City of Tamarac, Florida

SCULPTURAL INSTALLATION AT
WOODLANDS COUNTRY CLUB GOLF COURSE
TAMARAC, FLORIDA

WORK DESIGN, FABRICATION, & INSTALLATION

THIS AGREEMENT is made this ____ day of , 2016 by and between the **City of Tamarac, Florida** a municipal corporation of the State of Florida with a business address of 7525 NW 88th Avenue, Tamarac, FL 33321 (hereinafter referred to as "Owner"); and with its principal place of business located at, (hereinafter called "Artist").

W I T N E S S E T H:

WHEREAS, the City of Tamarac is implementing a public art installation on the Woodlands Country Club Property; and

WHEREAS, the Artist is a corporation owned and operated by an internationally known sculptor; and

WHEREAS, the Artist has been selected to fabricate, deliver and install works of art for the benefit of the Owner, hereinafter referred to as the "Work", such Work to be installed upon the selected location on the Woodlands Country Club Property hereinafter referred to as the "Site"; and

WHEREAS, both parties wish to promote and maintain the integrity and clarity of the Artist's ideas and statements as represented by the Work; and

WHEREAS, the Owner is authorized and empowered to execute contracts for works of art and other enhancements to adorn the Site; and

WHEREAS, the Owner desires to enter into an Agreement with the Artist to complete the Work at the Site and the Artist is willing and able to provide such services and such Work under the Agreement;

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants and considerations herein contained, and subject to the terms and conditions hereinafter stated, it is agreed by and between the Owner and the Artist as follows:

SECTION I -- SERVICES OF THE ARTIST

A. General

1. As used in this Agreement, unless the context otherwise requires: "Work" means the work of art consisting of the sculpture to be affixed to the ground to be constructed by the Artist at the Site (as defined in the recitals above) and as ultimately conceived, designed, fabricated, transported, delivered and installed by the Artist consistent with the final design proposal, project schedule and cost estimate approved and accepted by the Owner as required by this Agreement (collectively referred to as the "Design Proposal") to be attached to and made a part of this Agreement as Exhibit "A" as well as the specifications and engineering drawings provided by the Artist to the Owner after approval by the Owner of the final Design Proposal (collectively referred to as the ("Engineering Drawings.") to be attached to and made a part of this Agreement as Exhibit "B". Except as set forth below, the Work includes all physical components of the complete Work including but not limited to mounting brackets or devices, and other miscellaneous components necessary to complete the fabrication and installation of the Work as initially proposed.

2. The Artist and/or its authorized agents and representatives shall perform all services and furnish all supplies, material and equipment as necessary for the design and fabrication of the Work by the Artist and its transportation and delivery to and installation at the Site consistent with the Design Proposal and Engineering Drawings as approved by the Owner, including but not limited to payment for insurance, supplies, materials, small tools, equipment. Except as otherwise stated in this Agreement, the Artist shall, either directly or through qualified sub-contractors to be hired by the Artist, undertake the transportation and delivery of the Work to the Site and installation of the Work at the Site.

3. The Artist shall determine the artistic expression, scope, design, color, size, material, and texture of the Work as set forth in the Design Proposal and Engineering Drawings subject to review and written acceptance by the Owner on a timely basis as set forth in this Agreement.

4. The Artist shall be responsible for designing, fabricating, constructing, delivering and installing the Work in accordance with the final Design Proposal and Engineering Drawings accepted by the Owner and in compliance with all applicable city, county, state and/or federal laws, ordinances, statutes, codes, regulations,

and/or requirements that affect construction or installation of the Work at the Site, including any legal requirements for scaffolding.

5. The Artist shall at the Artist's sole expense obtain all licenses and approvals required with respect to the fabrication and its obligations for installation of the finished Work at the Site, including the written approval from the City of Tamarac certifying the structural compliance of the Work with applicable, legally mandated building codes that may be required.

6. The Owner shall provide the Artist with copies of all pertinent information relating to all such applicable city laws, ordinances, statutes, codes, regulations, and/or requirements referenced in this Agreement on a timely basis.

7. It is understood and agreed that immediately upon execution of this Agreement, the Owner shall appoint in writing an individual to serve as the Owner's authorized representative for purposes of administering this Agreement, and that the Owner's authorized representative shall be the primary contact for such purposes. It is expressly agreed that the Artist also may discuss the Work or its requirements with various departments of the Owner but any approvals required under this Agreement must be obtained in writing from the Owner or its authorized representative. Email constitutes writing for such purposes.

7. _____ shall be the authorized representative for administering the Agreement on behalf of the Artist and shall be the Owner's primary contact for obtaining any and all necessary approvals from the Artist. All approvals required must be authorized in writing by the Artist or its authorized representative. Email constitutes a writing for such purposes.

B. <u>Acceptance of Final Design Proposal</u>

1. A true and correct copy of the Artist's Design Proposal is attached to and made a part of this Agreement as Exhibit "A". The Owner shall have thirty (30) business days after the execution of this Agreement by the Artist to execute this Agreement and to review, approve and accept the final Design Proposal attached as Exhibit A. It is expressly understood and agreed that the Artist is under no obligation to commence work on any aspect of the Work until the Owner has executed this Agreement, approved and accepted the final Design Proposal in writing and has paid to the Artist the first installment payment in the amount of $ ------ as set forth in Section III below. The final Design Proposal approved by

the Owner shall be attached to and shall become a part of this Agreement as Exhibit “A”.

2. Notwithstanding anything to the contrary in this Agreement, in the event of any delay beyond the thirty (30) business day timeframe specified for the Owner’s execution of this Agreement and written approval of the final Design Proposal, the Artist’s obligations to commence work on the Work, to prepare the Engineering Drawings, to begin purchasing materials as well as the project schedule set forth in the Design Proposal shall be likewise delayed and adjusted accordingly.

