

**SERVICE AGREEMENT
FOR MURAL AT MILLS POND PARK**

THIS AGREEMENT, with an effective date of _____, 2023, is entered into by and between:

CITY OF FORT LAUDERDALE, a municipal corporation of the State of Florida, hereinafter referred to as "CITY,"

and

DJ THE ARTISTE LLC, a Florida Limited Liability Company, with its principal address at 1724 NW 2nd Street Pompano Beach, FL 33069, and hereinafter referred to as "ARTIST" or "CONTRACTOR."

WITNESSETH:

WHEREAS, CITY recognizes that providing for public art and enhancing the appearance of buildings and spaces benefit the community by displaying the historical, cultural and creative knowledge of its residents; and

WHEREAS, public art promotes the aesthetic values of the entire community and encourages the public to preserve and protect works of art in accordance with Section 9-389 of the City's Code of Ordinances; and

WHEREAS, CITY desires to retain the services of an artist to **paint a mural** on the reverse side of the **Mills Pond Park which currently faces I-95 expressway**, 2201 NW 9th Avenue, Fort Lauderdale ("Services"); and

WHEREAS, ARTIST is a professional artist who possesses the qualifications and specific skills, talent, professional expertise, experience, knowledge, and ability to perform the Services and is willing and able to enter into this Agreement with CITY; and

WHEREAS, in accordance with Section 9-354 of the City of Fort Lauderdale Code of Ordinances, on December 21, 2023, the Public Art and Placement Advisory Board ("Art Board") approved and recommended the design, location and placement of the proposed **mural** at the **Mills Pond Park sign facing highway I-95**, consistent with the image displayed on the Artist's proposal attached hereto and incorporated herein as **Exhibit 1**; and

WHEREAS, CITY desires to commission ARTIST to design and create the Artwork approved and recommended by the Art Board and perform the Services, subject to the terms and conditions of this Agreement ("Artwork").

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and adequacy of which are acknowledged, Parties covenant and agree to the following terms and conditions:

I. RECITALS

Parties agree the foregoing recitals are true and correct and incorporated herein by this reference.

II. SCOPE OF SERVICES

Unless otherwise specified herein, ARTIST shall perform all work identified in this Agreement. The Parties agree that the Scope of Services is a description of ARTIST's obligations and responsibilities, and is deemed to include preliminary considerations and prerequisites, and all labor, materials, equipment, and tasks which are such an inseparable part of the work described that exclusion would render performance by ARTIST impractical, illogical, or unconscionable.

By signing this Agreement, ARTIST represents that ARTIST has thoroughly reviewed the documents incorporated into this Agreement by this reference and that ARTIST accepts the description of the Services required and the conditions under which the Services are to be performed.

A. Design and Materials

The term "Design and Materials" shall refer to the professional services as set forth in this Agreement, which shall consist of the design concept, materials and products approved by the City and necessary to create an Artwork that will withstand humid outdoor environments and meet the Florida Building Code, as amended from time to time. The Artwork shall be fabricated with materials that are of good quality, fit for the selected purpose, within manufacture guidelines and warranties, and free from all faults and inherent defects.

B. Work Outside Scope of Services

CITY and ARTIST acknowledge that the Scope of Services does not delineate every detail and minor work tasks required to be performed by ARTIST to complete the Services. If, during the course of the performance of the services included in this Agreement, ARTIST determines that work should be performed to complete the Services which is in ARTIST's opinion, outside the level of effort originally anticipated, whether or not the Scope of Services identifies the work items, ARTIST shall notify CITY's Contract Administrator and obtain written approval by the City Manager, or his designee, in a timely manner before proceeding with the work. Notice to CITY's Contract Administrator does not constitute authorization or approval by City to perform the proposed work. CITY shall not pay for any work that is not approved by the City Manager or his designee

in writing. If ARTIST proceeds with said work without notifying the City and securing the written approval of the City Manager, or his designee, said work shall be deemed to be non-conforming whether specifically addressed in the Scope of Services.

ARTIST acknowledges and agrees that any change orders to the Scope of Services or amendments to this Agreement or related documents must be authorized by the City Manager, or his designee, and approved by the City Commission whenever required in compliance with the Charter and Code of Ordinances for the City of Fort Lauderdale. Performance of work by ARTIST outside the originally anticipated level of effort without prior written approval by the City Manager, or his designee, or the City Commission whenever necessary, is at ARTIST's sole risk.

C. Final Acceptance

CITY's final acceptance of the Artwork shall take effect only upon ARTIST's successful completion of the Artwork approved by the City Commission and in compliance with the terms, conditions and specifications contained in this Agreement, as well as the final written acceptance of the completed Artwork by the City Manager, or his designee.

D. Warranty

1. Uniqueness: ARTIST represents and warrants to CITY that the completed Artwork is artistically unique and agrees not to create or be involved in the creation of any duplicate or identical Artwork. Additionally, ARTIST represents and warrants the completed Artwork is solely the result of ARTIST's artistic effort, and the completed Artwork delivered to CITY by ARTIST is free and clear of any liens, claims or encumbrances from any source whatsoever.
2. Defect and Deficiencies: Upon CITY's written notice to ARTIST and for a period of two (2) years from the date of CITY's final written acceptance of the completed Artwork, ARTIST shall, at ARTIST's sole cost and expense, promptly correct any work or material that is found to be defective or deficient, whether such defect relates to the design, workmanship, materials or final completion. If ARTIST fails to cure such material defect or deficiency, or make arrangements to do so within a reasonable time that is satisfactory to CITY, CITY has the right to arrange for such replacements or corrections, and ARTIST must reimburse CITY for the costs associated with such replacements or corrections.

