

EXAMPLE ARTIST AGREEMENT

Once finalists are chosen to commission artwork, agreement will be processed.

ARTIST AGREEMENT

THIS AGREEMENT, dated the _____ day of _____, 2019, is by and between: City of Boynton Beach, a municipal corporation, organized and operating pursuant to the laws of the State of Florida, with a business address of 3301 Quantum Blvd., Suite 101, Boynton Beach FL 33426, hereinafter referred to as "CITY",

and

_____ with an address of _____ in hereinafter referred to as "ARTIST." CITY and ARTIST may hereinafter collectively be referred to as the "Parties."

WITNESSETH:

In consideration of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, "CITY" and ARTIST as follows:

WHEREAS, public art is a work of art, generally created by a public ARTIST exhibiting the highest quality of skill and aesthetic principals and includes all forms of the visual arts conceived in any medium, material or combination hereof, including but not limited to paintings, sculptures, stained glass, mosaics, murals, and ARTIST designed functional, architectural, landscaped, and landform elements as described in the Public Art Ordinance 07-002; and

WHEREAS, "CITY" desires to obtain professional services from ARTIST for the creation of public artwork; and

WHEREAS, ARTIST possesses the specific skills, talent, expertise, experience and knowledge to provide "CITY" with the artwork in a professional and artistic manner; and

WHEREAS, ARTIST has stated an interest in working on the creation of public artwork for the PUBLIC ART PROJECT; and

WHEREAS, "CITY" desires to commission the ARTIST to create public artwork for initial display at the PUBLIC ART PROJECT, LOCATION, Boynton Beach, Florida (the "Site") on the terms and conditions set forth in this agreement.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements herein contained and other good and valuable consideration, the receipt of which is hereby acknowledged, it is agreed herein between the Parties hereto as follows:

ARTICLE 1

1.1. RECITALS: Each "whereas" clause set forth above is true and correct and herein incorporated by this reference.

ARTICLE 2

SERVICES AND RESPONSIBILITIES

2.1. ARTIST hereby agrees to create the public artwork described in proposal attached hereto as Exhibit A (the "Public Art Project"), or other services which may otherwise be required, as further enumerated in the Scope of Services set forth in Article 3 herein below.

2.2. The public artwork shall be installed by the "CITY" in the location at the site as designated by the approved public art project proposal.

2.3. ARTIST shall furnish all services and labor necessary and as may be required in the performance of this agreement.

2.4. ARTIST hereby represents to "CITY", with full knowledge that "CITY" is relying upon these representations when entering into this agreement with ARTIST, that ARTIST has the professional expertise, talent, experience and manpower to perform the services to be provided by ARTIST pursuant to the terms of this agreement.

2.5. ARTIST represents and warrants that all work performed pursuant to this agreement, including but not limited to the public artwork, is an original creation and does not infringe upon or violate any copyrights or other rights of any person, firm or organization. ARTIST does hereby indemnify and hold "CITY" harmless from and against any and all claims and liabilities that may arise as a result of any breach of the foregoing representation and warranty.

2.6. "CITY" recognizes that authors of visual art have certain rights pursuant to the Federal Visual ARTIST Rights Act of 1990, known as "VARA". "CITY" will not intentionally distort, mutilate and/or modify the public artwork in a manner that would be prejudicial to ARTIST's honor or reputation.

2.7. "CITY" is entitled to exhibit, publish, broadcast, advertise and otherwise use the likeness of the public artwork, in any non-commercial, non-profit manner "CITY" sees fit. Incidental appearance of the public artwork in photographs or in depictions of the store front where the public art is located shall not violate the prohibition set forth in this paragraph.

2.8. "CITY" agrees to give the ARTIST full acknowledgement and credit as the creator of the public artwork, with the placement of a plaque or similar object on and/or near the public artwork.