3. Once the Owner executes this Agreement and approves and accepts the Design Proposal in writing, this Agreement and the Design Proposal may not be changed, modified or amended without the prior written consent of both the Artist and the Owner, as evidenced by an executed amendment to this Agreement. The parties’ acknowledge and agree that any changes in the Design Proposal after acceptance by the Owner may adversely affect the schedule for completion of the Work and any material changes in the Work may affect the total cost for the Work.

4. Upon execution of this Agreement and written acceptance by the Owner of the Design Proposal attached as Exhibit “A” and payment to the Artist of the first installment payment as set forth in Section III below, the Artist shall commence all activities necessary to complete the Work, including preparation of the Engineering Drawings.

C. <u>Preparation of Engineering Drawings and Commencement of Work</u>

1. Upon execution of this Agreement and written approval and acceptance of the final Design Proposal by the Owner, consistent with the requirements of this Agreement, and upon the Artist’s receipt of the first installment payment required in the amount of $-------- from the Owner in accordance with this Agreement, the Artist shall commence preparation of the Engineering Drawings.

2. Upon delivery to and written approval by the Owner’s engineer (“Owner’s Engineer ”) of the Engineering Drawings, the second installment payment in the amount of $-------- shall be due and payable to the Artist by the Owner in accordance with this Agreement. The Owner shall have a commercially reasonable period of time for its contractor, to review and accept the Engineering Drawings. The final Engineering Drawings shall be attached to and made a part of this Agreement as Exhibit “B”.

3. Upon the Artist's receipt of the second installment payment required in the amount of $------- in accordance with this Agreement, the Artist shall commence purchasing materials and fabricating the Work in accordance with the requirements of the Design Proposal.

4. The Artist shall avoid specifying in the Design Proposal and in the Engineering Drawings any materials or finishes known to be hazardous or potentially hazardous.

D. Fabrication

1. The Owner or its authorized representative shall have reasonable access to review the Artist's Work in progress at the Artist's place of business at mutually convenient dates and times to be scheduled in advance taking into account the Artist's schedule and commitments and the Owner's schedule and commitments. During the term of this Agreement, the Artist shall submit to the Owner written progress reports on a monthly basis, no later than the 5th day of each month, in a form customarily used by the Artist for such purpose and acceptable to the Owner.

2. The Artist shall complete the design, fabrication, transportation and installation of the Work in conformity with the Design Proposal and Engineering Drawings approved by the Owner, which are attached hereto and made a part of this Agreement as Exhibits "A" and "B", respectively.

3. Any material changes proposed by the Artist in the scope, design, color, size, material or texture of the Work as depicted in the Design Proposal and the Engineering Drawings shall be presented to the Owner for approval in writing prior to implementation. A change shall be deemed "material" if it alters the form, fit or function of the Work, or modifies its dimensions by more than ten percent (10%). Any such change shall be evidenced by the execution of a written amendment to this Agreement signed by both parties.

4. Once the Work has been fabricated, the Artist shall submit a report to the Owner, accompanied by photographs, slides, or other acceptable documentation substantiating that the fabrication of the Work has been completed in accordance with the Design Proposal and Engineering Drawings. The report shall include plans for installation and a description of all activities requiring coordination

with the Owner and Owner's Engineer.

5. The third installment payment in the amount of $------- is due and payable as set forth herein upon completion of fabrication and written notice to the Owner by the Artist that the Work is ready for shipment. The Work will be shipped by the Artist to the Site upon the Artist's receipt of written approval of the completed Work by the Owner.

E. Delivery and Installation

1. The Artist is responsible for the delivery and installation of the Work.

2. The Work shall not be delivered to or installed at the Site until the Artist has received written approval from the Owner or its authorized representative that the Work has been completed according to the approved Design Proposal and Engineering Drawings.

3. The Artist shall make arrangements for access to the Site for delivery and installation of the Work with the Owner or its authorized representative and the Owner's Engineer. The Artist shall provide the Owner with a written list of the workers, vehicles and equipment involved in the installation of the Work at least fifteen (15) days in advance of delivery and installation so that permits can be issued and security and unloading arrangements made.

4. Following delivery of the Work, the Artist shall install the Work at the Site consistent with the Engineering Drawings and shall approve and submit all required documentation and information to the Owner on a timely basis. The Artist shall be responsible for all expenses, labor and equipment incurred in connection with delivery of the Work and for Site preparation and installation of the Work.

5. The Artist shall exercise commercially reasonable efforts to limit construction operations to the Site unless otherwise approved by the Owner or its authorized representative. The Artist shall not perform operations of any nature on, over or across premises owned or leased by third parties except such operations as are specifically authorized in plans or specifications or as authorized by the Owner or its authorized representative.

6. The Artist and the Owner shall take all steps necessary to protect adjoining property and nearby buildings, roads and public

streets or roads from dust, dirt, rubbish or other nuisance arising out of their respective operations at the Site or its storage practices during Site work and delivery and installation of the Work at the Site.
Additionally, Artist shall utilize commercially acceptable methods to maintain the artwork and the work site during installation in a safe and secure manner, in order to protect against injury and vandalism. In the event of a predicted storm event, Artist shall take all necessary precautions to remove any loose materials at the job site within a period of twenty-four (24) hours prior to any such predicted storm event.

7. The Artist shall insure that the Site is clean, free of dust, construction debris, and trash during installation, and at other times when directed by the Owner. At all times while finish work is being accomplished, the Artist shall insure that the Site is clean, free of dust, construction debris and trash. Directly upon completion of the Work, the Artist shall remove from the Site all of their respective equipment and any waste materials not previously disposed of, leaving the Site clean and ready for the Owner's final inspection.

8. Delivery and installation of the Work shall be in conformance with all applicable federal, state, county, and municipal laws, including any applicable health, safety, and fire regulations.