E. Maintenance, Repairs and Restoration

1. **Maintenance:** CITY recognizes maintenance of the completed Artwork on a regular basis after final written acceptance is essential to preserving the integrity of the completed Artwork. Prior to final written acceptance of the completed Artwork by CITY, ARTIST shall provide CITY with written instructions and guidelines on recommended care and maintenance for the completed Artwork at Mills Pond Park. Until the completed Artwork is destroyed or removed, ARTIST shall conduct periodic inspections of the completed Artwork at Mills Pond Park and provide CITY with a report of any recommended maintenance, repair and/or restoration work at Mills Pond Park. CITY, in its sole discretion, shall determine when and if maintenance, repairs, and restorations to the completed Artwork will be performed, subject to availability and allocation of funds. Upon CITY's written request, and reasonable costs approved by CITY, ARTIST will conduct any maintenance, repairs and/or restorations to the completed Artwork. If CITY's request for maintenance or repair is due to damage caused by vandalism, collision, extreme environmental conditions, or other unforeseeable force majeure, CITY will reimburse ARTIST for reasonable costs for such, maintenance, repairs or restorations, except to the extent such damage is due to a defect in the design, workmanship or materials ARTIST used in the completed Artwork.
2. **Destruction or Removal:** Nothing in this Agreement shall preclude CITY's right, in its sole discretion, to remove the completed Artwork from display, relocate the completed Artwork to another location selected by CITY, or destroy the completed Artwork. If CITY decides to destroy, sell or donate the completed Artwork, CITY may notify ARTIST and offer ARTIST a reasonable opportunity to recover the completed Artwork at no cost or reduced cost to ARTIST, provided ARTIST indemnifies CITY and reimburses CITY for the difference between CITY's cost for ARTIST to recover the completed Artwork and CITY's cost to destroy the completed Artwork, as reasonably determined by CITY. To the extent CITY's uses, modification, destruction or removal of the completed Artwork under this Agreement affect any rights ARTIST has or may have under the provisions of federal, state, or local law, including the 1990 Visual Artists' Rights Act under 17 U.S.C. §106A(a) and §113, as may be amended, ARTIST hereby knowingly waives any rights provided by those laws.

III. TERM OF AGREEMENT

The initial contract period shall commence on _____, **2023, and shall terminate on the date the City issues its final written acceptance of the completed Artwork.** Any extension to this Agreement is subject to all terms, conditions and specifications contained in this Agreement and the mutual written consent of both Parties. In the event the term of this Agreement extends beyond the end of any fiscal year of City,

to wit, September 30th, the continuation of this Agreement beyond the end of such fiscal year shall be subject to both the appropriation and the availability of funds. City shall have no further obligations to Contractor, unless otherwise provided by law.

IV. COMPENSATION

ARTIST agrees to design and create the Artwork approved by the City Commission and provide the Services as specified in the Contract Documents. City agrees to pay ARTIST a total sum of **EIGHT THOUSAND ONE HUNDRED SIXTY DOLLARS AND ZERO CENTS (\$8,160.00)** (hereafter "total sum due"), inclusive of all costs associated with the concept/schematic design, materials and products utilized in the Artwork at Mills Pond Park and all costs associated with the completion of the Artwork at Mills Pond Park.

It is acknowledged and agreed by ARTIST that this amount is the maximum payable and constitutes City's obligation to compensate ARTIST for ARTIST's services related to this Agreement. This maximum amount, however, does not constitute a limitation of any sort upon ARTIST's obligation to perform all items of work required by or which can be reasonably inferred from the Scope of Services. Changes which are mutually agreed upon by and between CITY and ARTIST shall be incorporated in written amendments to this Agreement and executed by both parties.

V. METHOD OF BILLING AND PAYMENT

ARTIST shall submit written request(s) for payment supported by proper invoices with detailed receipts that tie expenses to costs associated with the design, fabrication and completion of the Artwork at Mills Pond Park and the required final written acceptance by the City Manager or his designee. Proper invoices shall designate the nature of the services performed and/or the goods provided and comply with the Florida Prompt Payment Act, Section 218.73, Florida Statutes, as may be amended or revised.

Parties agree CITY shall pay ARTIST pursuant to the following scheduled installments:

- A. 25% of the total sum due upon ARTIST's execution of this Agreement and, upon ARTIST's receipt and acceptance this installment, ARTIST shall immediately initiate work on the design of the Artwork at the Mills Pond Park sign facing highway I-95.
- B. 50% of the total sum due upon the written approval by the City Manager of the design proof submitted by the ARTIST for the Mills Pond Park Sign facing highway I-95. ARTIST agrees and understands this installment is not due and payable by the City until the City Manager or his designee approved the design submitted by ARTIST for Mills Pond Park sign facing highway I-95.
- C. 25% of the total sum due upon the written approval by the City Manager of ARTIST's completion of the final Artwork at the Mills Pond Park sign facing highway I-95. The ARTIST agrees and understands this installment is not due and payable to the City until the City Manager approves the design submitted by the

ARTIST.