2.9. The value of the public artwork is established when the price of the art is commissioned.

2.10. "CITY" agrees to provide the ARTIST reasonable access to the site to prepare the public artwork for managing the installation. ARTIST may not obstruct access to the entrance to the project and ARTIST shall be responsible for securing the installation site to protect the public from any hazards that may arise during preparation of the site or installation of the public artwork.

2.11. ARTIST may not hire or utilize the services of any sub-contractor, employee or other individual to assist the ARTIST in performing services under this agreement without the prior written approval of "CITY".

ARTICLE 3

SCOPE OF SERVICES

ARTIST shall perform the following services in accordance with this Agreement with "CITY" as follows:

3.1. All work performed under this Agreement shall be done in a professional manner.

3.2. The public artwork shall be produced to "CITY"'s satisfaction and in conformity with the appropriate moral and ethical standards for the community in which the Site is located. The quality of the completed public art is a matter of prime importance and shall meet all applicable industry standards. "CITY" shall have the right to approve and/or reject the public artwork or any portion thereof. The display, of the public artwork shall be subject to the sole discretion of "CITY".

3.3 The ARTIST shall perform and provide services as set forth in the Proposal for PUBLIC ART PROJECT dated, _____, a copy of which is attached hereto as Exhibit "A".

3.4 ARTIST is required to coordinate with project management team to prepare, install and complete the public art project. "CITY" is not responsible for negotiating, coordinating or managing the public art project timeline. Public Art Manager will monitor the project and from time to time document the public art projects process. The Project is estimate to begin _____ with an estimated completion date of, _____.

ARTICLE 4

TERM AND TERMINATION

4.1. This Agreement shall take effect as of the date of execution as shown herein below and shall end upon completion of the ARTIST's work and services described in Articles 2 and 3 hereof.

4.2. All documents, plans, work products, materials, equipment and tools belonging to "CITY" will be furnished to "CITY" upon completion and/or termination of the agreement, whichever occurs first.

4.3 "CITY"'s rights to exhibit, publish, broadcast, advertise and otherwise use of the likeness of the public artwork for non-commercial non-profit purposes or if for commercial purposes if incidental to photographs or renderings of the site shall survive the termination of this agreement.

ARTICLE 5

COMPENSATION

5.1. "CITY" shall provide compensation and/or payments to the ARTIST as set forth in the Proposal for the PUBLIC ART PROJECT dated _____ a copy of which is attached hereto as Exhibit "A".

5.2 Title to the public artwork passes to "CITY" of Boynton Beach upon payment of the compensation.

ARTICLE 6

CHANGES TO SCOPE OF WORK AND ADDITIONAL WORK

6. "CITY" or ARTIST may request changes that would increase, decrease or otherwise modify the Scope of Services to be provided under this Agreement. Such changes or additional services must be in accordance with the provisions of the Code of Ordinances of Boynton Beach and must be contained in a written amendment, executed by the Parties hereto, with the same formality and with equal dignity herewith prior to any deviation from the term or scope of this Agreement, including the initiation of any

additional or extra work. In no event will ARTIST be compensated for any additional work or change from attached Exhibit A which has not been described in a separate written Agreement executed by the Parties hereto.

ARTICLE 7 MISCELLANEOUS

7.1. Insurance. Worker's Compensation Insurance, property damage, liability insurance and vehicular liability insurance shall be maintained by ARTIST during the life of this Agreement to comply with statutory limits for all employees, and in the case any work is sublet, the ARTIST shall require the subcontractors similarly to provide Worker's Compensation Insurance at the same levels required by the ARTIST for all the subcontractor's employees unless such employees are covered by the protection afforded by the ARTIST.

A. ARTIST shall secure and maintain in force, throughout the duration of this Agreement, comprehensive general and automobile liability insurance with a minimum coverage of \$1,000,000 per occurrence; \$2,000,000 aggregate for personal injury; \$1,000,000 per occurrence, \$2,000,000 aggregate for property damage; and, professional liability insurance in the amount of \$1,000,000 (all professional contract services).