9. The fourth installment payment in the amount of $------- is all due and payable by the Owner to the Artist upon installation of the Work by the Artist and acceptance of the installed Work at the Site by the Owner. The Owner shall obtain authorization as required by law from its governing body as soon as practicable upon approval of this Agreement for its authorized representative or another designated person to accept the Work on behalf of the Owner upon certification of completion of installation of the Work by the Artist on the Completion Date without the necessity of further action by the Owner's governing body.

F. <u>Post-Installation</u>

1. Except as set forth below, the risk of destruction or damage to the Work or any part thereof shall be borne by the Artist until written acceptance of the Work. Accordingly, except as set forth herein, the Artist shall at its sole cost and expense rebuild, repair and restore damage to any portion of the Work until written acceptance of the Work by the Owner. Notwithstanding the foregoing, after delivery of the Work to the Site and during installation and until final acceptance of the Work by the Owner as

installed, under no circumstances shall the Artist be responsible for the cost of repair for any damage caused by job-site contractors or subcontractors hired by the Owner or otherwise not under the Artist's contractual control or supervision or in the event of vandalism or natural disasters resulting in damage to the Work or at the Site.

2. Upon installation of the Work, the Artist shall provide information on the Work as may be requested by the Owner for its files, including but not limited to technical and maintenance information and "As Built" drawings for use in maintaining and repairing the Work in the format provided in attached Exhibits, information regarding copyright of the Work by the Artist, updated biographical information, and a statement regarding the Work.

3. It is expressly understood and agreed that the Artist shall retain all ownership of and all right, title and interest in and to the Work, including but not limited to all intellectual property rights to the design of the Work, all copyrights with respect to the Work, all documentation, photographs and drawings and all models of the Work and all moral rights.

4. The Artist may, as part of this Agreement, be requested by the Owner with reasonable advance notice to discuss the Work with the general public and/or press/media representatives in special meetings scheduled for this purpose. Scheduling of all such requests shall take into account the Artist's schedules and commitments and may occur as agreed by the parties in writing. The Artist shall be entitled to be reimbursed by the Owner for travel and expenses for such events in accordance with the Owner's standard travel policies and procedures.

5. The Artist also shall be available at such time or times as may be agreed between the Owner and the Artist to attend inauguration or presentation ceremonies relating to the final installation of the Work and the transfer of title to the Work to the Owner. The Owner shall use its best efforts to arrange for publicity for the completed Work in such art publications and otherwise as may be determined between the Owner and the Artist as soon as practicable following installation.

SECTION II - PERIOD OF SERVICE

A. Design Proposal Schedule

1. Services associated with the design and approval of engineering drawings shall be completed by the Artist in accordance with the schedule set forth in the final Design Proposal and Engineering Drawings approved by the Owner and attached to and made a part of this Agreement as Exhibits "A" and "B", respectively.

2. The Artist may request an extension of time to complete the Work in accordance with the schedule established in the Design Proposal in the event that there is a material delay on the part of the Owner or of the Artist in performing their respective obligations under this Agreement, or if conditions beyond the Owner's or the Artist's control or Acts of God render timely performance impossible or unexpectedly burdensome. Such request for an extension of time shall be submitted in writing to the Owner's representative as soon as possible after the occurrence of the event necessitating the extension of time. The Owner's approval or denial of the extension of time shall be in writing and be provided to Artist no later than five (5) business days after submittal of the written request from the Artist.

SECTION III - PAYMENTS TO THE ARTIST

A. Contract Amount

1. For its services described under Section I of this Agreement, the Owner shall pay the Artist the sum of Two Hundred Thousand and 00/100 Dollars ($200,000.00) (the "Contract Amount") in accordance with the payment schedule enumerated in Section I herein. Payment terms are net thirty days. The Owner shall make payment to the Artist within forty-five (45) days of the date of the Artist's invoice in accordance with the following payment schedule. All payments shall be made in accordance with the Local Government Prompt Payment Act, F.S., Part VII, Chapter 218

2. Except as otherwise set forth in this Agreement, all expenses incurred in connection with the design, fabrication, delivery and installation of the Work by the Artist shall be paid by the Artist and are included in the Contract Amount stated herein. Delivery of all artwork and other materials to the site shall be F.O.B. Destination.

3. The Artist shall be responsible for all federal and state income taxes payable with respect to the Contract Amount paid by the Owner for the Work.

4. The Owner shall be responsible for payment of all sales and use taxes charged by any state or local governmental authority in connection with the purchase of the Work.

5. The Artist and the Owner agree that no charges or claim for damages shall be made for any delays or hindrances during the progress of completion of any portion of the services specified in this Agreement with respect to the Work. Such delays or hindrances, if any, with respect to the completion of any portion of the work required under this Agreement shall be compensated for by an extension of time for such reasonable period as may be mutually agreed between the parties.

6. At all times the Owner shall have the sole and absolute discretion to require that the Artist submit additional documentation to satisfy Owner's requirements that the Work is constructed in accordance with the Final Design Proposal, the approved Engineering Drawings, and the terms and conditions of this Agreement.

7. The Contract Amount shall be paid by the Owner to the Artist in four (4) installments as follows:

INSTALLMENT 1

1. Installment 1 in the amount of Dollars and No Cents ($) is due and payable by the Owner to the Artist upon execution of the Agreement by the Artist and the Owner and approval by the Owner of the Design Proposal.

2. The Artist shall not be obligated to commence any additional work with respect to the Work until the first installment has been paid by the Owner. It is understood and agreed that the failure by the Owner to make payment of any installment on a timely basis is a breach of this Agreement.

INSTALLMENT 2

1. Installment 2 in the amount of Dollars and No Cents ($) is due and payable by the Owner to the Artist upon completion and delivery by the Artist to the Owner of the Engineering Drawings.