Notwithstanding any provision of this Agreement to the contrary, City may withhold, in whole or in part, payment to the extent necessary to protect itself from loss on account of inadequate or defective work that has not been remedied or resolved in a manner satisfactory to the City Manager or his designee or failure to comply with this Agreement. The amount withheld shall not be subject to interest payment by City.

VI. GENERAL CONDITIONS

A. Indemnification

ARTIST shall protect and defend at ARTIST's expense, counsel being subject to the City's approval, and indemnify and hold harmless the City and the City's officers, employees, volunteers, and agents from and against any and all losses, penalties, fines, damages, settlements, judgments, claims, costs, charges, expenses, or liabilities, including any award of attorney fees and any award of costs, in connection with or arising directly or indirectly out of any act or omission by the ARTIST or by any officer, employee, agent, invitee, subcontractor, or sublicensee of the ARTIST. The provisions and obligations of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by the City Manager, any sums due ARTIST under this Agreement 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.

B. Intellectual Property

ARTIST represents and warrants that all work performed pursuant to this Agreement, including but not limited to the completed Artwork, is an original creation by ARTIST and does not infringe upon or violate any copyrights or other rights of any person, firm or organization. ARTIST shall protect and defend at ARTIST's expense, counsel being subject to the City's approval, and indemnify and hold harmless the City from and against any and all losses, penalties, fines, damages, settlements, judgments, claims, costs, charges, royalties, expenses, or liabilities, including any award of attorney fees and any award of costs, in connection with or arising directly or indirectly out of any infringement or allegation of infringement of any patent, copyright, or other intellectual property right in connection with the ARTIST's or the City's use of any copyrighted, patented or un-patented invention, process, article, material, or device that is manufactured, provided, or used pursuant to this Agreement. If the ARTIST uses any design, device, or materials covered by letters, patent or copyright, it is mutually agreed and understood without exception that ARTIST shall be solely liable for the costs arising from the use of such design, device, or materials in any way involved in the Scope of Services.

C. Termination for Cause

The aggrieved party may terminate this Agreement for cause if the party in breach has not corrected the breach within ten (10) days after written notice from the aggrieved party identifying the breach. The City Manager or his designee may also terminate this Agreement upon such notice as the City Manager or his designee deems appropriate under the circumstances in the event the City Manager determines that termination is necessary to protect the public health or safety. The Parties agree that if the City erroneously, improperly or unjustifiably terminates for cause, such termination shall be deemed a termination for convenience, which shall be effective thirty (30) days after such notice of termination for cause is provided. CITY's rights to exhibit, publish, broadcast, advertise and otherwise use the likeness of the Artwork for commercial or non-profit purposes shall survive the termination of this agreement.

This Agreement may be terminated for cause for reasons including, but not limited to, ARTIST's repeated (whether negligent or intentional) submission for payment of false or incorrect bills or invoices, failure to perform the Services to the City's satisfaction; or failure to continuously perform the Services in a manner calculated to meet or accomplish the objectives as set forth in this Agreement.

D. Termination for Convenience

The City reserves the right, in its best interest as determined by the City, to cancel this Agreement for convenience by giving written notice to the ARTIST at least thirty (30) days prior to the effective date of such cancellation. In the event this Agreement is terminated for convenience, ARTIST shall be paid for any services performed to the City's satisfaction pursuant to the Agreement through the termination date specified in the written notice of termination. ARTIST acknowledges and agrees that it has received good, valuable and sufficient consideration from City, the receipt and adequacy of which are hereby acknowledged by ARTIST, for City's right to terminate this Agreement for convenience.

E. Cancellation for Unappropriated Funds

The City reserves the right, in its best interest as determined by the City, to cancel this Agreement for unappropriated funds or unavailability of funds by giving written notice to the ARTIST at least thirty (30) days prior to the effective date of such cancellation. The obligation of the City for payment to ARTIST is limited to the availability of funds appropriated in a current fiscal period, and continuation of the contract into a subsequent fiscal period is subject to appropriation of funds, unless otherwise provided by law.

F. Insurance

ARTIST bears the risk of loss or damage to the Artwork until CITY's final acceptance of the completed Artwork pursuant to the terms and conditions of this Agreement. As a condition precedent to the effectiveness of this Agreement, during the term of this Agreement and during any renewal or extension term of this Agreement, the ARTIST, at its sole expense, shall provide insurance of such types and with such terms and limits as noted below. Providing proof of and maintaining adequate insurance coverage are material obligations of the ARTIST. The ARTIST shall provide the City a certificate of insurance evidencing such coverage. The ARTIST's insurance coverage shall be primary insurance for all applicable policies. The limits of coverage under each policy maintained by the ARTIST shall not be interpreted as limiting the ARTIST's liability and obligations under this Agreement. All insurance policies shall be through insurers authorized or eligible to write policies in the State of Florida and possess an A.M. Best rating of A-, VII or better, subject to approval by the City's Risk Manager.

The coverages, limits, and/or endorsements required herein protect the interests of the City, and these coverages, limits, and/or endorsements shall in no way be relied upon by the ARTIST for assessing the extent or determining appropriate types and limits of coverage to protect the ARTIST against any loss exposures, whether as a result of this Agreement or otherwise. The requirements contained herein, as well as the City's review or acknowledgement, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the ARTIST under this Agreement.

