

ST. PETERSBURG CITY COUNCIL

Consent Agenda

June 14, 2018

TO: The Honorable Lisa Wheeler-Bowman, Chair and Members of City Council

SUBJECT:

A resolution approving agreements between the city of St. Petersburg, Florida, and MGA sculpture studio, LLC ("Artist"), for Artist to (i) design, fabricate, and install a piece of interior art entitled "Shielded" in the main entrance of the City's new Police Headquarter Complex ("Complex") for a firm fixed price of \$130,000, and (ii) design, fabricate, deliver, and oversee the installation of a piece of exterior art entitled "Gladiolus Blossom" to be installed in the main entry plaza of the Complex for a firm fixed price of \$226,000; exempting and waiving the Florida Statute and City Code public construction bond requirement for the agreement for the artist to design, fabricate, and install "Shielded"; approving a transfer in the amount of \$500,000 from the Public Safety Capital Improvement Fund (3025) to the Arts in Public Places Fund (1901); approving a supplemental appropriation in the amount of \$356,000 from the unappropriated balance of the Arts in Public Places Fund (1901) resulting from the above transfer to the Mayor's Office Cultural Affairs division (0201777); authorizing the city attorney to make non-substantive changes to the agreements; authorizing the mayor or his designee to execute the agreements and all documents necessary to effectuate these transactions; and providing an effective date.

EXPLANATION:

The Police Department Public Art Project Committee was established pursuant to Section 5-58 of the City Code to ensure that proper consideration was given to the design, siting, facility operation, and neighborhood interests for artwork to be commissioned for the Complex. A Request for Qualifications ("RFQ") was sent on July 17, 2017 inviting artists to submit applications to create a piece of art or multiple pieces of art for the Complex. As a result, the Committee received seventy-two (72) applications and selected five (5) of those as finalists to prepare and present to the Committee site-specific proposals. The Committee met on April 11, 2018 to hear the finalists' presentations of their proposals and based on the site-specific proposals presented by Mark Aeling of MGA Sculpture Studio, LLC, the Committee selected Mr. Aeling to fully design and fabricate a piece of exterior art entitled "Gladiolus Blossom" to be installed in the main entry plaza of the Complex and design, develop and install a piece of interior art entitled "Shielded" inside the main entrance of the Complex. On May 1, 2018, the Public Arts Commission approved the Committee's selection and recommends that City Council approve agreements for Artist to fully design and develop the "Gladiolus Blossom" (with install of this piece to be completed through the City's contract with Ajax Building Corp.) for the main entry plaza; design, develop and install "Shielded" inside the main entrance of the Complex. Included with the total amount of the appropriation is \$5,000 for professional liability insurance required by the general contractor and bond holder responsible for the installation.

The total budgeted cost for the Police Department Public Art project is \$356,000 for two commissioned pieces; one to be placed in the main entrance, and one to be placed in the main entry plaza of the Complex. Work to be completed and installed in conjunction with the construction and completion of the new Complex.

The \$144,000 remaining from the total \$500,000 transfer has been reserved by the Public Arts Commission for an additional public art project at the Complex which will be presented to City Council for their approval in the near future.

RECOMMENDATION:

Administration recommends that City Council accept the recommendation made by the Police Department Public Art Project Committee and approved by the Public Arts Commission.

COST/FUNDING/ASSESSMENT INFORMATION:

Funds will be available after approval of a transfer in the amount of \$500,000 from the unencumbered balance of the Public Safety Capital Improvement Fund (3025) to the Arts in Public Places Fund (1901) of which \$356,000 is to provide for the design, fabrication, delivery, and installation of the artwork located at the City's new police headquarter complex; authorizing a supplemental appropriation in the amount of \$356,000 from the increase in the unappropriated balance of the Arts in Public Places Fund (1901) resulting from the above transfer to the Mayor's Office Cultural Affairs division (0201777).

ATTACHMENTS:

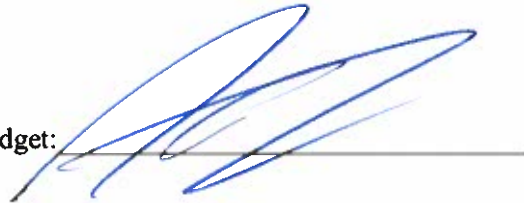
- (1) Sculpture Design Renderings
- (2) Resolution
- (3) Artist Agreement

APPROVALS:

Administration:

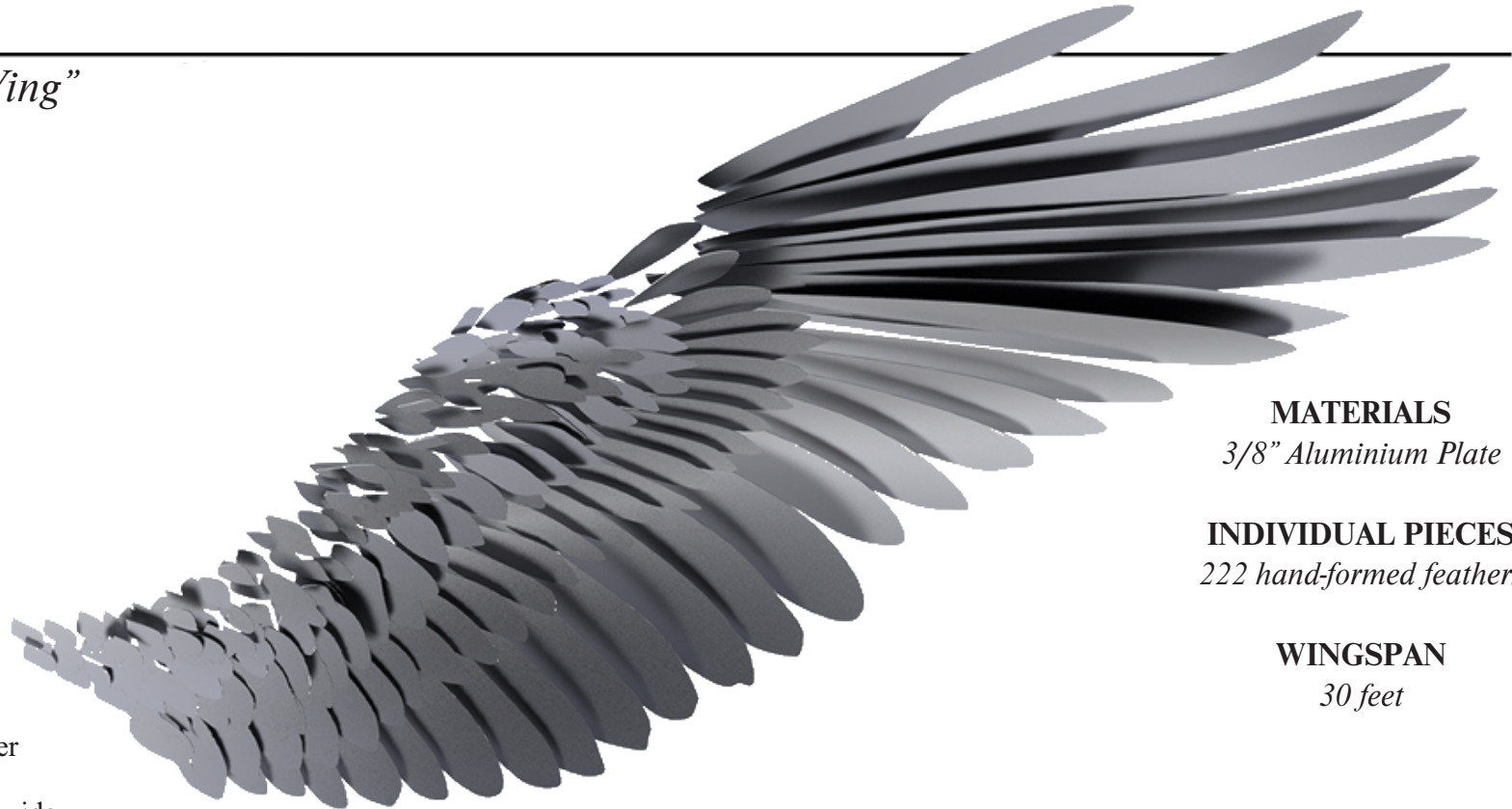


Budget:



Shielded

"Deconstructed Wing"



Artist Statement:

As we progress to the interior of the building we have a beautiful open atrium 3 stories high. When looking at this space I began to wonder what would complement this space, create visual interest, guide traffic flow and promote the ideals of what the police department represents to this community. I turned to another passion of mine, wings. What's not to love about a wing? They have what seems to be magical powers to defy gravity and create lift. So, I did some research on the historic meaning of different types of birds. Eagles are used symbolically across the globe they are the "King of Birds". The "lion of the skies". They embody power, authority, nobility and truth. There are also references to honesty and truthful principles. This seemed to me to be a good fit and it got me thinking about what it means to be "under someone's wing". This phrase means quite literally to be guided or protected by someone. This is a perfect metaphor for what it is to enter into this facility. "Shielded" is a sculpture made of 222 individual cut aluminum feathers suspended from the ceiling. It's about 30' long and varies in height from 15' on the side near the western wall of the lobby to 25' at the eastern entry area. The feathers are suspended individually and in small clusters creating an open somewhat abstract arrangement that from certain angles manifest into a full wing in the downward press of elevation. It will be illuminated from below so it can be seen from the street at night. Once again, we have a very visually compelling sculpture that is conceptually strong and works well to complement the existing architecture.