2. Upon completion of the Engineering Drawings, the Artist will coordinate on a timely basis with the Owner's Contractor to designate in writing the final location of the Work on the Site,

including placement of all structural attachments. The Engineering Drawings shall be updated to reflect this information and the updated Engineering Drawings shall be attached to and made a part of this Agreement as Exhibit "B".

3. It is expressly understood and agreed that it shall be the responsibility of the Artist to certify that all work to be performed, will comply with the Florida Building Code.

4. Upon receipt of the engineering drawings, and approval by the Owner, the Owner shall provide payment of the second installment payment to the Artist. The Artist's submittal of the engineering drawings shall include the following::

a. A copy of all Engineering Drawings required for fabrication of the Work;

b. A letter or certificate from a professional engineer licensed in the State of Florida acceptable to the City of Tamarac Building Department certifying that the Work as a sculptural object will comply "as built" with the 2010 Florida Building Code, Section 1620.2 – Broward County, Risk Category IV Building and Structures: 180 mph (Table 1604.5 Risk Category IV); and

c. Material samples with color application.

INSTALLMENT 3

1. Installment 3 in the amount of Dollars and No Cents ($) is due and payable by the Owner to the Artist upon the Artist's completion of the fabrication of the Work and written notice to the Owner that the Work is ready to ship.

2. Prior to payment of the third installment, the Artist shall provide the Owner with photo documentation of the fabricated Work, and the Owner shall provide Artist with written acceptance of the documentation confirming payment is due

INSTALLMENT 4

1. Installment 4 in the amount of Dollars and No Cents ($) is due and payable by the Owner to the Artist upon final acceptance by the Owner of the installed Work at the Site.

2. Prior to payment of the fourth installment by the Owner to the Artist, the Artist shall submit the following documents to the Owner's authorized representative with respect to the Work:

   a. A certification of the completion and installation of the Work;
   b. A Bill of Sale;
   c. The Technical and Maintenance Record (to be attached as Exhibit C);
   d. Updated biographical material;
   e. The Artist's Statement about the Work;
   f. Proof of Application by the Artist for all copyrights;
   g. "As-Built" drawings of the Work for use to repair the Work in the future (to be attached as Exhibit D).

SECTION IV -- ARTIST'S REPRESENTATIONS AND WARRANTIES

A. The Artist represents and warrants to the Owner that the fabrication and installation of the Work will be performed in a workmanlike manner and that the Work will be free of defects in workmanship or materials consistent with the final Design Proposal and Engineering Drawings approved by the Owner and that the Artist will, at the Artist's own expense, remedy any defects due to faulty workmanship or materials that arise within a period of three years from the Completion Date and the date the Work is finally accepted by the Owner or five days after the Completion Date, whichever shall first occur. Any and all such repair shall be completed by the Artist in a proper, workmanlike manner consistent with the Technical and Maintenance Record and the "As-Built Drawings" attached to and made a part of this Agreement as Exhibits C and D, respectively.

B. Warranties provided to the Artist by the sub-contractors, if any, shall be for at least one year from the date of final acceptance by the Owner. All warranties related to the Work performed by sub-contractors are attached to this Agreement and are hereby incorporated by reference and are considered to define the extent and limitations of warranties extended by the Artist to the Owner.

C. The Artist represents and warrants to the Owner that the Work will not require maintenance substantially in excess of that described in the maintenance recommendations set forth in the As-Built Drawings provided

by the Artist to the Owner pursuant to this Agreement.

D. The Artist represents and warrants to the Owner that the Work will not contain sharp points or edges which may pose a danger to the public and the Artist agrees to cooperate in making or permitting adjustments to the Work if necessary to eliminate any sharp points or edges which become apparent within one year of the date the Work is finally accepted by the Owner.

E. The Artist represents and warrants to the Owner that the Work is solely the result of the artistic efforts of the Artist and that it will be installed free and clear of any liens, claims or other encumbrances of any type from any source whatsoever.

F. The personal skill, judgment and creativity of the Artist are essential elements of this Agreement. Therefore, although the parties recognize that the Artist may employ qualified personnel to work under the Artist's supervision, the Artist shall not assign, transfer or subcontract the creative and artistic portions of the Work to a person other than the Artist without the prior written consent of the Owner's authorized representative.

G. The Artist represents and warrants to the Owner that the Work will be a unique placement and the sculptures in the Work do not infringe upon any copyright. The Artist will not execute or authorize another to execute a duplicate Work consisting of a sculpture of the exact same design and dimensions as the Work for placement anywhere in the State of Florida. In view of the intention that the final Work shall be unique and shall constitute the artistic expression of the Artist, the Artist shall not make any additional exact duplicate three-dimensional reproductions of the final Work, with the exception of the model(s) used in the process of developing the approved sculpture, nor shall the Artist grant permission to others to do so except with the written permission of the Owner. However, nothing shall prevent the Artist from making two dimensional reproductions of the Work for any purpose or from creating future artworks in the Artist's manner and style of artistic expression for any purpose. For the purposes of this warranty, if the dimensions of another artwork exceed 75% of the dimensions of the commissioned Work, the other artwork shall be deemed to be of the same dimensions as the commissioned Work. This warranty shall continue in effect for a period consisting of the life of the Artist plus 50 years and shall be binding on the Artist's heirs and assigns.

H. The Artist agrees that the Artist or other's acting on behalf of the Artist will not make reference to or reproduce the Work, or any portion thereof, in a way which reflects discredit on the Owner or the Work.

SECTION V - OWNER'S RESPONSIBILITIES

A. Upon request by the Artist, the Owner shall furnish the Artist, at no cost to the Artist, the following information or services, provided however that the Owner does not guarantee the accuracy of information provided and assumes no liability therefore:

1. One (1) copy of all available data pertinent to the Work, and information relative to policies, standards, criteria, and studies relating to the Work. However, the Artist shall be responsible for searching the records and requesting the information required.