The following insurance policies and coverages are required:

Commercial General Liability

Coverage must be afforded under a Commercial General Liability policy with limits not less than:

- \$1,000,000 each occurrence and \$2,000,000 aggregate for Bodily Injury, Property Damage, and Personal and Advertising Injury
- \$1,000,000 each occurrence and \$2,000,000 aggregate for Products and Completed Operations

Policy must include coverage for contractual liability and independent contractors.

The City, a Florida municipal corporation, its officials, employees, and volunteers are to be covered as an additional insured with a CG 20 26 04 13 Additional Insured – Designated Person or Organization Endorsement or similar endorsement providing equal or broader Additional Insured Coverage with respect to liability arising out of activities performed by or on behalf of the ARTIST. The coverage shall contain no special limitation on the scope of protection afforded to the City, its officials, employees, and volunteers.

Workers' Compensation and Employer's Liability

Coverage must be afforded per Chapter 440, Florida Statutes. Any person or entity performing work for or on behalf of the City must provide Workers' Compensation insurance. Exceptions and exemptions will be allowed by the City's Risk Manager, if they are in accordance with Florida Statute.

The ARTIST waives, and the ARTIST shall ensure that the ARTIST's insurance carrier waives, all subrogation rights against the City, its officials, employees, and volunteers for all losses or damages. The City requires the policy to be endorsed with WC 00 03 13 Waiver of our Right to Recover from Others or equivalent.

The ARTIST must be in compliance with all applicable State and federal workers' compensation laws, including the U.S. Longshore Harbor Workers' Act and the Jones Act, if applicable.

Insurance Certificate Requirements

- a. The ARTIST shall provide the City with valid Certificates of Insurance (binders are unacceptable) no later than ten (10) days prior to the start of work contemplated in this Agreement.
- b. The ARTIST shall provide to the City a Certificate of Insurance having a thirty (30) day notice of cancellation; ten (10) days' notice if cancellation is for nonpayment of premium.
- c. In the event that the insurer is unable to accommodate the cancellation notice requirement, it shall be the responsibility of the ARTIST to provide the proper notice. Such notification will be in writing by registered mail, return receipt requested, and addressed to the certificate holder.
- d. In the event the Agreement term or any surviving obligation of the ARTIST following expiration or early termination of the Agreement goes beyond the expiration date of the insurance policy, the ARTIST shall provide the City with an updated Certificate of Insurance no later than ten (10) days prior to the expiration of the insurance currently in effect. The City reserves the right to suspend the Agreement until this requirement is met.
- e. The Certificate of Insurance shall indicate whether coverage is provided under a claims-made or occurrence form. If any coverage is provided on a claims-made form, the Certificate of Insurance must show a retroactive date, which shall be the effective date of the initial contract or prior.
- f. The City shall be named as an Additional Insured on all liability policies, with the exception of Workers' Compensation.
- g. The City shall be granted a Waiver of Subrogation on the ARTIST's Workers' Compensation insurance policy.
- h. The title of the Agreement, Bid/Contract number, event dates, or other identifying reference must be listed on the Certificate of Insurance.

The Certificate Holder should read as follows:

City of Fort Lauderdale
100 N. Andrews Avenue
Fort Lauderdale, FL 33301

The ARTIST has the sole responsibility for all insurance premiums and shall be fully and solely responsible for any costs or expenses as a result of a coverage deductible, co-insurance penalty, or self-insured retention; including any loss not covered because of the operation of such deductible, co-insurance penalty, self-insured retention, or coverage exclusion or limitation. Any costs for adding the City as an Additional Insured shall be at the ARTIST's expense.

If the ARTIST's primary insurance policy/policies do not meet the minimum requirements, as set forth in this Agreement, the ARTIST may provide evidence of an Umbrella/Excess insurance policy to comply with this requirement.

The ARTIST's insurance coverage shall be primary insurance as respects to the City, a Florida municipal corporation, its officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, a Florida municipal corporation, its officials, employees, or volunteers shall be non-contributory.

Any exclusion or provision in any insurance policy maintained by the ARTIST that excludes coverage required in this Agreement shall be deemed unacceptable and shall be considered breach of contract.

All required insurance policies must be maintained until the contract work has been accepted by the City, or until this Agreement is terminated, whichever is later. Any lapse in coverage shall be considered breach of contract. In addition, ARTIST must provide to the City confirmation of coverage renewal via an updated certificate should any policies expire prior to the expiration of this Agreement. The City reserves the right to review, at any time, coverage forms and limits of ARTIST's insurance policies.

The ARTIST shall provide notice of any and all claims, accidents, and any other occurrences associated with this Agreement to the ARTIST's insurance company or companies and the City's Risk Management office, as soon as practical.

It is the ARTIST's responsibility to ensure that any and all of the ARTIST's independent contractors and subcontractors comply with these insurance requirements. All coverages for independent contractors and subcontractors shall be subject to all of the applicable requirements stated herein. Any and all deficiencies are the responsibility of the ARTIST.