B. The general liability and vehicular liability policies shall name "CITY" and "CITY" of Boynton Beach as an additional insured and shall include a provision prohibiting cancellation of said policy except upon thirty (30) days prior written notice to "CITY" .

C. ARTIST shall secure and maintain in force throughout the duration of this contract workers' compensation insurance in amounts not less than the statutory limits.

D. ARTIST shall furnish "CITY" with a certificate of insurance evidencing all required insurance coverage prior to the start of any work for "CITY". Said insurance companies must be authorized to do business in the State of Florida and "CITY" will not accept any company that has a rating less than B+ in accordance with A.M. Best's Key Rating Guide, latest edition.

E. If ARTIST claims to be exempt from this requirement, ARTIST shall provide "CITY" proof of such exemption along with a written request for "CITY" to exempt ARTIST, written on ARTIST's letterhead which exemption shall not be effective until signed by "CITY" .

7.2. Independent Contractor. This Agreement does not create an employee/employer relationship between the Parties. It is the intent of the Parties that the ARTIST is an independent contractor under this Agreement and not "CITY" 's employee for any purposes, including but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Worker's Compensation Act, and the State Unemployment Insurance law. The ARTIST shall retain sole and absolute discretion in the judgment of the manner and means of carrying out ARTIST' activities and responsibilities hereunder provided, further that administrative procedures applicable to services rendered under this Agreement shall be those of ARTIST, which policies of ARTIST shall not conflict with "CITY", State, or United States policies, rules or regulations relating to the use of ARTIST'S funds provided for herein. The ARTIST agrees that it is a separate and independent enterprise from "CITY", that it had full opportunity to find other business, that it has made

its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This Agreement shall not be construed as creating any joint employment relationship between the ARTIST and "CITY" and "CITY" will not be liable for any obligation incurred by ARTIST, including but not limited to unpaid minimum wages and/or overtime premiums.

7.3 Scrutinized Companies. By execution of this Agreement, in accordance with the requirements of F.S. 287-135 and F.S. 215.473, Contractor certifies that Contractor is not participating in a boycott of Israel. Contractor further certifies that Contractor is not on the Scrutinized Companies that Boycott Israel list, not on the Scrutinized Companies with Activities in Sudan List, and not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has Contractor been engaged in business operations in Syria. Subject to limited exceptions provided in state law, the City will not contract for the provision of goods or services with any scrutinized company referred to above. Submitting a false certification shall be deemed a material breach of contract. The City shall provide notice, in writing, to Contractor of the City's determination concerning the false certification. Contractor shall have five (5) days from receipt of notice to refute the false certification allegation. If such false certification is discovered during the active contract term, Contractor shall have ninety (90) days following receipt of the notice to respond in writing and demonstrate that the determination of false certification was made in error. If Contractor does not demonstrate that the City's determination of false certification was made in error then the City shall have the right to terminate the contract and seek civil remedies pursuant to Section 287.135, Florida Statutes, as amended from time to time.

7.4. Assignments.

7.4.1. This Agreement or any interest herein, shall not be assigned, transferred or otherwise encumbered, under any circumstances, by ARTIST without the prior written consent of "CITY". However, this Agreement shall run to "CITY" and its successors and assigns.

7.4.2. It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

7.5. No Contingent Fees. ARTIST warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the 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 other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, "CITY" shall have the right to terminate this Agreement without liability at its discretion, to deduct from the contract price, or otherwise recover from ARTIST the full amount of such fee, commission, percentage, gift or consideration.