MATERIALS

3/8" Aluminium Plate

INDIVIDUAL PIECES

222 hand-formed feathers

WINGSPAN

30 feet

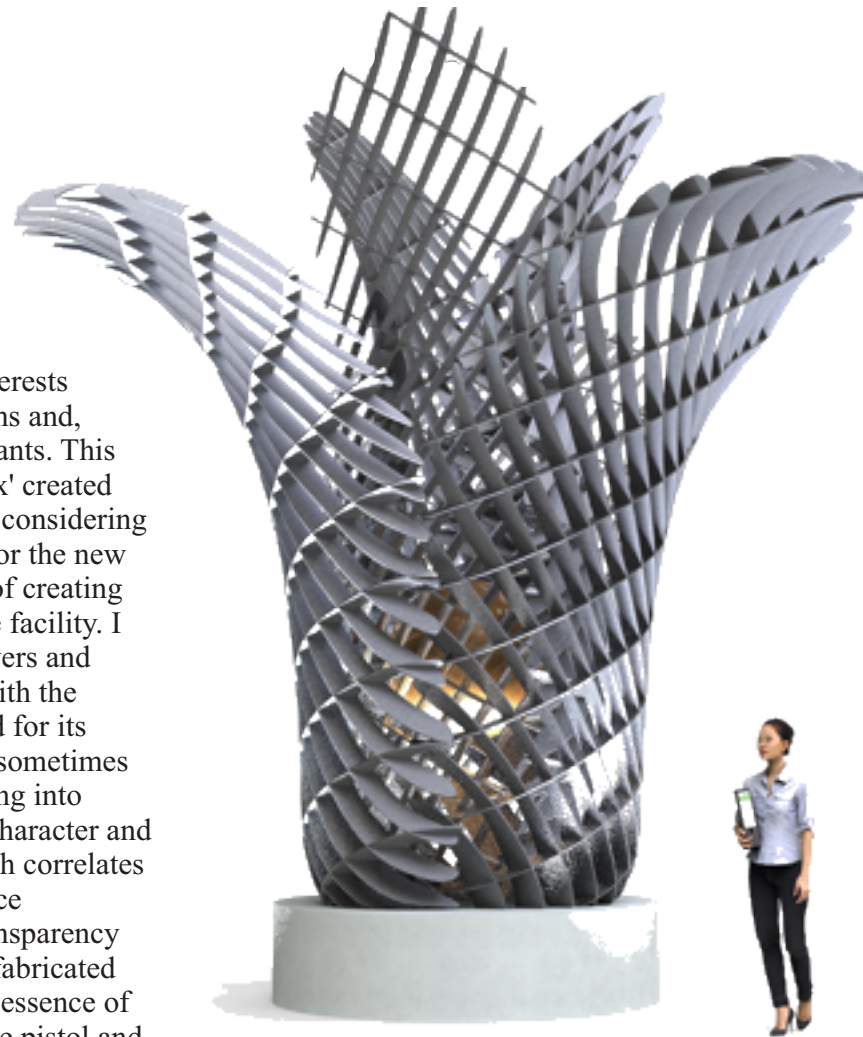


Gladiolus Blossom

"The Sword Flower"

Artist Statement:

I have been developing several areas of interest conceptually in recent projects. One of these interests involves the inherent math found in natural forms and, in particular, the reproductive components of plants. This is demonstrated in the sculpture 'Budding Vortex' created for a project in Tampa about 2 years ago. When considering the concept for the exterior sculptural element for the new police facility I was intrigued by the challenge of creating something that would welcome the public to the facility. I began to research the historical meaning of flowers and discovered that the Gladiolus shared its name with the gladiator and is the Latin root for sword. Named for its sword like shape. Apparently, gladiators would sometimes wear these flowers around their necks when going into battle. This flower also symbolizes strength of character and moral integrity. The Gladiolus has 6 petals which correlates to the 6 core values of the Saint Petersburg Police Department: Loyalty, integrity, honor, valor, transparency and service. In this sculpture, the six petals are fabricated from stainless steel they protect and nurture the essence of the flower at its core. In nature, this would be the pistil and stamen the reproductive organs of the plant that carry its future. In this sculpture, we find a gilded sphere at its center that represents our essence, the community. 'Gladiolus Blossom' sits on a low cast concrete and mosaic tile base in the plaza area above the steps near the entry to the facility. It stands Approximately 20' high including its basing element and will be illuminated by an LED lighting system at night that will focus light on the interior gilded sphere giving the sculpture a golden reflective radiance. This is a visually compelling, conceptually strong sculpture that will welcome the public to the facility and embody the core values of our police department.



MATERIALS

Stainless Steel

Gilded Sphere

Concrete w/Tile Mosaic Base

WEIGHT

approx 10,000 lbs

HEIGHT

20 feet w/base



A RESOLUTION APPROVING AGREEMENTS BETWEEN THE CITY OF ST. PETERSBURG, FLORIDA, AND MGA SCULPTURE STUDIO, LLC (“ARTIST”), FOR ARTIST TO (i) DESIGN, FABRICATE, AND INSTALL A PIECE OF INTERIOR ART ENTITLED “SHIELDED” IN THE MAIN ENTRANCE OF THE CITY’S NEW POLICE HEADQUARTER COMPLEX (“COMPLEX”) FOR A FIRM FIXED PRICE OF \$130,000, AND (ii) DESIGN, FABRICATE, DELIVER, AND OVERSEE THE INSTALLATION OF A PIECE OF EXTERIOR ART ENTITLED “GLADIOLUS BLOSSOM” TO BE INSTALLED IN THE MAIN ENTRY PLAZA OF THE COMPLEX FOR A FIRM FIXED PRICE OF \$226,000.00; EXEMPTING AND WAIVING THE FLORIDA STATUTE AND CITY CODE PUBLIC CONSTRUCTION BOND REQUIREMENT FOR THE AGREEMENT FOR THE ARTIST TO DESIGN, FABRICATE, AND INSTALL SHIELDED; APPROVING A TRANSFER IN THE AMOUNT OF \$500,000 FROM THE PUBLIC SAFETY CAPITAL IMPROVEMENT FUND (3025) TO THE ARTS IN PUBLIC PLACES FUND (1901); APPROVING A SUPPLEMENTAL APPROPRIATION IN THE AMOUNT OF \$356,000 FROM THE UNAPPROPRIATED BALANCE OF THE ARTS IN PUBLIC PLACES FUND (1901) RESULTING FROM THE ABOVE TRANSFER TO THE MAYOR’S OFFICE CULTURAL AFFAIRS DIVISION (0201777); AUTHORIZING THE CITY ATTORNEY TO MAKE NON-SUBSTANTIVE CHANGES TO THE AGREEMENTS; AUTHORIZING THE MAYOR OR HIS DESIGNEE TO EXECUTE THE AGREEMENTS AND ALL DOCUMENTS NECESSARY TO EFFECTUATE THESE TRANSACTIONS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of St. Petersburg, Florida, is committed to supporting and encouraging the artistic and cultural enrichment of the St. Petersburg community; and

WHEREAS, the Police Department Public Art Project Committee (“Committee”) was established pursuant to Section 5-58 of the City Code to ensure that proper considerations are given to the design, siting, facility operation, and neighborhood interests for artwork to be commissioned for the City’s new police headquarter complex (“Complex”); and

WHEREAS, on July 17, 2017, the Committee issued a Request for Qualifications (“RFQ”) inviting artists to submit applications to create a piece of art or multiple pieces of art for the Complex; and

WHEREAS, the Committee received seventy-two (72) applications in response to the RFQ and selected five (5) of those as finalists to prepare and present to the Committee site-specific proposals; and

WHEREAS, on April 11, 2018, the Committee met to hear the finalists’ presentations of their proposals; and

WHEREAS, based on the site-specific proposal for an exterior and interior piece presented by Mark Aeling of MGA Sculpture Studio, LLC (“Artist”), one of the finalists, the Committee selected Artist to fully design and fabricate a piece of exterior art entitled “Gladiolus Blossom” to be installed in the main entry plaza of the Complex and to fully design, fabricate, and install a piece of interior art entitled “Shielded” inside the main entrance of the Complex; and