B. The Owner shall promptly examine all materials and information submitted by the Artist to the Owner for approval and acceptance and shall take all actions and render all decisions promptly to avoid unreasonable delay in the progress and acceptance of the Design Proposal, Engineering Drawings and the Artist's Work. The Owner shall keep the Artist advised concerning the progress of the Owner's review of any and all materials and information submitted by the Artist to the Owner and of the Work. Response by the Owner to the Artist's written request for decisions shall be made as soon as possible but in any event within the timeframes mandated by this Agreement.

C. The Owner shall pay the Artist on a timely basis in accordance with the Local Government Prompt Payment Act, Section 218.70, *Fla.Stat*, *et.seq*, and the terms and conditions of this Agreement and shall not modify, repair or use the Work or the Artist's name in any manner that reflects discredit on the Work or on the name of the Artist or on the reputation of the Artist.

D. In view of the parties' intention that the Work shall constitute the artistic expression of the Artist and that all right, title and interest in and to any and all intellectual property associated with the Work shall not make and shall not permit any third party to make, any additional, exact duplicate two or three-dimensional reproductions of the final Work, including but not limited to any sculptures, drawings, paintings, photographs or other images except with the written permission of the Artist. Notwithstanding the foregoing, the Owner may make and use two-dimensional reproductions of the Work with proper attribution to the Artist and the Artist for non-commercial publicity purposes to promote the Work as set forth herein.

SECTION VI - INSURANCE
& INDEMNIFICATION

A. Artist's Insurance.

Prior to commencement of any work pursuant to this Agreement, Artist shall obtain at Artist's expense all necessary insurance in such form and amount as required by the City's Risk & Safety Officer before beginning work under this Agreement. Artist shall maintain such insurance in full force and effect during the life of this Agreement. Artist shall provide to the City's Risk & Safety Officer certificates of all insurance required under this section prior to beginning any work under this Agreement. Artist shall indemnify and save the City harmless from any damage resulting to it for failure of either Artist or any subcontractor to obtain or maintain such insurance.

The following are required types and minimum limits of insurance coverage, which the Artist agrees to maintain during the term of this contract:

	Limits	
Line of Business/ Coverage	**Occurrence**	**Aggregate**
Commercial General Liability	**$1,000,000**	**$1,000,000**
Including:		
Premises/Operations		
Contractual Liability		
Personal Injury		
Explosion, Collapse, Underground Hazard		
Products/Completed Operations		
Broad Form Property Damage		
Cross Liability and Severability of Interest Clause		
Automobile Liability	**$1,000,000**	**$1,000,000**
Workers' Compensation & Employer's Liability	**Statutory**	

If the Artist has no employees as defined by Florida Statutes and Regulations, and the Artist submits a letter so stating, this requirement may be waived in writing by the Owner; however, Artist shall be responsible for obtaining a waiver for Worker's compensation coverage from the State of Florida Division of Workers' Compensation.

The City reserves the right to require higher limits depending upon the scope of work under this Agreement.

Neither Artist nor any subcontractor shall commence work under this contract until they have obtained all insurance required under this section and have supplied the City with evidence of such coverage in the form of an insurance

certificate and endorsement. The Artist will ensure that all subcontractors will comply with the above guidelines and will maintain the necessary coverage throughout the term of this Agreement.

All insurance carriers shall be rated at least A-VII per A.M. Best's Key Rating Guide and be licensed to do business in Florida. Policies shall be" Occurrence" form. Each carrier will give the City sixty (60) days notice prior to cancellation.

The Artist's liability insurance policies shall be endorsed to add the City of Tamarac as an "additional insured". The Artist's Worker's Compensation carrier will provide a Waiver of Subrogation to the City. The Bidder shall be responsible for the payment of all deductibles and self-insured retentions.

The City may require that the Artist purchase a bond to cover the full amount of the deductible or self-insured retention. If the Artist is to provide professional services under this Agreement, the Artist must provide the City with evidence of Professional Liability insurance with, at a minimum, a limit of $1,000,000 per occurrence and in the aggregate. "Claims-Made" forms are acceptable for Professional Liability insurance.

B. Indemnification

1. The Contractor shall indemnify and hold harmless the City, its elected and appointed officials, employees, and agents from any and all claims, suits, actions, damages, liability, and expenses (including attorneys' fees) in connection with loss of life, bodily or personal injury, or property damage, including loss of use thereof, directly or indirectly caused by, resulting from, arising out of or occurring in connection with the operations of the Contractor or its officers, employees, agents, subcontractors, or independent Contractors, excepting only such loss of life, bodily or personal injury, or property damage solely attributable to the gross negligence or willful misconduct of the City or its elected or appointed officials and employees. The above provisions shall survive the termination of this Agreement and shall pertain to any occurrence during the term of this Agreement, even though the claim may be made after the termination hereof.

2. Upon completion of all Services, obligations and duties provided for in this Agreement, or in the event of termination of this Agreement for any reason, the terms and conditions of this Article shall survive indefinitely.

3. The Contractor shall pay all claims, losses, liens, settlements or judgments of any nature whatsoever in connection with the

foregoing indemnifications including, but not limited to, reasonable attorney's fees (including appellate attorney's fees) and costs.

4. The City and Contractor recognize that various provisions of this Agreement, including but not limited to this Section, provide for indemnification by the Contractor and requires a specific consideration be given there for. The Parties therefore agree that the sum of Ten Dollars and 00/100 ($10.00), receipt of which is hereby acknowledged, is the specific consideration for such indemnities, and the providing of such indemnities is deemed to be part of the specifications with respect to the services to be provided by Contractor. Furthermore, the City and Contractor understand and agree that the covenants and representations relating to this indemnification provision shall serve the term of this Agreement and continue in full force and effect as to the City's and the Contractor's responsibility to indemnify.

a. City reserves the right to select its own legal counsel to conduct any defense in any such proceeding and all costs and fees associated therewith shall be the responsibility of Contractor under the indemnification agreement.

b. Nothing contained herein is intended nor shall be construed to waive City's rights and immunities under the common law or Florida Statutes 768.28, as amended from time to time.