7.6. Notice. Whenever any party desires to give notice unto any other party, it must be given by written notice, sent by certified United States mail, with return receipt requested, addressed to the party for whom it is intended and the remaining party, at the places last specified in writing, and that places for giving of notice shall remain such until they shall have been changed by written notice in compliance with the provisions of this section. For the present, the ARTIST and "CITY" designate the following as the respective places for giving of notice:

City of Boynton Beach: Lori LaVerriere, City Manager
City of Boynton Beach
3301 Quantum Blvd., Suite #101,
Boynton Beach, FL 33426
561-742-6000

Copy To: Debby Coles-Dobay
Public Art Manager
City of Boynton Beach
3301 Quantum Blvd., Suite #101,
Boynton Beach, FL 33426
(561) 742 6026

ARTIST:

Telephone No. _____

Website _____ Social Media _____

7.6. Binding Authority. Each person signing this Agreement on behalf of either party individually warrants that he or she has the full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

7.7. Headings. Headings herein are for convenience of reference only and shall not be considered on any interpretation of this Agreement.

7.8. Severability. If any provision of this Agreement or application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.

7.9. Governing Law. This Agreement shall be governed by the laws of the State of Florida with venue lying in Palm Beach County, Florida.

7.10. Attorney's Fees. In the event that either party brings suit for enforcement of this Agreement, each party shall bear its own attorney's fees and costs.

7.11. Extent of Agreement. This Agreement represents the entire and integrated Agreement between "CITY" and the ARTIST and supersedes all prior negotiations, representations or Agreements, either written or oral.

7.12. Equal Employment Opportunity. In the performance of this Agreement, the ARTIST shall not discriminate against any firm, employee or applicant for employment or any other firm or individual in providing services because of sex, age, race, color, religion, ancestry or national origin.

7.13. Waiver. Any failure by either party to require strict compliance with any provision of this contract shall not be construed as a waiver of such provision, and the waiving party may subsequently require strict compliance at any time, notwithstanding any prior failure to do so.

7.14. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

7.15 Usage Rights After final acceptance of the artwork by "CITY", the following ARTIST' rights shall be guaranteed:

Maintenance of public artworks shall be the responsibility of "CITY" or developer or property association and not the ARTIST. The responsible party shall make reasonable efforts to maintain the artwork in good repair. The responsible party shall attempt to consult the ARTIST and collaborator on major repairs.

The artwork shall not be altered, modified, removed or relocated from a site integral to the concept for the work without first consulting with the ARTIST and collaborator, if reasonably possible. If a work, nevertheless, has been significantly altered, the ARTIST and collaborator shall have the right to disclaim authorship.

Copyright of the artwork shall belong to the creator(s), but "CITY" or developer or property association shall be granted the right to make two-dimensional reproductions for non-commercial purposes.

IN WITNESS WHEREOF, the parties have made and executed this Agreement on the respective dates under each signature.

ATTEST:

CITY OF Boynton Beach, FLORIDA

_____ Judith Pyle, City Clerk

_____ Lori LaVerriere, City Manager

APPROVED AS TO FORM:

City Attorney

State of Florida
County of Palm Beach

The foregoing instrument was acknowledged before me, the undersigned notary public in and for the State of Florida, on this the _____ day of _____, 2019, by _____ and _____, City Clerk and City Manager, respectively.

Notary Public, State of Florida

Printed, Typed or Stamped Name of
Notary Public Exactly as Commissioned

Individuals Who Signed Are:
Personally Known, No Identification Produced

**REMAINDER OF THIS PAGE LEFT BLANK.
ARTIST SIGNATURE PAGE FOLLOWS.**

(ARTIST FILL OUT THIS PAGE AND HAVE NOTARIZED)

ARTIST CONTACT INFORMATION

Name _____

Company _____

Address _____

Studio _____

Cell _____

Email _____

Web site _____

Social Media _____

Signature

Country _____

State of _____

County _____

The foregoing instrument was acknowledged before me, the undersigned notary public in and for the Country or State of _____, on this the _____ day of _____, 2019, by _____.

Individual who signed Is:

___ Personally Known, No ID Produced OR

___ Identification Produced

Notary Public (Signature)

Country or State of _____

Printed, Typed or Stamped Name of
Notary Public Exactly as Commissioned