G. Environmental, Health and Safety

ARTIST shall place the highest priority on health and safety and shall maintain a safe working environment during performance of the Services. ARTIST shall comply, and shall secure compliance by its employees, agents, and subcontractors, with all applicable environmental, health, safety and security laws and regulations, and performance conditions in this Agreement. Compliance with such requirements shall represent the minimum standard required of ARTIST. ARTIST shall be responsible for examining all requirements and determine whether additional or more stringent environmental, health, safety and security provisions are required for the work. ARTIST agrees to utilize protective devices as required by applicable laws, regulations, and any industry or ARTIST's health and safety plans and regulations, and to pay the costs and expenses thereof, and warrants that all such persons shall be fit and qualified to carry out the Services.

H. Standard of Care

ARTIST represents that it is qualified to perform the Services, that ARTIST and his/her/its subcontractors possess current, valid state and/or local licenses to perform the Services, and that their services shall be performed in a manner consistent with that level of care and skill ordinarily exercised by other qualified artists under similar circumstances.

I. Rights in Artwork

Unless otherwise expressly agreed to in writing, and approved by the City Commission, all rights, title and interest in and to each Artwork produced by ARTIST pursuant to the terms and conditions of this Agreement shall be vested in the City of Fort Lauderdale. CITY shall be deemed the owner of and shall retain title to all work produced by ARTIST pursuant to the terms and conditions of this Agreement, as permitted by law.

ARTIST agrees and understands that all art, concepts, stencils, schematic imaging or design, narrative materials, or any materials or work created by the ARTIST pursuant to this Agreement, whether in digital format or any other format, are and shall remain the property of the City and ARTIST disclaims any copyright in such materials. The City reserves the right to reproduce the Art concept for purposes including but not limited to use in promotional materials, advertisements, and promotion of the project and completion. The ARTIST is required to provide all native art files for each of the installed designs, including all digital files, to the City upon completion of the project. Additionally, any and all reports, photographs, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of City; and ARTIST disclaims any copyright in such materials.

Any right, title or interest in and each Artwork produced pursuant to the terms and conditions of this Agreement that ARTIST, its agents, employees, officers and

assigns, presently have or may claim in the future shall immediately terminate upon City's written acceptance of the completed Artwork. ARTIST agrees upon City's final acceptance of the completed Artwork at Mills Pond Park and ARTIST's receipt of payment, the Artwork at Mills Pond Park shall be deemed to be and will remain City's personal property, and ARTIST shall not thereafter incur, assume or permit to exist any mortgage, pledge, lien, security interest, charge or other encumbrance of any nature whatsoever on said completed Artwork.

In the event of and upon termination of this Agreement, any art, concepts, stencils, schematic imaging or design, narrative materials, or any materials or work created by the ARTIST, as well as any reports, photographs, surveys, and other data and documents prepared by ARTIST, whether finished or unfinished, shall become the exclusive property of City and shall be delivered by the ARTIST to the City Manager or his designee within seven (7) days of termination of this Agreement by either Party. Any compensation due to ARTIST shall be withheld until ARTIST delivers all documents to the City as provided herein.

To the extent the terms of this Agreement affect any rights ARTIST has or may have under the provisions of federal, state, or local law, including the 1990 Visual Artists' Rights Act under 17 U.S.C. §106A(a) and §113, as may be amended, ARTIST hereby knowingly waives any rights provided by those laws.

J. Audit Rights and Retention of Records

City shall have the right to audit the books, records, and accounts of ARTIST and ARTIST's subcontractors that are related to this Agreement. ARTIST shall keep, and ARTIST shall cause ARTIST's subcontractors to keep, such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Agreement. All books, records, and accounts of ARTIST and ARTIST's subcontractors shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, ARTIST or ARTIST's subcontractor, as applicable, shall make same available at no cost to City in written form.

ARTIST and ARTIST's subcontractors shall preserve and make available, at reasonable times for examination and audit by the City Manager or his designee in Broward County, Florida, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida public records law, Chapter 119, Florida Statutes, as may be amended from time to time, if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement, whichever is longer. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida public records law is determined by City to be applicable to ARTIST and ARTIST's subcontractors' records, ARTIST and ARTIST's subcontractor shall comply with all requirements of the Florida

public records law; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by the Participant. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for the City's disallowance of funding and recovery of any payment upon such incomplete or incorrect entry.

ARTIST shall, by written contract, require ARTIST's subcontractors to agree to the requirements and obligations of this Section.

The ARTIST shall maintain during the term of this Agreement all books of account, reports and records in accordance with generally accepted accounting practices and standards for records directly related to this Agreement.

K. Independent Contractor

ARTIST is an independent contractor under this Agreement. Services provided by sub-contractor pursuant to this Agreement shall be subject to the supervision of the ARTIST. In providing such services, neither ARTIST nor ARTIST's agents shall act as officers, employees, or agents of City. No partnership, joint venture, or other joint relationship is created hereby. City does not extend to ARTIST or ARTIST's agents any authority of any kind to bind City in any respect whatsoever.

L. Inspection and Non-Waiver

ARTIST shall permit the representatives of City to inspect and observe the Services at all times. ARTIST shall notify CITY in writing when the Artwork is complete at Mills Pond Park and CITY shall inspect the completed Artwork at Mills Pond Park. If CITY approves the completed Artwork, CITY shall promptly notify ARTIST of its approval. CITY shall immediately notify ARTIST in writing of any findings of deficiency and ARTIST shall have ten (10) to correct those deficiencies in compliance with the terms and conditions of this Agreement.

