture Garden, San Antonio, Texas

#### Recent Exhibits

55th Annual Newport Beach Art Exhibition, Newport Beach, California, 2019  
Showcase Gallery 23rd Annual Art Exhibition, Santa Ana, California, 2019  
Convergence, Richard Neutra Gallery, Los Angeles, California, 2019  
Orange County Open Art Venture, Segerstrom Concert Hall, Costa Mesa, California, 2018  
Artist's Eye Exhibit, Showcase Gallery, Santa Ana, California, 2018, 2nd Place  
Sculptors of Southern California, Vista Art Gallery, Vista, California, 2018  
Pasadena Society of Artists, La Canada, California, Award of Merit, 2018  
National Sculpture Society, San Diego, California, 2017  
Art Venture Show, Costa Mesa, California, 2017  
PSA 92nd Annual, Montrose, California, 2017  
San Fernando Valley Arts Center, Tarzana, California 2016  
White's Gallery Show, Montrose California, 2015  
Burbank Arts Gallery, 2015, Burbank, California  
Pasadena Museum, 2015, Pasadena, California  
Saga Gallery, Monrovia California, 2015  
Pasadena Art Gallery Association, 2014  
dA Gallery Show, 2013, Pomona, California.  
Third Dimension Exhibit, 2013, Burbank, California.  
Huntington Museum Exhibit, 2012, San Marino, California.  
PAS Annual Open Exhibit, 2011, Award of Merit, Juror Hollis Goodall, Curator LACMA  
Brand Museum, Glendale, California 2010, Juror Gloria W. Sander, Curator Norton Simon Museum  
Colonnade Gallery, Pasadena, California 2011  
Orange Open, Guggenheim Gallery, Orange, California 2011  
ACE, Citibank Gallery, Los Angeles, California 2010, Award of Merit and Peoples' Choice Awards  
PAS 85th Annual Exhibit, Pasadena, California, 2010  
VITA art Center "March" Exhibit, Ventura, California 2010  
Southern California Open Regional Art Exhibit, Sherman Oaks, California, 2010

Loveland Sculpture Show, Loveland Colorado, 2009  
Bancroft Sculpture Show, Walnut Creek, California 2009  
Sculptors' Dominion Show, San Antonio, Texas 2009  
President's Award, Fullerton Art Show, Fullerton, California 2008  
Second Place, Sculpture, Fullerton Art Show, Fullerton, California 2007

#### Recent Projects

My works are in public, corporate and private collections throughout the world. Some are portraits or interpretations of individuals, while others portray a subject with symbolic meaning to the client.

2019, Maya Angelou, Palo Alto, California  
2019, Colossus, Pomona, California  
2018, Sunburn, Stockton, California  
2018, Susan B. Anthony, Walnut, California  
2018, West Wind, Phoenix, Arizona  
2017, LeCorsaire, Walnut, California  
2017, Deep Blue Sea, Oceanside, California  
2017, We Can, Berkeley, California  
2017, On The Precipice, Colfax, Washington  
2016, Anything's Possible, by Levi's Stadium, Santa Clara, California  
2016, A Mother's Heart, Walnut, California  
2015, One World, One People, Sacramento, California  
2015, Lotus, Pasadena, California  
2015, Pegasus, Tracy, California  
2014, Joe, Echo Park, California  
2014, Hopscotch, Diamond Bar, California  
2014, DD Palmer, Dandenong, Victoria, Australia  
2014, DD Palmer, Toronto, Canada  
2014, DD Palmer, Ontario, Canada  
2014, Old Dad Chiro, Life Chiropractic College, Hayward, California  
2014, First Chiropractor, Barcelona, Spain  
2014, Portrait of DD Palmer, New Zealand  
2013, Sylvia, Walnut, California.  
2013, Aftermath, Newport Beach, California  
2012, Hello, Butterfly, Los Angeles, California.  
2012, Waiting, Walnut, California.  
2012, Atlas At Rest, Atlanta, Georgia.  
2012, Leda Tempting the Swan Zeus, new.  
2011, Handfuls of Water, drinking fountain.  
2011, Pomona, Oakland, California.  
2011, Mermaid, Monterey, California.  
2011, Leatherback Turtle, Monterey, California.  
2010, Dryad, Los Angeles, California.  
2010, Our Many Faces, Sacramento, California.  
2010, Picnic, Santa Barbara, California.  
2010, Medusa, Thousand Oaks, California.