WHEREAS, on May 1, 2018, the Public Arts Commission approved the Committee’s selection and recommends that City Council approve the agreements with the Artist; and

WHEREAS, the agreement for Artist to design, fabricate, and install Shielded involves the prosecution and completion of a public work requiring a public construction bond pursuant to Florida Statute Section 255.05(1) and City Code Section 2-254(a), unless City Council exempts Artist from executing a public construction bond pursuant to Florida Statute Section 255.05(1)(d) and waives the requirement pursuant to City Code Section 2-259; and

WHEREAS, Administration recommends that City Council grant an exemption and waiver from the public construction bond requirement for the agreement for Artist to design, fabricate, and install Shielded; and

WHEREAS, because Artist is not installing Gladiolus Blossom, the agreement for Artist to design, fabricate, deliver, and oversee the installation of Gladiolus Blossom is not subject to the public construction bond requirements of Florida Statute Section 255.05 or City Code Section 2-254(a); and

WHEREAS, the total allocation of funds to be deposited into the Arts in Public Places Fund for the police headquarters project pursuant to City Code Section 5-63 is \$500,000; and

WHEREAS, funding for the agreements with the Artist require a transfer and supplemental appropriation of \$356,000; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of St. Petersburg, Florida, that the agreements between the City of St. Petersburg, Florida, and MGA Sculpture Studio, LLC ("Artist"), for Artist to (i) design, fabricate, and install a piece of interior art entitled "Shielded" in the main entrance of the City's new police headquarter complex ("Complex") for a firm fixed price of \$130,000, and (ii) design, fabricate, deliver, and oversee the installation of a piece of exterior art entitled "Gladiolus Blossom" to be installed in the main entry plaza of the Complex for a firm fixed price of \$226,000.00 are hereby approved.

BE IT FURTHER RESOLVED that Artist is exempted from executing a public construction bond for the prosecution and completion of a public work for the agreement to design, fabricate, and install Shielded pursuant to Florida Statute 255.05.

BE IT FURTHER RESOLVED that the requirement under City Code Section 2-254(a) that the Artist obtain a public construction bond is waived pursuant to City Code Section 2-259.

BE IT FURTHER RESOLVED that there is hereby approved the following transfer from the unencumbered balance of the Public Safety Capital Improvement Fund (3025) to the Arts in Public Places Fund (1901):

<u>Public Safety Capital Improvement Fund (3025)</u>	
Arts in Public Places Fund (1901)	\$500,000

BE IT FURTHER RESOLVED that there is hereby approved from the increase in the unappropriated balance of the Arts in Public Places Fund (1901), the following supplemental appropriation for FY 2018:

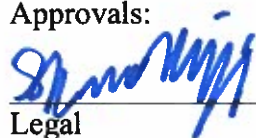
<u>Arts in Public Places Fund (1901)</u>	
Mayor's Office Cultural Affairs Division (0201777)	\$356,000

BE IT FURTHER RESOLVED that the City Attorney is authorized to make non-substantive changes to the agreements.

BE IT FURTHER RESOLVED that the Mayor or his designee is authorized to execute the agreements and all other documents necessary to effectuate these transactions.

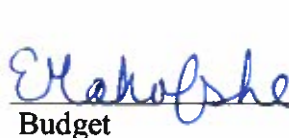
This Resolution shall become effective immediately upon its adoption.

Approvals:

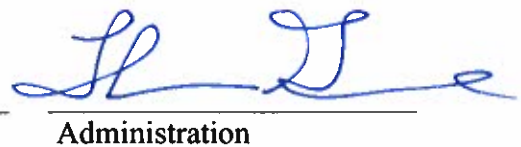


Legal

00380192



Budget



Administration

ARTIST AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered into this ____ day of _____, 2018 ("Effective Date"), by and between the City of St. Petersburg, Florida, a municipal corporation of the State of Florida, ("City") and MGA Sculpture Studio, LLC ("Artist") (collectively, "Parties").

WITNESSETH:

WHEREAS, the Police Department Public Art Project Committee ("Committee") was established pursuant to Section 5-58 of the St. Petersburg City Code to ensure that proper considerations would be given to the design, siting, facility operation, and neighborhood interests for artwork to be commissioned for the City's new police headquarter complex; and

WHEREAS, the Committee issued a Request for Qualifications ("RFQ") on July 17, 2017 inviting artists to submit applications to create a piece of interior art for the complex; and

WHEREAS, based on the site-specific proposal for an interior piece presented by Mark Aeling of MGA Sculpture Studio, LLC, one of the finalists for the RFQ, the Committee recommended to the City's Public Arts Commission and the City of St. Petersburg City Council that Artist should be selected to fully design, develop and install a piece of interior art entitled "Shielded" inside the main entrance of the complex; and

WHEREAS, the City's Public Arts Commission and the City of St. Petersburg City Council approved the Committee's recommendations; and

WHEREAS, it is the desire of City and Artist to establish the terms and conditions under which this work of art shall be fully designed, fabricated and installed by Artist in the place designated herein.

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein (which are an integral part of this Agreement and are incorporated herein by reference), and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE 1. DEFINITIONS

1.1 Artwork - The work of art entitled "Shielded" which is to be fully designed, fabricated, and installed by Artist under this Agreement.

1.2 Site - Inside the enclosed atrium interior of the main entrance at the City of St. Petersburg's new police headquarters complex, located at 1301 1st Avenue North, St. Petersburg Florida.

ARTICLE 2. SCOPE OF SERVICES

- 2.1. Artwork Described. Artist shall complete the design, development, fabrication, delivery and installation of the Artwork. The Artwork is generally depicted and described in Exhibit A, which is attached hereto and made a part of this Agreement.
- 2.2. Independent Contractor. Artist is an independent contractor and nothing in this Agreement shall be construed as constituting Artist as an employee, agent or representative of the City. No employee or agent of the City shall supervise Artist.
- 2.3. Artist Responsibilities. Artist shall perform or provide all services and furnish all supplies, materials and equipment necessary for the design, development, fabrication, delivery and installation of the Artwork, and shall comply with the following:
- A. Beginning on the Effective Date, Artist shall commence the final design, development, fabrication and installation of the Artwork in accordance with this Agreement.
 - B. Artist shall provide the City with the specifications for the attachment points at the Site on or before July 16, 2018 to allow the City to build the appropriate infrastructure at the Site to support the Artwork.
 - C. Final placement of the Artwork must be coordinated with and approved by the City before installation begins to ensure that no damage is caused to the Site.
 - D. Artist shall submit monthly progress reports to the City upon written request.
 - E. Artist shall present to the City in advance, for further review and approval, a written proposal for any significant changes in the scope, design, color, size, material or texture, or location on the Site of the Artwork which affects installation, scheduling, Site preparation or maintenance for the Artwork or the concept of the Artwork as approved by the City.
 - F. Artist agrees that the Artwork will not utilize any protected patent, trademark, or copyright unless Artist has obtained proper permission and all releases and other necessary documents. If Artist uses any protected material, process, or procedure, Artist shall disclose such patent, trademark, or copyright in the construction drawings and technical specifications.
 - G. Artist shall provide written instructions for the care, maintenance and preservation requirements for the Artwork. The City acknowledges that the Artwork may suffer some ordinary wear and tear, but such wear and tear shall not be of such a nature to affect the integrity or overall visual quality of the Artwork. The Artwork shall

be designed to withstand all conditions that could reasonably be expected to occur at the Site.

- H. Artist shall provide a written warranty of the Artwork, guaranteeing the quality of materials and workmanship for a period of not less than three (3) years after Final Acceptance.
- I. Artist is responsible for acquiring all City, county, state or federal permits or variances necessary for the construction and/or installation of the Artwork.
- J. Artist and the Artwork shall at all times comply with all current and future federal, state, and local statutes, rules, regulations, and ordinances, the federal and state constitutions and the orders and decrees of any lawful authorities having jurisdiction over the matter at issue (collectively, "Laws").

- 2.4. City's Right to Review Progress. The City shall have the right to review the progress of the Artwork at all reasonable times.
- 2.5. Ownership of Documents. Upon completion of the Artwork all studies, drawings, designs and photographs prepared and submitted to the City under this Agreement by Artist shall become the property of the City. The City will not be entitled to any other original drawings in the possession of Artist.