The failure of the City to insist upon strict performance of any other terms of this Agreement or to exercise any rights conferred by this Agreement shall not be construed by ARTIST as a waiver of the City's right to assert or rely on any such terms or rights on any future occasion or as a waiver of any other terms or rights.

N. Assignment and Performance

Neither this Agreement nor any right or interest herein shall be assigned, transferred, or encumbered without the written consent of the other party. In addition, ARTIST shall not subcontract any portion of the work required by this Agreement, except as provided in the Schedule of Subcontractor Participation. City may terminate this Agreement, effective immediately, if there is any assignment, or attempted assignment, transfer, or encumbrance, by ARTIST of this Agreement or any right or interest herein without City's prior written consent.

ARTIST represents that each person who will render services pursuant to this Agreement is duly qualified to perform such services by all appropriate governmental authorities, where required, and that each such person is reasonably experienced and skilled in the area(s) for which he or she will render his or her services.

ARTIST shall perform ARTIST's duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of ARTIST's performance and all interim and final product(s) provided to or on behalf of City shall be comparable to the best local and national standards.

In the event ARTIST engages any subcontractor in the performance of this Agreement, ARTIST shall ensure that all of ARTIST's subcontractors perform in accordance with the terms and conditions of this Agreement. ARTIST shall be fully responsible for all of ARTIST's subcontractors' performance, and liable for any of ARTIST's subcontractors' non-performance and all of ARTIST's subcontractors' acts and omissions. ARTIST shall defend at ARTIST's expense, counsel being subject to City's approval, and indemnify and hold City and City's officers, employees, and agents harmless from and against any claim, lawsuit, third party action, fine, penalty, settlement, or judgment, including any award of attorney fees and any award of costs, by or in favor of any of ARTIST's subcontractors for payment for work performed for City by any of such subcontractors, and from and against any claim, lawsuit, third party action, fine, penalty, settlement, or judgment, including any award of attorney fees and any award of costs, occasioned by or arising out of any act or omission by any of ARTIST's subcontractors or by any of ARTIST's subcontractors' officers, agents, or employees. ARTIST's use of subcontractors in connection with this Agreement shall be subject to City's prior written approval, which approval City may revoke at any time.

O. Conflicts

Neither ARTIST nor any of ARTIST's employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with ARTIST's loyal and conscientious exercise of judgment and care related to ARTIST's performance under this Agreement.

ARTIST further agrees that none of ARTIST's officers or employees shall, during the term of this Agreement, 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 interests of City in connection with any such pending or threatened legal or administrative proceeding unless compelled by court process. The limitations of this section shall not preclude ARTIST or any persons in any way from representing themselves, including giving expert testimony in support thereof, in any action or in any administrative or legal proceeding.

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

P. Materiality and Waiver of Breach

City and ARTIST agree that each requirement, duty, and obligation set forth herein was bargained for at arm's-length and is agreed to by the Parties in exchange for *quid pro quo*, that each is substantial and important to the formation of this Agreement and that each is, therefore, a material term hereof.

City's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

R. Compliance With Laws

ARTIST shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing ARTIST's duties, responsibilities, and obligations pursuant to this Agreement.

S. Severance

In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable, the provisions not having been found by a court of competent jurisdiction to be invalid or unenforceable shall continue to be effective.

T. Limitation of Liability

The City desires to enter into this Agreement only if in so doing the City can place a limit on the City's liability for any cause of action for money damages due to an alleged breach by the City of this Agreement, so that its liability for any such breach never exceeds the sum of \$1,000. ARTIST hereby expresses its willingness to enter into this Agreement with ARTIST's recovery from the City for any damage action for breach of contract or for any action or claim arising from this Agreement to be limited to a maximum amount of \$1,000 less the amount of all funds actually paid by the City to ARTIST pursuant to this Agreement.

Accordingly, and notwithstanding any other term or condition of this Agreement, ARTIST hereby agrees that the City shall not be liable to ARTIST for damages in an amount in excess of \$1,000 which amount shall be reduced by the amount actually paid by the City to ARTIST pursuant to this Agreement, for any action for breach of contract or for any action or claim arising out of this Agreement. Nothing contained in this paragraph or elsewhere in this Agreement is in any way intended

to be a waiver of the limitation placed upon City's liability as set forth in Section 768.28, Florida Statutes (2022) as may be amended or revised.

U. Jurisdiction, Venue, Waiver, Waiver of Jury Trial

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Venue for any lawsuit by either party against the other party or otherwise arising out of this Agreement, and for any other legal proceeding, shall be in Broward County, Florida, or in the event of federal jurisdiction, in the Southern District of Florida, Fort Lauderdale Division. **THE PARTIES EXPRESSLY AGREE TO WAIVE ALL RIGHTS TO A TRIAL BY JURY OF ANY AND ALL ISSUES SO TRIABLE UNDER THIS AGREEMENT.**

V. Amendments

No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed the City and ARTIST.

W. Prior Agreements

This document represents the final and complete understanding of the Parties and incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. The Parties agree that there is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document. Accordingly, the Parties agree that no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written.

X. Payable Interest

City shall not be liable for interest for any reason, whether as prejudgment interest or for any other purpose, and in furtherance thereof ARTIST waives, rejects, disclaims and surrenders any and all entitlement it has or may have to receive interest in connection with a dispute or claim based on or related to this Agreement.

