



AGREEMENT

THIS AGREEMENT is made this _____ day of _____, 2020 between the City of Boca Raton, a Florida municipal corporation (“City”), and _____, an Artist (“Artist”).

WITNESSETH:

WHEREAS, the City owns and operates the Mizner Park Amphitheater located at the north end of Mizner Park (“Amphitheater”); and

WHEREAS the City Council has determined that a visual art project should be installed on the stage doors of the Amphitheater, the Mizner Park Amphitheater Stage Doors Mural Project (“Project”), which will be comprised of a visual art mural (“Artwork”) created by an artist(s); and

WHEREAS, the purpose of the Project is to enhance and improve the overall aesthetic appearance of the Mizner Park Amphitheater, Downtown Boca and the City of Boca Raton as a whole with the Artwork; and

WHEREAS, the City issued a Call to Artists for artists to create Artwork for the Project in conformance with the Project Selection Criteria; and

WHEREAS, at a public meeting, the City Council selected Artist to create Artwork for the Project; and

WHEREAS, Artist’s Artwork proposal, a copy of which is attached hereto as Exhibit “A”; meets the Project Selection Criteria; and

WHEREAS, the City and Artist desire to execute an agreement establishing the rights and responsibilities with respect to the Artwork, including installation, maintenance, and ownership.

NOW, THEREFORE, for the mutual covenants set forth in this Agreement and good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Recitals.** The recitations set forth above are hereby incorporated into this Agreement as if fully set forth herein.

2. Artist's Representations, Warranties, and Responsibilities.
- a. Artist shall create the Artwork in the exact manner, or as close to the proposal, approved by the City Council, which is depicted in attached Exhibit "A".
 - b. Artist shall complete the installation of the Artwork on or before March 31, 2021. Should inclement weather prevent the Artist from completing the Artwork on or before March 31, 2021, the City Council may permit completion at a future date to be determined.
 - c. The City may update the City's Parks and Recreation Board and/or the Greater Boca Raton Beach and Park District of the selected Artwork. Artist shall provide all support deemed necessary by the City in order to complete the update in regard to the Artwork, in the event the City's Parks and Recreation Board and/or the Greater Boca Raton Beach and Park District are to be updated.
 - d. The Artwork shall be installed by Artist at the site generally depicted in attached Exhibit "B". The City Staff shall determine the time and hours of day for completion of the Artwork to be installed.
 - e. Artist shall furnish all services and labor necessary and as may be required in the performance of this Agreement. Artist shall be responsible for providing all materials and supplies necessary to complete the installation of the Artwork and cleanup of the Project area.
 - f. Artist hereby represents to the City, with full knowledge that the City is relying upon these representations when entering into this Agreement, that Artist has the expertise, talent, experience, and manpower to perform the services pursuant to this Agreement.
 - g. Artist represents and warrants that all work performed pursuant to this Agreement, including but not limited to the Artwork, is the sole work of the Artist, is an original creation, and does not infringe upon or violate any copyrights or other rights of any person, firm, or organization. Artist acknowledges and agrees to defend, indemnify and hold harmless the City against any claims alleging that the Artwork infringes on the intellectual property rights of any third parties.
 - h. Artist warrants the Artwork against all defects in workmanship and materials for a period not to exceed two (2) years from the date of Project completion ("Warranty Period") and shall repair or replace defective materials and workmanship at Artist's sole cost during the warranty period. To be valid, any warranty claim(s) submitted by the City must be made in writing during the Warranty Period.
 - i. All work performed under this Agreement shall be done in a professional manner.
 - j. The Artwork shall be produced to the City's sole satisfaction. The quality of the completed Artwork is a matter of prime importance and shall meet

all applicable industry standards. The display of the Artwork shall be subject to the sole discretion of the City.