ARTICLE 3. COMPENSATION

- 3.1. Firm Fixed Price. City shall pay Artist a firm fixed price of one hundred thirty thousand dollars (\$130,000) ("Firm Fixed Price"), which shall constitute full compensation for all services performed (including any approved services provided prior to the Effective Date) and materials furnished by Artist under this Agreement, including Artist's fee.
- 3.2. Method and Schedule of Payment. The City shall pay each invoice within thirty (30) days after receipt, provided Artist is in compliance with the terms and conditions of this Agreement. The Firm Fixed Price shall be paid in the following installments, each payment installment to represent full and final payment for all services and materials provided prior to payment thereof. Each installment shall be paid upon receipt of the certifications and documentation described below, which shall be in a form acceptable to the City in its reasonable discretion.
 - A. Phase I - The City shall pay Artist 20% of the Firm Fixed Price within thirty (30) days after the Effective Date. This amount is intended to cover the completion of the technical design and engineering of the Artwork, and shall coincide with commencement of fabrication by Artist.

- B. Phase II - Artist shall invoice the City for 40% of the Fixed Firm Price within thirty (30) days after the City's acceptance of the design and engineering documents for the Artwork. This amount is intended to cover materials and process fees.
- C. Phase III – Artist shall invoice the City for 20% of the Firm Fixed Price after fabrication completion and the City's acceptance of the fabricated Artwork following City inspection.
- D. Phase IV - Artist shall invoice the City for the remaining 20% of the Firm Fixed Price after installation of the Artwork and after presenting to or obtaining from the City the following:
 - i. Photos and documentation of completed fabrication of the Artwork and evidence that all required permits have been obtained,
 - ii. A written bill of sale conveying title of the Artwork to the City,
 - iii. Written instructions for the care, maintenance, preservation and handling of the Artwork pursuant to this Agreement,
 - iv. A sworn statement of no liens, claims or other encumbrances for the Artwork pursuant to this Agreement,
 - v. A written warranty for the Artwork pursuant to this Agreement,
 - vi. Written assignment of any and all warranties for materials used or labor performed by subcontractors or other persons for the Artwork, and
 - vii. Obtaining Final Acceptance (as defined herein) of the Artwork pursuant to this Agreement.

3.3. Availability of Funds. The performance by the City of any of its obligations under this Agreement shall be subject to and contingent upon the availability of funds appropriated by the City for the purposes of this Agreement for the current and any future fiscal period. The City shall appropriate all funds necessary to fund this Agreement at the time this Agreement is approved by City Council.

3.4. Travel and Other Expenses. Travel and other expenses will not be reimbursed except as provided in this Agreement. Artist's sole compensation shall be the Firm Fixed Price as described in this ARTICLE 3.

ARTICLE 4. TIME OF PERFORMANCE

- 4.1. Time of Performance Described. All services by Artist shall be completed pursuant to this Agreement. Artist agrees to be available to begin this project immediately on the Effective Date. Artist shall complete and install the Artwork and submit all required documentation to the City no later than March 1, 2019.
- 4.2. Extensions by City. The City may grant Artist a reasonable extension of time in the event there is a delay on the City's part in performing obligations under this Agreement or if conditions beyond Artist's control or acts of God render timely performance of Artist's services impossible or unreasonably burdensome. Artist agrees and understands that the City shall be the sole judge of what constitutes "beyond Artist's control." Further, Artist agrees that there will be no extension of time for any reason if such extension of time would result in an increase in the Fixed Firm Price.
- 4.3. Special Extensions. The City's Mayor or his designee shall have the authority to grant one extension for up to ninety (90) days for good cause, as determined by the City in its sole and absolute discretion.
- 4.4. Failure to Fulfill Obligations. Except as otherwise provided herein, failure to fulfill obligations due to conditions beyond either party's reasonable control will not be considered a breach of this Agreement, provided that such obligations shall be suspended only for the duration of such conditions.
- 4.5. Presentations of Artwork While in Progress. During the performance of this Agreement, Artist specifically grants to the City the right, at the City's discretion, to make presentations, photographs or otherwise reproduce faithful images of the Artwork while in progress for presentation purposes.
- 4.6. Acceptance of Artwork upon Completion. Artist shall provide the City with written notice of completion after Artist completes and installs the Artwork and provides to the City all documentation required pursuant to this Agreement. The City shall, in writing, accept or reject the Artwork within ten (10) business days of the City's receipt of Artist's written notice of completion. The City may only reject the Artwork if it does not meet the design plans, drawings or specifications described herein or if Artist has not provided documentation as required pursuant to this Agreement. If the City fails to accept the Artwork due to noncompliance with the design plans, drawings or specifications or failure to provide documentation required pursuant to this Agreement ("Noncompliance"), the City shall give Artist written notice of such failure to accept, the reasons therefore and a reasonable opportunity to correct such Noncompliance, provided, however, that in no event shall the period to correct the Noncompliance exceed thirty (30) calendar days from the date the City provides notice of Noncompliance to Artist. For purposes of this Agreement, "Final Acceptance" means that Artist has cured all Noncompliance (if any), and the City has issued written approval of the Artwork and associated documentation.

ARTICLE 5. GENERAL CONDITIONS

- 5.1. Assignment, Transfer or Subcontracting. A material element of this Agreement is the personal skill, judgment and creativity of Mark Aeling at MGA Sculpture Studio, LLC. Therefore, Artist shall not assign, transfer or subcontract the creative or artistic portions of the Artwork to another party without the prior written approval of the City, which approval may be withheld in the City's sole and absolute discretion.
- 5.2. Nameplate. Artist may, at Artist's expense, include a permanent and proper nameplate, which shall include the name of the Artwork, the name of Artist, and the date of completion. The content, design and location thereof must be mutually agreed to by Artist and the City. If Artist provides a nameplate or if no nameplate is provided and the City wishes to provide a nameplate, or if the nameplate provided by Artist is replaced, the nameplate should, at a minimum, include the information set forth in this Section 5.2.
- 5.3. Public Records.
- A. Artist shall (i) keep and maintain public records (as defined in Florida's Public Records law) required by the City to perform the services pursuant to this Agreement; (ii) upon request from the City Clerk's Office, provide the City (at no cost to 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 under Florida's Public Records law or other applicable Laws; (iii) ensure that public records in Artist's possession that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by applicable Laws from the Effective Date until the City issues its Final Acceptance ("Services Term") or until earlier termination of this Agreement; and (iv) during the Services Term or earlier termination of this Agreement, at the City's request, either transfer, at no cost, to the City all public records in Artist's possession within ten (10) days following the City's request and/or keep and maintain any public records required by the City to perform the services pursuant to this Agreement. If Artist transfers all public records to the City upon expiration of the Services Term or earlier termination of this Agreement, 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 after the expiration of the Services Term or earlier termination of this Agreement, Artist shall meet all applicable requirements for retaining public records in accordance with this Agreement and all applicable Laws. At the City's request, all public records stored electronically by Artist shall be provided to the City in a format approved by the City.

B. IF ARTIST HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, AS TO ARTIST'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CITY CLERK'S OFFICE (THE CUSTODIAN OF PUBLIC RECORDS) AT (727) 893-7448, CITY.CLERK@STPETE.ORG, OR 175 FIFTH ST. N., ST. PETERSBURG FL 33701.

C. Nothing contained herein shall be construed to affect or limit Artist's obligations including but not limited to Artist's obligations to comply with all applicable Laws.

ARTICLE 6. WARRANTIES

- 6.1. Warranty of Title. Artist warrants that the Artwork shall be the result of the artistic efforts of Artist and that, unless otherwise stipulated herein, the Artwork shall be unique, an edition of one, and not infringe on any copyright. Artist shall deliver the Artwork free and clear of any liens, claims or other encumbrances of any type arising from the acts of Artist.
- 6.2. Warranty of Quality. Artist warrants that the Artwork shall be free of defects in material and workmanship and that Artist shall correct any such defects which appear for a period of three (3) years from Final Acceptance at Artist's expense. This warranty of quality shall not require Artist to correct any damage caused by vandalism or any act of the City so long as such damage is not the result of a defect in material or workmanship of Artist. It is understood by the City that the Artwork has been designed and built by Artist as a work of art. Any use by the City of the Artwork for purposes other than for adornment of the Site as a work of art hereby voids this warranty of quality.
- 6.3. Warranty Regarding Useful Life. Artist warrants that the Artwork will be designed, fabricated, and installed to have a useful life of at least twenty-five (25) years after Final Acceptance.

ARTICLE 7. TITLE AND COPYRIGHT

- 7.1. Artist Responsibility. Artist shall execute any and all lawful documents, including assignments, which the City deems necessary or desirable to fully acknowledge the City's ownership interest in the Artwork and to effectuate any assignment and this Agreement.
- 7.2. Title. Title to the Artwork shall vest in the City upon delivery of the Bill of Sale by Artist. As owner of the Artwork, the City may exercise any and all rights of ownership including but not limited to sale, removal or destruction of the Artwork, subject to the requirements set forth in this Agreement.