Y. Representation of Authority

Each individual executing this Agreement on behalf of a party hereto hereby represents and warrants that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such party and does so with full legal authority.

Z. Force Majeure

The City and ARTIST will be excused from the performance of their respective

obligations under this Agreement when and to the extent that their performance is delayed or prevented by a Force Majeure or any circumstances beyond their control including, fire, flood, explosion, strikes or other labor disputes, act of God or public emergency, war, riot, civil commotion, malicious damage, act or omission of any governmental authority, delay or failure or shortage of any type of transportation, equipment, or service from a public utility needed for their performance, provided that:

1. The non-performing party gives the other party prompt written notice describing the particulars of the Force Majeure including, but not limited to, the nature of the occurrence and its expected duration, and continues to furnish timely reports with respect thereto during the period of the Force Majeure;
2. The excuse of performance is of no greater scope and of no longer duration than is required by the Force Majeure;
3. No obligations of either party that arose before the Force Majeure causing the excuse of performance are excused as a result of the Force Majeure; and
4. The non-performing party uses its best efforts to remedy its inability to perform. Notwithstanding the above, performance shall not be excused under this Section for a period in excess of two (2) months, provided that in extenuating circumstances, the City may excuse performance for a longer term. Economic hardship of the ARTIST will not constitute Force Majeure. The term of the Agreement shall be extended by a period equal to that during which either party's performance is suspended under this Section.

AA. Public Records

IF ARTIST HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ARTIST'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT CITY CLERK'S OFFICE, 100 N. ANDREWS AVENUE, FORT LAUDERDALE, FLORIDA 33301, PHONE: 954-828-5002, EMAIL: PRRCONTRACT@FORTLAUDERDALE.GOV.

ARTIST shall comply with public records laws, and ARTIST shall:

1. Keep and maintain public records required by the City to perform the service.
2. Upon request from the City's custodian of public records, provide the City with a copy of the 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 (2022), as may be amended or revised, or as

otherwise provided by law.

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

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

CC. Default

Any of the following events shall constitute an "event of default" pursuant to this Agreement:

1. The Participant fails to perform any covenant or term or condition of this Agreement; or any representation or warranty of the Participant herein or in any other grant documents executed concurrently herewith or made subsequent hereto, shall be found to be inaccurate, untrue or breached.

2. If the Participant or any endorser of the Agreement files a voluntary petition in bankruptcy or shall be adjudicated as bankrupt or insolvent, or shall file any petition or answer seeking reorganization, arrangement, composition, readjustment, liquidation, wage earner's plan, assignment for the benefit of creditors, receivership, dissolution or similar relief under any present or future Federal Bankruptcy Act or any other present or future applicable federal, state or other local law, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Participant for all or any part of the properties of Participant; or if within ten (10) days after commencement of any proceeding against the Participant, seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, debtor relief or similar relief under any present or future Federal Bankruptcy Act or any other present or future federal, state or other local law, such proceeding shall not have been dismissed or stayed on appeal; or if, within ten (10) days after the appointment, without the consent or acquiescence of the Participant or of any endorser of the Agreement, of any trustee, receiver, or liquidator of the Participant or any endorser of the Note, or of all or any portion of the Property, such appointment shall not have been vacated or stayed on appeal or

otherwise; or if within ten days after the expiration of any such stay, such appointment shall not have been vacated.

3. Participant's breach, violation or failure to perform any of the obligations or any of the covenants and conditions set forth in this Agreement.

4. Upon the occurrence of any event of default, the City shall issue written notice in accordance with Article V and the Participant shall have thirty (30) days within which to cure such default. If Participant fails to cure the default within the thirty (30) days, the City may terminate this Agreement immediately.

5. If any provision of this Agreement is held invalid by a court of competent jurisdiction, the remainder of the Agreement shall not be affected thereby, and all other parts of this Agreement not having been held invalid by a court of competent jurisdiction shall remain in full force and effect.

6. The ARTIST shall not discriminate against its employees based on the employee's race, color, religion, gender, gender identity, gender expression, marital status, sexual orientation, national origin, age, disability, or any other protected classification as defined by applicable law.

- a. The ARTIST certifies and represents that the ARTIST offers the same health benefits to the domestic partners of its employees as are offered its employees' spouses or offers its employees the cash equivalent of such health benefits because it is unable to provide health benefits to its employees' domestic partners, and that the ARTIST will comply with Section 2-187, Code of Ordinances of the City of Fort Lauderdale, Florida, (2022), as may be amended or revised, ("Section 2-187"), during the entire term of this Agreement.
- b. The failure of the ARTIST to comply with Section 2-187 shall be deemed to be a material breach of this Agreement, entitling the City to pursue any remedy stated below or any remedy provided under applicable law.
- c. The City may terminate this Agreement if the ARTIST fails to comply with Section 2-187.
- d. The City may retain all monies due or to become due until the ARTIST complies with Section 2-187.
- e. The ARTIST may be subject to debarment or suspension proceedings. Such proceedings will be consistent with the procedures in section 2-183 of the Code of Ordinances of the City of Fort Lauderdale, Florida.