SECTION VII -- GENERAL CONSIDERATIONS

A. Records

Owner is a public agency subject to Chapter 119, Florida Statutes. The Artist shall cooperate with the Owner and shall provide to the Owner upon request contractual and financial information in its possession regarding the terms and conditions of this Agreement and the Work that may be reasonably required for the Owner to comply with Florida's Public Records Law.

B. Alteration in Character of Work

The goal of the parties is a Work which represents the creative talents of the Artist and satisfies the specifications of the Owner. The parties recognize that they must consult closely in order to accomplish these goals and that changes in the design may become desirable as the Work is fabricated, under the Artist's personal supervision, in conformity with the approved Design Proposal attached to and made a part of this Agreement

as Exhibit “A”. The Work shall not deviate from the approved Design Proposal unless the change is approved in advance in writing by the Owner or an authorized representative and by the Artist or its authorized representative.

C. Termination

The Owner and the Artist hereby agree to the full performance of the covenants contained herein, except that until such time as the Owner has been notified that the fabrication of the Work is substantially complete and ready for shipment, the Owner reserves the right, at its discretion and without cause, to terminate or abandon the services to be provided by the Artist to the Owner under this Agreement, or abandon any portion of the project for which services have been performed by the Artist.

1. In the event the Owner shall terminate all or any part of the services to be performed by the Artist and/or of the Work to be fabricated by the Artist under this Agreement as permitted by this Section “C”, the Owner shall notify the Artist in writing, and immediately after receipt of such notice (the “Termination Date”), the Artist shall discontinue performing work or services and fabricating the Work under this Agreement.

2. Upon such termination or abandonment, the Artist shall retain all work and materials completed with respect to the Work as of the date to termination by the Owner without offset.

3. The Artist shall determine the percentage of work completed as of the Termination Date and shall submit its determination to the Owner for evaluation. The Owner shall have the right to inspect the Artist's work to verify the percentage of work completed.

4. The Artist shall receive a fee for the percentage of the Work actually completed as compensation in full for services performed to the date of such termination. This fee shall be at least equal to any project related payments owed to the Artist and to the Artist’s suppliers and subcontractors for work, labor, services and/or materials supplied, and shall be in an amount to be agreed upon mutually by the Artist and the Owner. The Owner shall pay all such amounts owed to the Artist within thirty (30) days of the Termination Date

5. The Artist may terminate this Agreement only if the Owner should substantially fail to perform its responsibilities as provided herein, including but not limited to its obligation to pay the Contract Amount and each installment on a timely basis.

6. The death or incapacity of the Artist that renders him/her permanently disabled at any time prior to substantial completion of fabrication of the Work may, in permit the Owner, in its sole discretion, to terminate this Agreement. In the event that the Owner elects to terminate the Agreement as a result of the death or permanent disability of the Artist prior to substantial completion of fabrication of the Work, neither the Artist nor the Artist's estate shall have any further right to perform the obligations under this Agreement absent the Owner's written consent. In the event of such termination, the Owner shall pay to the Artist the full Contract Amount not previously paid reduced by the amount of commercially reasonable, additional costs, if any, which shall be incurred by the Owner by reason of such termination. The Owner shall provide written documentation in a form acceptable to the Artist's certified public accountants to document any such additional costs.

7. In the event that the Work is substantially complete at the time of the Artist's death or permanent disability as stated above, there shall be no termination of the Agreement and the Artist shall complete the Work utilizing its skilled artisan staff and deliver and install the Work in accordance with the approved Design Proposal and Engineering Drawings.

D. Communications

Except as otherwise stated in this Agreement, all notices, requests, demands and other communications which are required or permitted to be given under this agreement shall be in writing and shall be deemed to have been duly given upon the delivery or receipt thereof, as the case may be, if delivered by email with a received digital confirmation, or personally or sent by registered or certified mail, return receipt requested, postage prepaid, or by air or courier services, or if delivered personally by messenger as follows:

1. If the Owner, to:

City Manager
City of Tamarac7525 N.W. 88th Avenue
Tamarac, FL. 33321-2401
Email:

With a copy to:

Samuel S. Goren, City Attorney
3099 E. Commercial Blvd., Suite 200

Fort Lauderdale, FL 33308
Email:

2. If the Artist, to:

With a copy to:

E. Additional Work

Additional work not contemplated by the final Design Proposal and Engineering Drawings, when authorized by the Owner or an authorized representative in writing, shall be compensated for by a fee to be mutually agreed upon between the Owner and the Artist.

F. Ownership and Reproduction Rights

1. Title to the Work shall pass to the Owner upon written notice to the Artist of final acceptance of the Work after installation at the Site.

2. The Artist retains: (1) all right, title and interest in all intellectual property associated with the Work, including but not limited to all rights to the design of the Work, all rights to all copyrights with respect to the Work under the Copyright Act of 1976, 17 U.S.C. & 101, et seq., as amended by the Visual Artists Rights Act of 1990, and any successor act, and all moral rights; and (3) all rights expressly granted in this Agreement.

3. The Artist hereby grants the Owner the sole and exclusive right to display the Work, and two-dimensional reproductions of the Work, and upon the prior consent of the Artist, which consent shall not be unreasonably withheld, to loan the Work and such reproductions to others with authority to display it publicly with proper attribution to the Artist. Except for those rights retained as provided herein, the Artist agrees that the Artist shall not undertake any public display of the Work in a three dimensional form.