- 7.3. Copyright. Except ownership and possession, Artist retains all rights in and to the Artwork, including the right to use images of the Artwork for promotional purposes, and also including all rights under the Copyright Act of 1976, 17 U.S.C. §§ 101 et. seq., except as such rights are limited by this Agreement or waived by Mark Aeling in Exhibit D, which is attached hereto and made a part hereof. In the event Artist records Artist's identity and address with the Copyright Office, Artist shall notify the City of such recordation.
- 7.4. Limitations on Artist Copyright. The Artwork in its final dimension shall be unique. Artist shall not make any exact duplicates of the final Artwork or grant permission to others to do so except with the written permission of the City.
- 7.5. License to City. Artist grants to the City and its assigns an irrevocable license to make reproductions of the Artwork for noncommercial purposes, including but not limited to reproductions used in marketing, advertising, brochures, media publicity, web sites, and catalogues or other similar publications, provided that such reproductions of the Artwork must be made in a professional and tasteful manner.
- 7.6. Credit to Artist. The City shall use reasonable efforts, in all reproductions based on the Artwork, to give credit to Artist. This section 7.6 shall not apply if Mark Aeling exercises his right to prevent the use of his name as the author of the Artwork in accordance with applicable Laws or if Artist exercises its right to prevent the use of its name in association with the Artwork in accordance with this Agreement.
- 7.7. Credit to City. Artist shall use best efforts to give a credit reading substantially, "all original work owned by the City of St. Petersburg, Florida" in any public showing or distribution to the public of any reproductions of the Artwork which have been authorized by the City and which are under Artist's control.

ARTICLE 8. RISK OF LOSS AND INSURANCE

- 8.1. Damage. Should any repairs to any structure or the Site become necessary or if the Artwork is damaged in any way prior to the City issuing its Final Acceptance, the City shall not have any liability or responsibility for replacement or repair of the Artwork.
- 8.2. Damage to Materials. If, before the City issues its Final Acceptance, the Artwork, art materials or any portion of the art materials are substantially damaged by fire, explosion, or other casualty or occurrence, the City may elect to repair or replace the art materials or immediately terminate this Agreement. In the event of termination pursuant to this Section 8.2, the City shall not be obligated to pay Artist any remaining monies in connection with this Agreement. The City shall not have any liability to Artist in the event of termination of this Agreement pursuant this Section 8.2 and Artist shall not be required to repay any money paid to Artist from the City pursuant to this Agreement, unless such damage to the art materials was caused or contributed to by the negligence of Artist or Artist's employees, subcontractors, representatives or agents. Nothing contained herein shall limit the City's

rights and remedies against Artist if Artist, any other occupant of the Site, or their respective agents, employees, representatives, guests, invitees, customers, contractors or subcontractors, caused or contributed to the damage to the art materials.

- 8.3. Insurance. Artist shall arrange for, and/or ensure that Artist and all subcontractors have, or are covered by, public liability and property damage insurance to protect Artist, the Indemnified Parties (as defined herein), and any subcontractor performing work covered by or related to this Agreement, from claims for damage for personal and bodily injury, including accidental death, as well as from claims of property damage, which may arise from operations under this Agreement whether such operations are by Artist and by any subcontractor or anyone directly employed by either of them in the amounts as follows, which shall remain in effect until Final Acceptance by the City:
- A. General Liability Insurance including contractual liability and products and completed operations with coverage limits of at least \$300,000 per occurrence protecting the City against all claims or demands that may arise.
 - B. Automobile Liability Insurance with minimum limits as set forth by Florida Statute.
 - C. Workers' Compensation Insurance in compliance with the laws of the State of Florida. Employers Liability coverage with minimum limits of \$100,000 for each accident, \$100,000 for each employee for disease, and \$500,000 total for all disease.
 - i. The Indemnified Parties (as defined herein) must be shown as an additional named insured with respect to this coverage.
 - ii. The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operations of Artist.
 - iii. The insurance policy required above shall be issued by a company authorized to do business in the State of Florida, with the following qualifications as to management and financial strength: the company must be rated not less than "A" as to management, and not less than Class "X" as to strength, by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent.
 - iv. Artist shall furnish a certificate of insurance on a standard ACORD form to the City prior to commencement of operations on the Site, which certificate shall clearly indicate that Artist and/or its subcontractors have obtained insurance in the type, amount and classification as required for strict compliance with this article and that no material changes or cancellation of

insurance will be effective without thirty (30) days prior written notice to the City, despite changes to or cancellation of insurance.

- v. Compliance with the foregoing requirements shall not relieve Artist of its liability and obligations under this Agreement.

ARTICLE 9. INDEMNIFICATION AND RELEASE

9.1. Indemnification.

- A. Artist shall defend at its expense, pay on behalf of, hold harmless and indemnify the City, its officers, employees, agents, elected and appointed officials and volunteers (collectively, "Indemnified Parties") from and against any and all claims, demands, liens, liabilities, penalties, fines, fees, judgments, losses and damages (collectively, "Claims"), whether or not a lawsuit is filed, including, but not limited to Claims for damage to property or bodily or personal injuries, including death at any time resulting therefrom, sustained by any persons or entities; and costs, expenses and attorneys' and experts' fees at trial and on appeal, which Claims are alleged or claimed to have arisen out of or in connection with, in whole or in part, directly or indirectly:
 - (i) The performance of this Agreement (including any amendments thereto) by Artist, its employees, agents, representatives or subcontractors; or
 - (ii) The failure of Artist, its employees, agents, representatives or subcontractors to comply and conform with applicable Laws; or
 - (iii) Any negligent act or omission of Artist, its employees, agents, representatives, or subcontractors, whether or not such negligence is claimed to be either solely that of Artist, its employees, agents, representatives or subcontractors, or to be in conjunction with the claimed negligence of others, including that of any of the Indemnified Parties; or
 - (iv) Any reckless or intentional wrongful act or omission of Artist, its employees, agents, representatives, or subcontractors; or
 - (v) Infringement or alleged infringement of the Artwork or any materials or parts contained in the Artwork upon any copyright, trademark, patent, or trade secret right of any party; or
 - (vi) Artist's failure to maintain, preserve, retain, produce, or protect records in accordance with this Agreement and applicable Laws (including but not limited to Florida laws regarding public records).

B. The provisions of this Section 9.1 are independent of, and will not be limited by, any insurance required to be obtained by Artist pursuant to this Agreement or otherwise obtained by Artist, and shall survive the expiration or earlier termination of this Agreement with respect to any claims or liability arising in connection with any event occurring prior to such expiration or termination.

9.2. Notice. The Parties each agree to give the other party prompt notice of any claim coming to its knowledge that in any way directly or indirectly affects the other party.

9.3. Release. Artist releases and forever waives any and all present and future claims, covenants not to sue, and holds harmless the Indemnified Parties from and against all actions, claims, damages, liabilities, costs and expenses, including but not limited to, attorneys' fees and costs, on account of injury to the person or property in connection with Artist's performance pursuant to this Agreement, whether arising out of or caused by the negligence of any or all of the Indemnified Parties or otherwise, or whether arising out of or caused by any defect, or presence or absence of any condition of, or in or on any real property, premises, the Site, City property or thoroughfare while the undersigned is participating in any phase of the design, fabrication and installation of the Artwork. Artist shall require all workers engaged in the performance of this Agreement to execute the release set forth Exhibit "B".

ARTICLE 10. MAINTENANCE, RESTORATION, MODIFICATION, AND REMOVAL

10.1. Maintenance. The City recognizes that the maintenance of the Artwork on a regular basis will be necessary and shall clean and maintain the Artwork in conjunction with the normal maintenance and cleaning procedures based on Artist's written instructions therefore provided pursuant to this Agreement for as long as the Artwork remains at the Site.

10.2. Failure to Maintain Artwork. In the event the City fails to maintain the Artwork in good condition, Artist shall have the right to prevent the use of Artist's name as author of the Artwork. In such event, Artist may require, by providing written notice to the City of such requirement, that the City remove any references to Artist on the nameplate accompanying the Artwork (if applicable) unless and until the Artwork is satisfactorily repaired.

10.3. Restoration. After Final Acceptance, the City shall have the right to determine when and if repairs and restoration to the Artwork will be made. To the extent practical, the City shall give Artist (i.e., MGA Sculpture Studio, LLC) notice, during Mark Aeling's lifetime, of any intended repairs or restoration and the opportunity to make or approve all repairs and restorations; provided, however, that Artist shall not unreasonably withhold approval for any repair or restoration of the Artwork. If, within ninety (90) days, Artist does not respond to the City's reasonable attempts to give Artist the opportunity to make or approve any repair or restoration, or if Artist unreasonably fails to approve any repair or restoration, the City shall have the right to make such repair or restoration. To the extent practical, Artist shall be given the opportunity to make or personally supervise significant (as

determined by the City) repairs or restoration and shall be paid a reasonable fee for any such services, provided that the City and Artist agree in writing, prior to commencement of any significant repairs or restoration, upon Artist's fee for such services. If no agreement is reached as to Artist's fee for such repairs or restoration, then the City may make repairs, restoration or other arrangements the City deems appropriate for the Artwork.