7. Subject to *Odebrecht Construction, Inc., v. Prasad*, 876 F.Supp.2d 1305

(S.D. Fla. 2012), affirmed, *Odebrecht Construction, Inc., v. Secretary, Florida Department of Transportation*, 715 F.3d 1268 (11th Cir. 2013), with regard to the “Cuba Amendment,” the ARTIST certifies that it is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes (2022), as may be amended or revised, and that it is not engaged in a boycott of Israel, and that it does not have business operations in Cuba or Syria, as provided in section 287.135, Florida Statutes (2022), as may be amended or revised. The City may terminate this Agreement at the City’s option if the ARTIST is found to have submitted a false certification as provided under subsection (5) of Section 287.135, Florida Statutes (2022), as may be amended or revised, or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes (2022), as may be amended or revised, or is engaged in a boycott of Israel or has been engaged in business operations in Cuba or Syria, as defined in Section 287.135, Florida Statutes (2022), as may be amended or revised.

8. The Participant shall at all times conduct its affairs in accordance with and be in compliance with all applicable laws, ordinances, and regulations.

9. In no event will the Participant be compensated for any work which has not been described in this Agreement or in a separate amendment to this Agreement executed by the parties hereto.

DD. E-Verify

1. As a condition precedent to the effectiveness of this Agreement, pursuant to Section 448.095, Florida Statutes (2022), as may be amended or revised, the ARTIST and its subcontractors shall register with and use the E-Verify system to electronically verify the employment eligibility of newly hired employees.

2. The ARTIST shall require each of its subcontractors, if any, to provide the ARTIST with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. The ARTIST shall maintain a copy of the subcontractor’s affidavit for the duration of this Agreement and in accordance with the public records requirements of this Agreement.

3. The City, ARTIST, or any subcontractor who has a good faith belief that a person or entity with which it is contracting has knowingly violated Subsection 448.09(1), Florida Statutes (2022), as may be amended or revised, shall terminate the contract with the person or entity.

4. The City, upon good faith belief that a subcontractor knowingly violated the provisions of Subsection 448.095(2), Florida Statutes (2022), as may be amended or revised, but that the ARTIST otherwise complied with Subsection 448.095(2), as may be amended or revised, shall promptly notify ARTIST and order the ARTIST to immediately terminate the contract with the subcontractor, and the ARTIST shall comply with such order.

5. A contract terminated under Subparagraph 448.095(2)(c)1. or 2., Florida Statutes (2022), as may be amended or revised, is not a breach of contract and may not be considered as such. If the City terminates this contract under Paragraph 448.095(2)(c), Florida Statutes (2022), as may be amended or revised, the ARTIST may not be awarded a public contract for at least one year after the date on which the contract was terminated. The ARTIST is liable for any additional costs incurred by the City as a result of termination of this Agreement.

6. ARTIST shall include in each of its subcontracts, if any, the requirements set forth in this Section, including this subparagraph, requiring any and all subcontractors, as defined in Subsection 448.095(1)(j), Florida Statutes (2022), as may be amended or revised, to include all of the requirements of this Section. in their subcontracts. ARTIST shall be responsible for compliance by any and all subcontractors, as defined in Subsection 448.095(1)(j), Florida Statutes (2022), as may be amended or revised, with the requirements of Section 448.095, Florida Statutes (2022), as may be amended or revised.

EE. Notices.

Whenever it is provided herein that notice of default, demand, request or other communication shall or may be given to, or served upon, either of the parties by the other, or either of the parties shall desire to give or serve upon the other any notice of default, demand, request or other communication with respect hereto or with respect to any matter set forth in this Agreement, each such notice of default, demand, request or other communication shall be in writing and any law or statute to the contrary notwithstanding shall not be effective for any purpose unless the same shall be given by hand delivery, or by a nationally recognized overnight courier, or by mailing the same by registered or certified mail, postage prepaid, return receipt requested, addressed to the party at the address set forth below, or at such other address or addresses and to such other person or firm as each party may from time to time designate by notice as herein provided.

AS TO CITY: City Manager
 City Fort Lauderdale
 100 North Andrews Avenue
 Fort Lauderdale, Florida 33301

With a copy to:

City Attorney
City of Fort Lauderdale
100 North Andrews Avenue
Fort Lauderdale, Florida 33301

As to Artist/Contractor:

Djerlens Chery
1724 NW 2nd Street
Pompano Beach, Florida 33069

IN WITNESS OF THE FOREGOING, the parties hereto have set their hands and seals as of the day and year first above written.

CITY OF FORT LAUDERDALE, a
municipal corporation of the State of
Florida.

GREG CHAVARRIA
City Manager

Approved as to form and correctness:
D'WAYNE M. SPENCE
Interim City Attorney

PATRICIA SAINTVIL-JOSEPH
Assistant City Attorney

ARTIST / CONTRACTOR

WITNESSES:

DJ THE ARTISTE LLC,
a Florida Limited Liability Company

(Witness signature)

By:_____
DJERLENS CHERY, Manager

(Witness type of print name)

(Witness signature)

(Witness type of print name)

(CORPORATE SEAL)

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me by means of ___ physical presence or ___ online notarization, this ____ day of _____, 2023 by **DJERLENS CHERY**, as Manager for **DJ THE ARTISTE LLC**, a Florida Limited Liability Company.

(NOTARY SEAL)

Signature of Notary Public – State of Florida

Print, Type or Stamp Commissioned Name
Of Notary Public

Personally Known____OR Produced Identification____
Type of Identification Produced_____

EXHIBIT 1