- k. Artist agrees to the following related to the Mizner Park Amphitheater site: that he/she will coordinate and fully cooperate with the City Amphitheater staff during the completion of the Project; keep all areas of the stage and the amphitheater clean and free of paint or debris, protected from scratches or other physical damage including but limited to the stage door tracks, floor of stage, side walls, proscenium above and the entire amphitheater grounds; no vehicles or parking will be permitted inside the amphitheater, or grounds—parking will be available in the grass lot adjacent to the amphitheater throughout the duration of the project; if scaffolding or boom lift is used, it must be secured overnight—scaffolding with wheels may be moved into the stage area and stored overnight, as coordinated with amphitheater staff; initial setup and ending times shall be coordinated with the amphitheater staff; area shall be clear and navigable without obstructions while the work is being performed on or near the sidewalk and any public pathways adjacent to the project area.
 - l. The City is responsible for establishing the Project’s timeline.

3. Term of Agreement. This Agreement shall commence as of the date of execution and shall end two (2) years from the project completion.

4. Termination. The City shall have the right to terminate this Agreement upon seven (7) days written notice to Artist when the City determines, in its sole discretion, that it is in the best interest of the public or for the convenience of the City, or if the Artist fails to install the Artwork that is specified in this Agreement, fails to complete installation of the Artwork within the time period required by this Agreement, or otherwise breaches this Agreement. The City shall be liable only for payment required by this Agreement until the date of the termination. Artist shall only have the right to terminate this Agreement for special circumstances that prevent Artist from continuing to provide the work under this Agreement. If Artist terminates the Agreement, if required by the City, the Artist shall return to the City any funds received by Artist from the City within ten (10) days of the date of termination. If this Agreement is terminated for any reason, Artist shall remove all of Artist’s property from all City facilities. The following provisions shall continue indefinitely and survive the cancellation, termination, expiration, lapse or suspension of this Agreement: the indemnity provision in paragraph 2(g), paragraph 2(i), Paragraph 7, and paragraph 8.

5. Compensation. The City shall pay Artist a total amount not to exceed \$_____. Of this amount, \$_____ shall be paid as a Project stipend, which stipend shall only be utilized by Artist for costs incurred for paint, supplies, site preparation, installation, and clean-up, and \$_____ shall be paid pursuant to funds provided by the Greater Boca Raton Beach and Park District. The stipend and funds herein shall be the only payment made to Artist under this

Agreement; there shall be no additional payments to Artist by the City in regard to the Agreement or for costs incurred by Artist. Payments made to Artist by the City are subject to authorization by the City Council, conformance with any Project rules or procedures established by the City Council, and subject to an approved W-9 Vendor Registration being submitted by Artist to the City.

Payment to Artist by the City shall be made as follows: a) 50% of the approved amount within thirty (30) days following the execution of this Agreement, authorization by the City Council and the approval of the submitted W-9 Vendor Registration information; and b) the remaining 50% of the approved amount within thirty (30) days of the date of completion of the Artwork.

6. Independent Contractor. Artist, and anyone assisting or providing support to the Artist, shall be and shall remain an independent contractor and not an agent or employee of the City.

7. Ownership of the Artwork, Waiver and Acknowledgement. The City shall own all rights in the Artwork. Artist hereby waives (1) all proprietary rights to, and ownership of, the Artwork; (2) all claims that may arise under the Visual Artists Rights Act of 1990, 17 U.S.C., Sections 106A and 113(d) (also known as "VARA") and any other local, state, federal or international laws that convey rights of the same nature as pursuant to 17 U.S.C. 106A; and (3) all rights to replicate, distribute, or reproduce the Artwork.

Artist acknowledges the City's right to modify, remove, and/or maintain the Artwork, in any matter determined by the City and in the City's sole discretion. Artist acknowledges the City is entitled to exhibit, publicize, broadcast, advertise, and otherwise use the likeness of the Artwork, in any non-commercial, non-profit manner the City sees fit. Artist acknowledges that the City shall have the right to use Artist's name, likeness and biographical information in connection with the display, reproduction, and/or distribution of materials related to the Artwork.