- 10.4. Alteration of the Artwork. Except to the extent the City may alter the Site or remove, relocate, maintain, restore, sell, donate, dispose of, destroy, or store the Artwork pursuant to this Agreement, the City agrees that it will not intentionally damage, alter, modify or change the Artwork without the prior written approval of Artist to the extent the City deems it is practical to obtain such approval.
- 10.5. Alteration of the Site. To the extent the City deems practical, the City shall notify Artist of any proposed alteration of the Site that would affect the intended character and appearance of the Artwork and shall consult with Artist in the planning and execution of any such alteration and shall make a reasonable effort to maintain the integrity of the Artwork consistent with the provisions of this Agreement.
- 10.6. Removal of Artwork. The City has the right to remove the Artwork from the Site for any reason in the City's sole and absolute discretion, subject to the requirements of this Agreement. If the City removes the Artwork, the City may then, in the City's discretion, subject to the requirements of this Agreement, place the Artwork on other property of the City that the City deems suitable, store the Artwork in its entirety in a safe location, place the Artwork on non-City owned property that the City deems suitable, or dispose of, destroy, sell or donate the Artwork.
 - A. Relocation or Storage. To the extent practical, during Mark Aeling's lifetime, the City shall notify Artist (i.e., MGA Sculpture Studio, LLC) if the City elects to remove and relocate or store the Artwork, and shall give Artist the opportunity to remove the Artwork at Artist's expense, or to personally supervise the removal of the Artwork to the location chosen by the City. In the event that Artist fails, within ninety (90) days of receipt of such notice, to participate in the planning or execution of the removal of the Artwork, the City shall have the right to proceed with the removal and relocation or storage of the Artwork without any input or participation by Artist. Artist expressly acknowledges and understands that removal and subsequent relocation or storage of the Artwork may subject the Artwork to destruction, distortion, mutilation, or other modification, and Artist hereby expressly agrees to waive any rights Artist may have to prevent the destruction, distortion, mutilation, or other modification of the Artwork that may result from the Artwork's removal and relocation or storage.
 - B. Disposition, Destruction, Sale, or Donation. To the extent practical, during Mark Aeling's lifetime, the City shall give Artist (i.e., MGA Sculpture Studio, LLC) reasonable notice and opportunity (not to exceed ninety (90) days) to have the

Artwork returned to Artist at Artist's expense in the event the City elects to dispose of, destroy, sell, or donate the Artwork. Artist hereby expressly agrees to waive any rights it may have to prevent the destruction, distortion, mutilation, or other modification of the Artwork that may occur as a result of such disposition, destruction, sale, or donation of the Artwork.

ARTICLE 11. DEFAULT AND TERMINATION

- 11.1. *Default Defined.* Failure of either party to comply with any provisions of this Agreement shall place that party in default. Except as otherwise provided in Section 5.3 and Section 8.2, concerning public records and damage to materials, respectively, the defaulting party shall be entitled to thirty (30) days to cure the default upon receipt of written notice specifying the default.
- 11.2. *Termination.* In the event the default is not timely cured in the thirty (30) day period referenced in Section 11.1, this Agreement may be terminated immediately by written notice. Prior to terminating this Agreement and except as otherwise provided herein, the non-defaulting party shall notify the defaulting party in writing stating specifically the provisions which are alleged to give rise to the default. If the City terminates this Agreement pursuant to this Section 11.2 before Final Acceptance by the City, Artist shall immediately repay all payments paid to Artist under this Agreement. If Artist terminates this Agreement pursuant to this Article, the City shall forfeit any right to repayment of any payments made through the date Artist notifies the City that the Agreement is terminated.
- 11.3. *Termination for Convenience.* This Agreement may be terminated at any time by the City for convenience upon thirty (30) days written notice. In the event of termination for convenience, the City shall only be liable to Artist for payment milestones reached prior to the effective date of termination.

ARTICLE 12. NOTICE TO PARTIES

- 12.1. *Notice of Documents.* All notices, requests, demands, or other communications hereunder shall be in writing and shall be deemed to be served as of the delivery date appearing upon the return receipt if sent by certified mail, postage prepaid with return receipt requested, at the address listed below, or upon the actual date of delivery if hand delivered to the address below:

TO CITY:

City of St. Petersburg
Attention: Lynn Goodwin
P.O. Box 2842
St. Petersburg, FL 33731

TO ARTIST:

MGA Sculpture Studio, LLC
515 22nd St. S., Unit E
St. Petersburg, FL 33712
Attn: Mark Aeling

- 12.2. Change of address. Any party may change its address for the giving of notice pursuant to notice given in accordance with the provisions of Section 12.1, which notice shall be effective upon receipt by the other party.
- 12.3. Failure to Notify City of Change of Address. If Artist fails to notify the City of a change of address, Artist waives all rights that are granted in this Agreement that require notice to Artist.

ARTICLE 13. MISCELLANEOUS

- 13.1. Entirety of Agreement. This writing embodies the entire agreement and understanding between the Parties hereto, and there are no other agreements and understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby. No alteration, change, or modification of the terms of this Agreement shall be valid unless made in writing and signed by both Parties hereto.
- 13.2. Surviving Covenants. The covenants and obligations set forth in this Agreement shall survive the delivery and Final Acceptance and associated documentation and shall be binding upon the Parties, their heirs, legatees, executors, administrators, assigns, transferees, and all their successors in interest.
- 13.3. Severability. If any provision of this Agreement is contrary to, prohibited by, or deemed invalid by applicable Laws of any jurisdiction in which it is sought to be enforced, then such provision shall be deemed inapplicable and omitted, but such omissions shall not invalidate the remaining provisions of this Agreement.
- 13.4. Captions. Captions are inserted only as a matter of convenience and for reference, and in no way define, limit, nor describe the scope of this Agreement, nor the intent or content of any provision contained herein.
- 13.5. Waiver. No waiver of any provision of this Agreement or any breach thereof shall be construed as a continuing waiver nor shall it constitute a waiver of any other provision or breach. Further, the failure of either party to exercise its rights under this Agreement shall not be construed as a waiver to such a right.
- 13.6. Law and Forum. This Agreement shall be construed under the laws of the State of Florida, and any action arising hereunder shall be brought in Pinellas County, Florida, or, if in Federal Court, the Middle District of Florida, Tampa Division.
- 13.7. Construction. Should any provision of this Agreement require judicial interpretation, the court interpreting or construing the same shall not construe it against one party more strictly by reason of the rule of interpretation that a document is to be construed more strictly against the party who itself or through its agents prepared the same, as each party has participated in the preparation of this Agreement and each party consulted with

independent legal counsel of its own selection or waived its right to do so prior to the execution of this Agreement.

- 13.8. No Third Party Beneficiaries. Neither Artist nor the City intends to directly or indirectly benefit a third party by this Agreement. Therefore, the Parties agree that no third party shall be entitled to assert a claim against either of them based upon this Agreement. The Parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement.
- 13.9. Incorporation by Reference. Composite Exhibit C, the Bill of Sale, Warranty, Contractor's Affidavit, Affidavit of No Liens, Approval and Acceptance of Artwork, Certification of Completion and Installation, and Copyright Agreement and Assignment are upon their execution by a party to this Agreement incorporated into and made a part of this Agreement.
- 13.10. Further Assurances. The Parties shall promptly execute all documents reasonably required and take such other steps in addition to the execution of this Agreement to effectuate the intent and purpose of this Agreement.
- 13.11. Exhibits. Each exhibit to this Agreement is an essential part hereof and is incorporated herein by reference.

(THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, the Parties hereto have executed these presents for the purposes herein expressed.

CITY OF ST. PETERSBURG, FLORIDA

By: _____
Print: _____
Title: _____
Address: P. O. Box 2842
St. Petersburg, FL 33731



ATTEST:

City Clerk

(SEAL)

MGA SCULPTURE STUDIO, LLC:

Sign: _____
Print: _____
Address: 515 2nd St. S.
St. Pete, FL 33712

WITNESSES

AS TO ARTIST:

Sign: _____
Print: Patricia Beneby
Sign: _____
Print: Lynn C. Gordon

STATE OF Florida)
COUNTY OF Pinellas)

The foregoing instrument was acknowledged before me this 5th day of June, 2018, by Mark Achnig, personally known to me or who has produced _____ as identification and who did take an oath.