#### Education and Experience

Fullerton College Sculpture Foundry, Fullerton, California  
California Polytechnic University, Pomona, California  
UCLA, B.A.  
California Licensed Building Contractor and Landscape Contractor, License B379481  
Planning Commissioner, City of Walnut, California

#### Profile and Skills

Proficient at capturing a faithful likeness of a real person, even if only photos are available.  
Adept at capturing character and mood of a subject in facial and bodily expressions.  
Skillful at executing clothing, fabric drapery and textures, and accoutrements in finished work.  
Innovative problem solver, patient and tenacious, and able to meet deadlines.  
Hard working, even tempered, mature and flexible.

Extensive experience in all facets of bronze sculpture production and installation.  
Over 25 years experience working with individuals and communities in project development.

#### Summary

A work of art is most engaging when it reflects an aspect of the time in which it was created, making us more aware of our own mores, attitudes and behavior, both in our own present and in relation to past peoples. My works are completed in cast bronze in the ancient lost wax casting technique and are of a quality that will last for generations, indoors or out. My personal artistic focus is on the intricacies of character and circumstance as expressed through facial types and expressions and the use of the human figure to represent our dreams, ideals, and everyday life.

I have had extensive experience working with both individual and group clients in environments encompassing many styles of architecture and landscaping. I understand the importance of community concerns, and the need to consider the desires of the individual developer and project designer as well as the goals of the receiving community. Integration into the physical, cultural, and historic environment is crucial to the success of a public piece.

I am a wholly owned women's business enterprise, and am a mature and responsible artist who has never missed a deadline or gone over budget. I do not believe that there is only one solution to a project and am flexible in adapting my ideas to the needs and desires of the client.

If you are proposing a new commissioned artwork, upload examples of past works. Minimum of 3 maximum of 5.

If you are submitting a prefabricated artwork, you do not need to answer this question.

No files uploaded

#### PAYMENTS

Transactions ID# 769603 (1) \$0.00 All Cultural Arts Sculpture using a Visa or Mastercard

#### COMMUNICATION

Emails

#### ART

##### Category

**Statement** As an artist, my goal is to make public art that resonates with the receiving community. My figurative works are reflections of our own experiences. They might include a message, but they also stand alone on their own merits. They can be appreciated for their intrinsic beauty with no explanation required. It is this connection between art and viewer that makes a piece appealing. My works fill our need for the familiar welcoming image of our own selves, and ground a project in the real world.

The piece I am submitting is entitled, Le Corsaire, The Pirate. It depicts a male ballet dancer in all his power and grace. It is the perfect complement for the Ali Cultural Arts Building. As a celebration of performing arts, it needs no explanation to be appreciated. As a sculpture, it exhibits repetition, an aspect rarely achieved in figural work. This repetition imbues the dancer with dynamic movement. His perfect form is instinctively recognizable by all.

The piece is bronze and should be mounted to a pedestal about 36" high so that he appears to be leaping above the viewer. The piece itself measures 37" x 37" x 16". It was cast at a world renowned foundry and is of a quality that will last for generations, tolerating the ravages of time, weather, and human interaction. Traditional bronze sculptures like mine will be our enduring legacy. My classic style is ageless. My works will remain relevant for generations.

My bronze sculptures are in collections throughout the world. I was honored by the California Senate for my contribution to public art. My installation of a football player and young fan, Anything's Possible, by Levi's Stadium, installed for Super Bowl 50, is a well-known landmark. (see [https://en.wikipedia.org/wiki/Anything%27s\\_Possible](https://en.wikipedia.org/wiki/Anything%27s_Possible) )

Because the viewer can make eye contact with my works, they do not get lost in the background decoration, remaining both noticeable and memorable.