4. With the Artist's prior, written consent, the Artist hereby authorizes the Owner to make, and to authorize the making of, photographs and

other two-dimensional reproductions of the Work for educational, public relations, arts promotional, non-commercial purposes. For the purposes of this Agreement, the following are among those deemed to be reproductions for non-commercial purposes: brochures and pamphlets pertaining to the Owner; reproduction in exhibition catalogues, books, slides, photographs and in news sections of newspapers; in general books and magazines not primarily devoted to art but of an educational nature; electronic media and television from stations operated for educational purposes. On any and all such reproductions, the Owner shall place a copyright notice in the form and manner required to protect the copyright in the Work under the United States copyright law, the Berne Convention and any and all copyright international conventions as may be enacted and/or amended from time to time.

5. All references to the Work and all reproductions of the Work shall credit the Work to the Artist unless the Artist makes a specific written request to not include the Artist as part of the credit.

6. The Artist agrees that all formal references to the Work and noncommercial reproductions of the Work under the Artist's control shall include the following credit line: "A Public Art Commissioned for the City of Tamarac, Florida."

G. Repair and Restoration

Except as otherwise set forth in this Agreement, maintenance of the Work after installation of the Work at the Site and the Owner's written acceptance of the Work shall be the responsibility of the Owner. The Owner shall maintain the Work and/or make minor or emergency repairs without the Artist's approval or consultation, provided such work is performed in accordance with recognized principles of conservation as determined by the Artist. It will be policy of the Owner to consult with the Artist regarding repairs and restoration which are undertaken during the Artist's lifetime when that is practicable only when such work does not comply with the maintenance guidelines provided by the Artist. To facilitate consultation, the Artist will notify the Owner of any change in the Artist's permanent address. If the Artist is unable or unwilling to perform any necessary repairs or restoration, the Owner will cause to have such work performed at the Owner's own expense in accordance with the Artist's the specifications for maintenance and repair contained in the Technical and Mechanical Record and in the As-Built Drawings attached to this Agreement as Exhibits "C" and "D", respectively. It is expressly acknowledged and agreed by the parties that due to the materials used in the fabrication of the Work, its size, weight and mass, a failure by the

Owner to maintain and/or repair the Work in accordance with the maintenance and repair specifications provided to the Owner by the Artist in the "As Built Drawings and Technical and Maintenance Record attached as Exhibits may result in a loss of structural integrity that may pose a hazard to public health and safety over time.

H. Removal or Relocation

Notwithstanding any provision of law, the parties agree that removal, destruction or relocation of the Work may occur. While it is the Owner's intent to permanently retain and publicly display the Work it has acquired through the Public Art program, circumstances may arise that would make it prudent for the Owner to remove the Work from public display. The Artist hereby acknowledges that the Work when installed, will be incorporated within and made a part of the Site in such a way that removing the Work from the Site, or destruction or modification of "Site" may cause the destruction, distortion or mutilation, of the Work. The Artist hereby acknowledges that the Work, when installed, will be the property of the Owner. The Artist therefore agrees that the Owner shall have absolute right incidental to its ownership of the Site and the Work to remove, relocate, replace, transport, transfer, sell, or store the Work, (such actions being referred to herein as "Removal"), or to destroy, (such actions being referred to herein as "Destructions"), the Work at such times as the Owner shall deem necessary in order to exercise its powers and responsibilities with respect to the Site. The Owner shall notify the Artist in writing no less than 90 days in advance of such removal. In the event of any damage whatsoever to the Work, the Artist reserves the right to withdraw attribution of the Work to the Artist.

I. Public Hazard

In the event that the Owner determines that the Work presents an imminent hazard to the public, the Owner may authorize the removal of the Work without approval of the Artist. The Artist shall be notified within thirty (30) days of such action, and the Owner shall then consider options for the final disposition, repair, reinstallation, maintenance or deaccession of the Work. In the event of any damage whatsoever to the Work or deaccession of the Work, the Artist reserves the right to withdraw attribution of the Work to the Artist.

J. Successors and Assigns

The Owner and the Artist shall each bind themselves, their partners, successors, assigns, and legal representatives to the other party to this Agreement and to the partners, successors, assigns, and legal representatives of such other party in respect to all covenants of this

Agreement. Neither the Owner nor the Artist shall assign, sublet, or transfer any interest in this Agreement without the written consent of the other.

K. Covenant Against Contingent Fees

The Artist represents and warrants to the Owner that to the best of its knowledge, no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for commission, percentage, brokerage, or contingent fee, and that no member of the Owner or any employee of the Owner has any interest, financially or otherwise, in the Artist's business.

The Owner represents and warrants to the Artist that to the best of its knowledge, no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for commission, percentage, brokerage, or contingent fee, and that no member of the Owner or any employee of the Owner has any interest, financially or otherwise, in the Artist's business.

L. Non-Discrimination & Equal Opportunity

The Artist is an equal opportunity employer and shall not discriminate against any employee or applicant for employment because of race, color, sex including pregnancy, religion, age, national origin, marital status, political affiliation, familial status, sexual orientation, gender identity and expression, or disability. The Artist will take affirmative action to ensure that employees are treated during employment, without regard to their race, color, sex including pregnancy, religion, age, national origin, marital status, political affiliation, familial status, sexual orientation, gender identity or expression, or disability. Such actions must include, but not be limited to, the following: employment, promotion; demotion or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Artist shall agree to post in conspicuous places, available to employees and applicants for employment, appropriate legal notices as required by law.

The Owner is an equal opportunity employer and shall not discriminate against any employee or applicant for employment because of race, color, sex including pregnancy, religion, age, national origin, marital status, political affiliation, familial status, sexual orientation, gender identity and expression, or disability. The Owner will take affirmative action to ensure that employees are treated during employment, without regard to their race, color, sex including pregnancy, religion, age, national origin, marital

status, political affiliation, familial status, sexual orientation, gender identity or expression, or disability. Such actions must include, but not be limited to, the following: employment, promotion; demotion or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Owner shall agree to post in conspicuous places, available to employees and applicants for employment, appropriate legal notices as required by law.