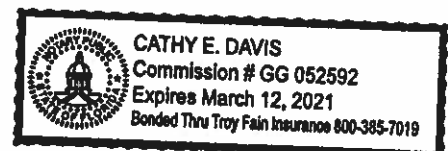
NOTARY PUBLIC:

Sign: _____
Print: Cathy E. Davis
State of Florida
My Commission No.: 00052592

APPROVED AS TO FORM AND CONTENT:

City Attorney (designee)

document # 00378997



ATTACHMENTS:

Exhibit A – Final Design and Description of Artwork

Exhibit B - Release of any person working on the Site or the Artwork

**Composite Exhibit C - Bill of Sale, Warranty, Contractor's Affidavit, Affidavit of No Liens,
Approval and Acceptance of Artwork, Certification of Completion and Installation
and Copyright Agreement and Assignment**

Exhibit D – Release and Waiver of Rights under 17 U.S.C. § 106A

Exhibit A
Final Design and Description of Artwork

“Shielded” – The artwork to be installed in the lobby of the Police Station will be constructed of cut and hand formed aluminum feathers that will be arranged in the shape of an eagle’s wing. These feathers will be affixed to the ceiling of the Police Station using a mounting system suspended from the existing ceiling structure. This mounting system will be designed and fabricated by MGA Sculpture Studio who will consult with the City’s architect and general contractor for the building construction to coordinate its load requirements. The piece will be approximately 30’ long with proportional width.

The sculpture shown on the left in this rendering is referenced above.



Exhibit B
Release and Hold Harmless Agreement

THIS RELEASE and HOLD HARMLESS AGREEMENT ("Agreement") is made this ____ day _____, 201_, by _____, its heirs, successors and assigns (collectively "Worker") for the benefit of the City of St. Petersburg, Florida ("City").

WHEREAS, at the request of MGA Sculpture Studio, LLC ("Artist"), the City has agreed to purchase a work of art (herein "Artwork") and Worker has agreed with Artist to help implement the Artwork by providing labor or other services.

WHEREAS, pursuant to the artist agreement between Artist and the City dated _____, 2018 ("Artist Agreement"), Worker must execute this Agreement in favor of the City prior to working on the Artwork or Site (as defined in the Artist Agreement) in order to protect the Releasees (as defined herein) from certain liabilities.

NOW, THEREFORE, in order to induce the City to fund the Artwork and allow Worker to work for Artist on the Artwork or Site and as consideration therefore, the Worker agrees as follows:

1. Worker hereby releases and forever waives any and all present and future claims, covenants not to sue, and holds harmless the City of St. Petersburg, its City Council, its employees, servants, representatives, officers, agents, successors, assigns and volunteers (hereinafter referred to as "Releasees"), from and against all actions, claims, damages, liabilities, costs and expenses, including but not limited to attorney's fees and costs, on account of injury to the person or property or resulting in death of the undersigned, whether arising out of or caused by the negligence of any or all of the Releasees, or otherwise, or whether arising out of or caused by any defect, or presence or absence of any condition of, or in or on any real property, premises, City property, the Site or any thoroughfare while the undersigned is participating in any phase of the Artwork.
2. Worker agrees to indemnify and hold and save the Releasees harmless from any and all damages, loss or liability occurring by reason of any injury of any person or property which may occur as a result of or in connection with the implementation of the Artwork or occasioned by an act or omission, neglect, or wrongdoing of the Worker.
3. Worker will, at Worker's own cost and expense, defend and protect the Releasees against any and all such claims or demands which may be claimed to have arisen as a result of or in connection with the implementation of the Artwork.
4. The undersigned expressly agrees personally that this Agreement is intended to be as broad and inclusive as is permitted by the law of the State of Florida, and if any portion thereof is held to be invalid, it is agreed that the balance shall, notwithstanding, continue in full legal force and effect.

WORKER

Sign: _____
Print: _____
Address: _____

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____,
201__, by _____, who is personally known to me or who has produced
_____ as identification, and who did take an oath.

NOTARY PUBLIC

Sign _____
Print _____
My Commission No.: _____

COMPOSITE EXHIBIT C

BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS that MGA Sculpture Studio, LLC, for and in consideration of the sum of one hundred thirty thousand dollars (\$130,000) lawful money of the United States, and other good and valuable consideration, the receipt whereof is hereby acknowledged, has granted, bargained, sold, transferred and delivered, and by these presents does grant, bargain, sell, transfer and deliver to the City of St. Petersburg, Florida, its successors and assigns, the work of art entitled "Shielded" consisting of cut and hand-formed aluminum feathers installed at the ceiling of the lobby of the Police Station located at 1301 1st Avenue North, St. Petersburg Florida.

TO HAVE AND TO HOLD the same unto the City of St. Petersburg, Florida, its successors and assigns forever.

IN WITNESS WHEREOF, _____, has hereunto set his hand and seal this ____ day of _____, 201__.

Address: _____

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 201__, by _____, who is personally known to me or who has produced _____ as identification and who did take an oath.

NOTARY PUBLIC:

Sign _____
Print _____
State of _____
My Commission No.: _____
My Commission expires: _____

WARRANTY: SHIELDED

MGA Sculpture Studio, LLC ("Artist"), hereby warrants the work of art entitled "Shielded" consisting of cut and hand-formed aluminum feathers installed at the ceiling of the lobby of the Police Station, to be free from defects in materials or workmanship for three (3) years from the date of the written Final Acceptance (as defined in the Artist Agreement) thereof by the City. Artist shall immediately correct any such defects which appear during that period at Artist's own cost and expense.

This warranty is in addition to all other warranties, statutory or otherwise, express or implied, all other representations to the City and all other obligations or liabilities with respect to such work of art including implied warranties of merchantability and fitness.

IN WITNESS WHEREOF, _____ has hereunto set his hand and seal this ____ day of _____, 201__.

Address: _____

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 201__, by _____, who is personally known to me or who has produced _____ as identification and who did take an oath.

NOTARY PUBLIC:

Sign _____
Print _____
State of _____
My Commission No.: _____
My Commission expires: _____

CONTRACTOR'S AFFIDAVIT: SHIELDED

STATE OF FLORIDA)
COUNTY OF PINELLAS)

On this day personally appeared before me, the undersigned authority, duly authorized to administer oaths and take acknowledgments, _____, who after being first duly sworn by me, on oath, deposes and says:

That I am a general contractor under an agreement executed on the _____ day of _____, 20__, between MGA Sculpture Studio, LLC and the City of St. Petersburg, Florida, that I installed and completed the work of art consisting of cut and hand-formed aluminum feathers installed at the ceiling of the lobby of the Police Station., for a total price of one hundred thirty thousand dollars (\$130,000) to be paid to MGA Sculpture Studio, LLC and that said installation is now completed and finished.

That MGA Sculpture Studio, LLC has paid and discharged all subcontractors, laborers and materialmen and that there are no liens outstanding of any nature nor any debts or obligations out of which could arise a lien or encumbrance.

That I am making this affidavit upon consideration of the payment of one hundred thirty thousand dollars (\$130,000) to MGA Sculpture Studio, LLC in full satisfaction and discharge of said agreement.

Sign: _____
Address: _____

STATE OF _____)
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 201__, by _____, who is personally known to me or who has produced _____ as identification and who did take an oath.

NOTARY PUBLIC:

Sign _____
Print _____
State of _____
My Commission No.: _____
My Commission expires: _____

AFFIDAVIT OF NO LIENS: SHIELDED

STATE OF _____)
COUNTY OF _____)

On this day personally appeared before me, the undersigned authority, duly authorized to administer oaths and take acknowledgments, _____, who after being first duly sworn by me on oath deposes and says:

1. _____ is the owner of a work of art consisting of cut and hand-formed aluminum feathers installed at the ceiling of the lobby of the Police Station.
2. There are no liens, claims or other encumbrances on the work of art and _____ is the sole owner and creator of said work of art.
3. _____ has paid and discharged all subcontractors or materialmen, if any, and there are no liens outstanding of any nature nor any debts or obligations out of which could arise a lien or encumbrances on the work of art.
4. I am making this Affidavit upon consideration of the payment of one hundred thirty thousand dollars (\$130,000).

Address: _____

STATE OF _____)
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 201__,
by _____, who is personally known to me or who has produced
_____ as identification and who did take an oath.

NOTARY PUBLIC:

Sign _____
Print _____
State of _____
My Commission No.: _____
My Commission expires: _____

APPROVAL AND ACCEPTANCE OF ARTWORK "Shielded"

MGA Sculpture Studio, LLC ("Artist") has completed the work of art consisting of cut and hand-formed aluminum feathers ("Artwork") installed at installed at the ceiling of the lobby of the Police Station, in a manner that meets all the requirements of the Artist Agreement dated _____, 2018, by and between Artist and the City of St. Petersburg, Florida ("Owner"). Owner hereby approves and accepts ownership of the Artwork.