8. Indemnification. Artist shall be responsible for all damage to persons or property that occurs as a result of Artist's fault or negligence. Artist hereby agrees to defend, indemnify and hold harmless the City and its agents, employees, and elected officials. Artist hereby agrees to defend, indemnify and hold harmless the City and its agents, employees, and elected officials from any and all losses, claims, suits, actions and liability, including all litigation costs, which may arise from any acts or omissions of Artist during the performance of the work related to this Agreement. In the case the City shall be made a party to any such litigation, the Artist shall defend, protect and hold the City harmless and pay all costs and expenses and reasonable attorney's fees for the litigation, including appellate levels. This indemnity shall continue indefinitely and survive the cancellation, termination, expiration, lapse or suspension of this Agreement.

9. Assignment. The parties agree that the expertise and experience of Artist are material considerations for this Agreement. Therefore, Artist shall not assign or transfer any interest in this Agreement nor the performance of any of Artist's obligations hereunder.

10. No Third-Party Beneficiaries. This Agreement shall not be construed to confer rights or privileges or causes of action to any third party or entities not a party to this Agreement.

11. No Waiver of Sovereign Immunity. Nothing in the Agreement shall be construed to affect in any way the City's rights, privileges, and immunities, including the monetary limitations of liability, as set forth in Section 768.28, Florida Statutes and nothing herein shall be construed as a waiver by the City of its sovereign immunity protections.

12. Public Records. Artist shall comply with all applicable public records laws in regard to public records relating to this Agreement. If Artist has questions regarding the application of Chapter 119, Florida Statutes, Artist may contact the custodian of public records at city of Boca Raton, City Clerk, 201 W Palmetto Park Road, Boca Raton, Florida 33432, or via email at brcityclerk@myboca.us.

13. Notice. All notices required or permitted by this Agreement shall be delivered (a) by certified mail, postage prepaid, effective five days after mailing, or (b) by hand delivery, effective upon delivery, in either case addressed as follows:

As to City:

City of Boca Raton
Ruby Childers, AICP, Downtown Manager
201 West Palmetto Park
Boca Raton, FL 33432
561-393-7782

As to Artist:

Artist's Name: _____

Artist's Address: _____

Artist's Phone No.: _____

Artist's E-mail Address: _____

14. Force Majeure. The City shall not be responsible for its failure to make the premises available or to provide the facilities and services described herein, and the Artist shall not be responsible for completing the Artwork, where such performance is rendered impossible and impractical due to strikes, walk-outs, acts of God, inability to obtain labor, materials or services, government restriction (other than City), enemy action, civil commotion, fire, unavoidable casualty, utility disruptions or blackouts, or similar causes or any other causes beyond the control of City.

15. Governing Law and Venue. Any dispute under this Agreement shall be determined under the laws of the State of Florida with venue in Palm Beach County, Florida. **BY ENTERING INTO THIS AGREEMENT, THE CITY AND THE PROVIDER HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY LITIGATION RELATED TO THIS AGREEMENT.**

16. Entire Agreement. This Agreement constitutes the entire understanding between the parties, and as its effective date supersedes all prior or independent agreements between the parties covering the subject matter hereof. This Agreement may only be modified in writing by an instrument executed by the City and Artist.

17. Severability. The invalidity, illegality, or unenforceability of any provision of this Agreement, or the occurrence of any event rendering any portion or provision of this Agreement void or voidable, shall in no way affect the validity or enforceability of any other portion or provision of the Agreement. Any void or voidable provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void. The parties further agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision provided, however, no severance or reformation shall have the effect of creating an interest in real property for the Artist.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the day and year first written above.

ATTEST:

CITY OF BOCA RATON, FLORIDA

Susan S. Saxton
City Clerk

By: _____
Leif J. Ahnell, C.P.A., C.G.F.O.
City Manager

Approved as to Form:

Diana Grub Frieser
City Attorney

ARTIST:

WITNESSES:

By: _____

(print or type name)

Name: _____

(print or type name)

SAMPLE