Thank you for consideration,  
Linda Serrao  
LindaSerrao.com



***Le Corsaire***  
bronze  
42" x 42" x 22"  
\$35000.00



***Anything's Possible Installation***  
Bronze  
78" x 36" x 36"  
\$100000.00



***Old Dad Chiro.***  
bronze  
72" x 36" x 36"  
\$104000.00



***American Colossus***  
bronze  
28" x 18" x 12"  
\$0.00

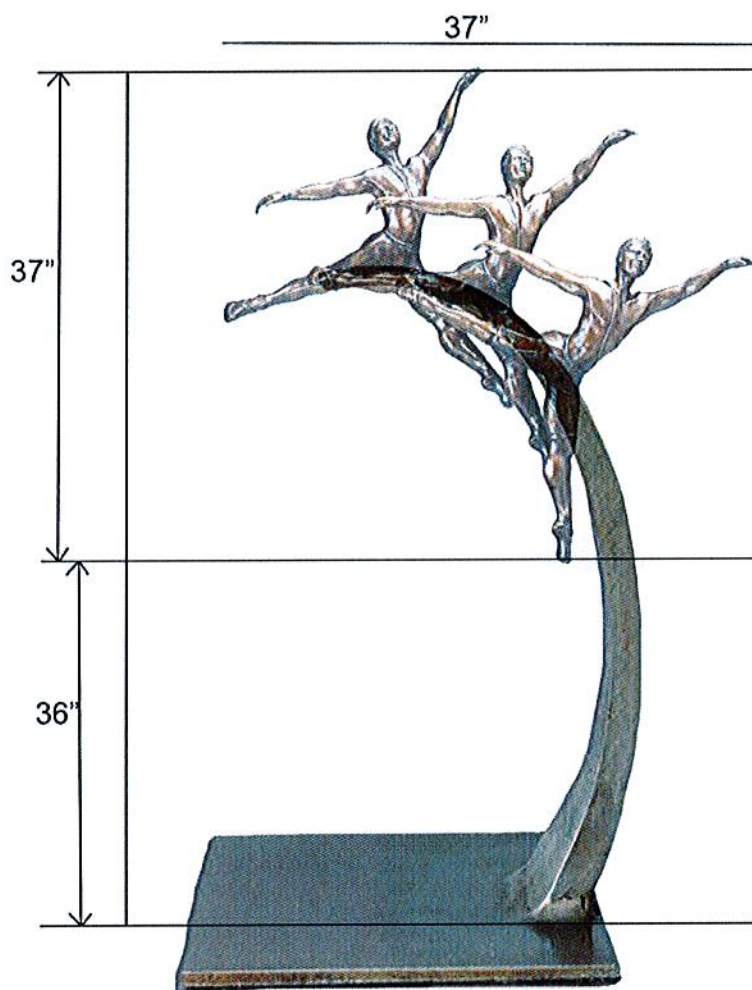


***Lotus***  
bronze  
24" x 24" x 24"  
\$25000.00

Exhibit: 3



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# Exhibit: 4

## THE CITY OF POMPANO BEACH PUBLIC ART CATALOGUING FORM

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

I. Artist Information

A. 1. Name:

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

B. Date of Birth:

C. Place of Birth:

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

E. Phone:

F. One paragraph biography of artist:

II. Work of Art

A. Title:

B. Description of materials:

C. Dimensions in inches:

D. Inscription marks:

E. Artwork with electronic components used:

-Name of item:

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

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

G. Artist's statement:

III. Fabrication Information

A. Material(s) used in Artwork:

B. Material Finish:

C. Material Suppliers:

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

- E. Fabricators (name, address, phone, e-mail, web site):
- F. Fabrication method (attach diagrams or drawings):
- G. Architect/Engineer (name, address, telephone, e-mail):

IV. Installation

- A. Installation executed by (name, address, phone, fax, e-mail, website):
- B. Installation method (attach diagram of substructure, footings, CD with documents and photographs):
- C. Date of Installation:

V. External Factors

- A. Describe physical positioning of the artwork:
- B. Describe existing environmental factors which may affect the condition of the artwork:
- C. If the Artwork is site-specific, describe the relationship of the Artwork to its site:

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

- A. Short-term:
- B. Long-term:
- C. Note desired appearance of the artwork:

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

VIII. Documentation

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



Exhibit: 5

**ABSOLUTE BILL OF SALE**  
**(Le Corsaire Sculpture)**

**KNOW ALL MEN BY THESE PRESENTS**, that **LINDA SERRAO** ("GRANTOR"), whose address is **20833 Fuerte Drive, Walnut, California 91789** for and in consideration of the sum of **THIRTY THOUSAND DOLLARS (\$30,000.00)** and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, has granted, bargained, sold, transferred and delivered, and by these presents does grant, bargain, transfer and deliver unto the **CITY OF POMPANO BEACH**, a municipal corporation of the State of Florida (**GRANTEE**"), whose address is **100 West Atlantic Boulevard, Pompano Beach, Florida 33060**, its successors and assigns, the following:

**All right, title and interest in the Le Corsaire sculpture on a pedestal depicted and more particularly described in Composite Exhibit A attached hereto and made a part hereof**

**TO HAVE AND TO HOLD** the same unto **GRANTEE**, its successors and assigns forever.

**GRANTOR** does covenant to and with **GRANTEE**, that **GRANTOR** is the lawful owner of the above described property; that said property is free from all encumbrances; that **GRANTOR** has good right to sell the same aforesaid; that **GRANTOR** will warrant and defend the sale of said property unto **GRANTEE**, its successors and assigns, against the lawful claims and demands of all persons whomsoever.

**IN WITNESS WHEREOF**, **GRANTOR** has hereunto set its hand and seal, this \_\_\_\_ day of \_\_\_\_\_, 2019.

WITNESSES

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

By: \_\_\_\_\_  
Signature of Artist

By: \_\_\_\_\_  
Print Name of Artist

State of \_\_\_\_\_  
County of \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019, by **LINDA SERRAO** who is personally known to me or who has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public

(SEAL)

\_\_\_\_\_  
Print Name

FP/jmz  
10/30/19  
l:agr/cultural-arts/2020-56f

# Exhibit: 6

## CITY OF POMPANO BEACH ADMINISTRATIVE POLICY

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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

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In an effort to ensure that the City of Pompano Beach provides a safe place for children to learn and enjoy recreation programs, and in an effort to acquire and retain volunteers and instructors who are more likely to safely interact with participants in programs, the Parks and Recreation Department will conduct criminal background screening on all prospective volunteers and instructors, and based upon the recommended guidelines for credentialing set by the National Recreation and Park Association, shall establish and enforce criteria for disqualification of applicants.

(1) The following shall constitute grounds for disqualification of an applicant:

(a) The applicant has been found guilty of any of the following crimes listed below:

"Guilty" means that a person was found guilty following a trial, entered a guilty plea or entered a no contest plea, accompanied by a court finding of guilt, regardless of whether there was an adjudication of guilt (conviction) or a withholding of guilt. Acquittal, Nolle Prose, or dismissal of charges shall not be included in said definition:

1. **SEX OFFENSES INVOLVING CHILDREN**

\*All Sex Offenses and Offenses involving children or the abuse of children – regardless of the amount of time since offense. Examples include but are not limited to child molestation, rape, sodomy, prostitution, indecent exposure.

2. **FELONIES**

\*All Felony Offenses involving violence – regardless of the amount of time since the offense. Examples include but are not limited to: murder, attempted murder, manslaughter, aggravated battery, aggravated assault, kidnapping, robbery.

**CITY OF POMPANO BEACH  
ADMINISTRATIVE POLICY**

**PAGE 2**

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<b>TITLE:</b>	<b>Youth Program Background Screening Policy</b>	<b>Number:</b>	<b>500.06</b>
		<b>Revised:</b>	<b>8-2-10</b>

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\*All Felony Offenses, other than those for violence, sex, or offenses involving children, within the past seven (7) years of the date of the application. Examples include but are not limited to: drug offenses, theft.

**3. MISDEMEANORS**

\*All Misdemeanor offenses involving violence within the past five (5) years of the application date. Examples include but are not limited to: simple battery, assault, domestic violence.

\*Any three (3) or more Misdemeanor drug offenses or alcohol offenses, or any combination of same within the past five (5) years of the application date. Examples include, but are not limited to, driving under the influence, possession of marijuana, disorderly conduct, possession of drug paraphernalia.

\*Any other Misdemeanor offense within the past five (5) years of the application date that would be considered a potential danger to children or that is directly related to the function of that coach. Examples include but are not limited to contributing to the delinquency of a minor, providing alcohol to a minor, petty theft of money.

- (b) Pending prosecution of offenses listed under subsection (a.) above.
- (c) Falsification of any requested information on the application.

**CITY OF POMPANO BEACH  
ADMINISTRATIVE POLICY**

**PAGE 3**

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<b>TITLE:</b>	<b>Youth Program Background Screening Policy</b>	<b>Number:</b>	<b>500.06</b>
		<b>Revised:</b>	<b>8-2-10</b>

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- (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