M. Independent Existence

The parties acknowledge and agree that this Agreement is not intended to and does not create a joint venture or partnership or any business entity or combination of any kind between the parties and that neither party has the right to contract on behalf of or to bind the other party by virtue of having entered into and performing their respective obligations under this Agreement. The parties further acknowledge and agree that this Agreement is not intended to create and does not create an employee/employer relationship between the Parties or between the Owner and Artist or between any person employed by the Artist in any capacity or between the Artist and any person employed by the Owner in any capacity. It is the intent of the Parties that the Artist is an independent contractor under this Agreement and not the Owner's employee for any purposes. The Artist shall retain sole and absolute discretion in the judgment of the manner and means of carrying out the Artist's activities and responsibilities. Each party shall be solely responsible for payment of all wages (including overtime pay), mandatory withholds and benefits to and/or on behalf of their respective employees and neither party shall assume or be deemed to have assumed any responsibility whatsoever for any wages or other compensation whatsoever that may be due or claimed to be due to any employee of the other party, including but not limited to any obligation arising under the Fair Labor Standards Act, 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. .

N. Force Majeure

If either party shall be delayed or prevented from the performance of any act required under this Agreement by reason of acts of God or other cause beyond the control and without fault of the party (financial inability excepted), performance of that act shall be excused, but only for the period of the delay. The time for performance of the act shall be extended

for a period equivalent to the period of delay.

O. Immigration Reform and Control Act of 1986

The Artist understands and acknowledges the applicability of the Immigration Reform and Control Act of 1986 to the Artist. The Artist agrees to comply with the Immigration Reform and Control Act of 1986 in performing work under this Agreement and to permit the Owner to verify such compliance. The Owner understands and acknowledges the applicability of the Immigration Reform and Control Act of 1986 to the Artist. The Owner agrees to comply with the Immigration Reform and Control Act of 1986 in performing work under this Agreement and to permit the Artist to verify such compliance.

P. Severability; Waiver of Provisions

Any provision in this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provisions in any other jurisdiction. The non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

Q. Jurisdiction

It is mutually understood and agreed that this Agreement shall be construed and enforced in accordance with the laws of the State of Florida. Any action at law, suit in equity or judicial proceeding for the enforcement of this Agreement or any provision thereof shall be instituted in the appropriate state court located in Broward County, Florida

R. Merger; Amendment

This Agreement and all Exhibits together with all other contract documents executed between the parties with respect to the Work (the “Contract Documents”) constitute the entire Agreement between the Artist and the Owner, and negotiations and oral understandings between the parties are merged in the Contract Documents.. This Agreement can be supplemented and/or amended only by a written document executed by both the Artist and the Owner.

S. No Construction Against Drafting Party

Each party to this Agreement expressly recognizes that this Agreement results from the negotiation process in which each party was represented

by counsel and contributed to the drafting of this Agreement. Given this fact, no legal or other presumptions against the party drafting this Agreement concerning its construction, interpretation or otherwise accrue to the benefit of any party to the Agreement, and each party expressly waives the right to assert such a presumption in any proceedings or disputes connected with, arising out of, or involving this Agreement.

This Agreement shall be in full force and effect only when it has been approved and executed by the Artist and the duly authorized Owner officials.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the _____ day of _____, 201_

CITY:
CITY OF TAMARAC, FLORIDA

BY:_____
MAYOR HARRY DRESSLER

ATTEST:

_____
PAT TEUFEL, CITY CLERK

APPROVED AS TO FORM:

_____
OFFICE OF THE CITY ATTORNEY

ARTIST:

BY:_____

STATE OF)
COUNTY OF _____) ss.:

On the _____ day of _____, in the year 201_, before me, the undersigned, a Notary Public in and for said State, personally appeared., residing at _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the

within instrument and acknowledged to me that she executed the same in her capacity and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

My Commission Expires:
Registration No.:

EXHIBIT A – ARTIST'S FINAL DESIGN PROPOSAL AND SCHEDULE

Contract No.
Between The City of Tamarac, Florida
And

SUBMITTED BY:

_____

Artist Date

APPROVED:

_____

Authorized agent for The City of Tamarac Date

EXHIBIT B – ENGINEERING DRAWINGS
Contract No. 0000
Between the Owner and

[See Attached]

EXHIBIT C - FORMAT FOR TECHNICAL AND MAINTENANCE RECORD

Contract No. 00000
Between the Owner
And

I. GENERAL INFORMATION:

Artist:

Title of Work:

Location: Woodlands Country Club Property

General Description:

II. WORK INFORMATION
(in-depth information for overall project and for each individual element)

Medium and Description of Materials (include materials thickness,)

Special Methods Utilized in Execution of Work ()

Material Finish ()

Installation Method(s) (foundation installation structure, bolt/pin size, grout)

Placement of Work (cautions regarding sunlight, heat, etc.)

III. VENDORS/PARTS/STORAGE (includes supplier's name, address and phone number, description for all components of project, attach copies of manufacturer specifications whenever possible)

EXHIBIT C- FORMAT FOR TECHNICAL AND MAINTENANCE RECORD (CONT.)

Contract No. 00000
Between the Owner
and

IV. REGULAR MAINTENANCE SCHEDULE (include cleaning agents and recommended cleaning procedure, yearly maintenance schedule for the entire piece and recommended procedure to check any electrical or mechanical parts that are integrated in this work)

V. SPECIAL CONSIDERATIONS AND/OR ADDITIONAL PERTINENT INFORMATION

EXHIBIT C- AS- BUILT DRAWINGS FOR MAINTENANCE AND REPAIR OF THE WORK

Contract No. 00000
Between the Owner
And
[See Attached]