DATE: _____

CITY OF ST. PETERSBURG, FLORIDA

BY: _____

Print: _____

Address: P. O. Box 2842
St. Petersburg, FL 33731

CERTIFICATION OF COMPLETION AND INSTALLATION "Shielded"

Artist: MGA Sculpture Studio, LLC
Artwork: Shielded
Location: Ceiling of the Lobby of the Police Station

The above named artwork is installed and 100% completed as required by the Artist Agreement entered into on _____, 2018, by and between MGA Sculpture Studio, LLC and the City of St. Petersburg, Florida.

Date: _____

COPYRIGHT AGREEMENT & ASSIGNMENT: SHIELDED

_____ for and in consideration of the purchase by the City of St. Petersburg of the work of art consisting of cut and hand-formed aluminum feathers installed at the ceiling of the lobby of the Police Station, which work of art ("Artwork") is owned by _____, hereby assigns to the City of St. Petersburg, Florida, title and full rights of ownership as well as the irrevocable license to make reproductions of the Artwork for noncommercial purposes, including but not limited to reproductions used in marketing, advertising, brochures, media publicity, web sites, and catalogues or other similar publications, provided that such reproductions of the Artwork must be made in a professional and tasteful manner.

_____ further assigns to the City of St. Petersburg, Florida, any and all warranties for materials used and labor performed by subcontractors or other persons, if any, which _____ holds to the City of St. Petersburg, Florida.

_____ further agrees to execute any and all further lawful documents including assignments which the City of St. Petersburg, Florida shall deem necessary or desirable to fully effectuate this Copyright Agreement and Assignment.

Address: _____

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____, who is personally known to me or who has produced _____ as identification and who did take an oath.

NOTARY PUBLIC:

Sign _____
Print _____
State of _____
My Commission No.: _____
My Commission expires: _____

Exhibit D
Release and Waiver of Rights under 17 U.S.C. § 106A

In consideration of payment received by MGA Sculpture Studio, LLC ("Artist") from the City of St. Petersburg, Florida ("City") for Artist designing, fabricating, delivering, and installing a work of art ("Artwork") inside the enclosed atrium interior of the main entrance at the City of St. Petersburg's police headquarters complex, located at 1301 1st Avenue North, St. Petersburg Florida, pursuant to the agreement between the City and Artist dated _____, 2018 ("Agreement"), and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, I, Mark Aeling, hereby waive, disclaim and terminate my rights to prevent any intentional or accidental distortion, damage, destruction, or mutilation of the Artwork, which would be prejudicial to my honor or reputation and the right to prevent any intentional or grossly negligent destruction of the Artwork if it is of a recognized stature as provided under 17 U.S.C. § 106A (Visual Artist Rights Act of 1990), in the following circumstances:

- The distortion, damage, destruction, or mutilation results, in whole or in part, from the acts of a party other than the City or the City's officers, employees, agents, elected or appointed officials acting in their official capacity; or
- The distortion, damage, destruction, or mutilation occurs as a result of the City's failure to repair or restore the Artwork, regardless of the cause necessitating such repair or restoration; or
- The distortion, damage, destruction, or mutilation occurs as a result of the City's attempts to repair or restore the Artwork, provided that the City first gave Artist a reasonable opportunity to perform the repairs or restorations in accordance with Section 10.3 of the Agreement; or
- The distortion, damage, destruction, or mutilation occurs as a result of the City's alteration of the installation site, provided the City complies with the requirements set forth in Section 10.5 of the Agreement; or
- The distortion, damage, destruction, or mutilation occurs as a result of the City's temporary or permanent removal of the Artwork from the installation site and/or subsequent relocation, storage, disposition, destruction, sale, or donation of the Artwork, provided that the City complied with the requirements set forth in Section 10.6 of the Agreement; or
- The distortion, damage, destruction, or mutilation otherwise occurs in accordance with the process set forth 10.6 of the Agreement.

This waiver applies to the use of the Artwork to enhance the City's police headquarters complex or to enhance any other site chosen by the City in the event the City relocates the Artwork to another site.

I am retaining my rights to disclaim authorship of the Artwork as granted by 17 U.S.C. § 106A(a)(1)-(2); provided, however, that I agree if I exercise such rights to disclaim authorship, I thereby waive all other rights to the Artwork set forth in 17 U.S.C. § 106A, including all rights to prevent its distortion, damage, destruction, or mutilation, however caused.

I have read and voluntarily sign this Release and Waiver, and further agree that no oral representations, statements or inducements apart from the foregoing written release and waiver have been made.

I acknowledge that I have been hereby encouraged to seek the advice of attorney prior to signing this Release and Waiver, and have been given the opportunity to seek such counsel.

I acknowledge the fact that this Release and Waiver could become a public record pursuant to Chapter 119, Florida Statutes, and will be available to members of the public upon their request.

By signing this Release and Waiver I am waiving and releasing valuable legal rights. I have read this Release and Waiver carefully before signing it.

IN WITNESS WHEREOF, the undersigned has caused this Release and Waiver to be executed this ____ day of _____, 201__.

BY:

Sign:


Mark Aeling

Telephone:

727 327 3473

Address:

515 22nd St. S. St. Pete, FL, 33712

ARTIST AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered into this ____ day of _____, 2018 ("Effective Date"), by and between the City of St. Petersburg, Florida, a municipal corporation of the State of Florida, ("City") and MGA Sculpture Studio, LLC ("Artist") (collectively, "Parties").

WITNESSETH:

WHEREAS, the Police Department Public Art Project Committee ("Committee") was established pursuant to Section 5-58 of the St. Petersburg City Code to ensure that proper considerations would be given to the design, siting, facility operation, and neighborhood interests for artwork to be commissioned for the City's new police headquarter complex; and

WHEREAS, the Committee issued a Request for Qualifications ("RFQ") on July 17, 2017 inviting artists to submit applications to create a piece of exterior art to be installed at the complex; and

WHEREAS, based on the site-specific proposal for an exterior piece presented by Mark Aeling of MGA Sculpture Studio, LLC, one of the finalists for the RFQ, the Committee recommended to the City's Public Arts Commission and the City of St. Petersburg City Council that Artist should be selected to fully design and fabricate a piece of exterior art entitled "Gladiolus Blossom" to be installed in the main entry plaza of the complex; and

WHEREAS, the City's Public Arts Commission and the City of St. Petersburg City Council approved the Committee's recommendations; and

WHEREAS, it is the desire of City and Artist to establish the terms and conditions under which this work of art shall be fully designed, fabricated, and delivered by Artist and installed by or through the City's construction manager, Ajax Building Corporation ("Construction Manager") in the place designated herein.

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein (which are an integral part of this Agreement and are incorporated herein by reference), and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE 1. DEFINITIONS

1.1 Artwork - The work of art entitled "Gladiolus Blossom" which is to be created, designed, fabricated, and delivered by Artist under this Agreement to be installed at the Site. The Artwork

is generally depicted and described in Exhibit A, which is attached hereto and made a part of this Agreement.

1.2 Site – Outside, in the main entrance plaza (specific location to be determined and agreed upon between the Parties) at the City of St. Petersburg's new police headquarters complex, located at 1301 1st Avenue North, St. Petersburg Florida.

ARTICLE 2. SCOPE OF SERVICES

2.1. Independent Contractor. Artist is an independent contractor and nothing in this Agreement shall be construed as constituting Artist as an employee, agent or representative of the City. No employee or agent of the City shall supervise Artist.

2.2. Artist Responsibilities. Artist shall perform or provide all services and furnish all supplies, materials and equipment necessary for the design, development, fabrication, delivery and installation oversight for the Artwork, and shall comply with the following:

- A. Beginning on the Effective Date, Artist shall commence the final design, development, and fabrication of the Artwork in accordance with this Agreement.
- B. Final placement of the Artwork must be coordinated with the City. Artist shall provide the City with all information and services necessary to allow the City or City's contractor to install the Artwork at the Site. Artist will be responsible for overseeing and approving the installation of the Artwork.
- C. Artist shall be responsible for obtaining or ensuring that its subcontractor(s) obtain(s) all insurance required by the Construction Manager for the installation of the Artwork.
- D. Artist shall submit monthly progress reports to the City upon written request.
- E. Artist shall present to the City in advance, for further review and approval, a written proposal for any significant changes in the scope, design, color, size, material or texture, or location on the Site of the Artwork which affects installation, scheduling, Site preparation or maintenance for the Artwork or the concept of the Artwork as approved by the City.
- F. Artist agrees that the Artwork will not utilize any protected patent, trademark, or copyright unless Artist has obtained proper permission and all releases and other necessary documents. If Artist uses any protected material, process, or procedure, Artist shall disclose such patent, trademark, or copyright in the construction drawings and technical specifications.

- G. Artist shall provide written instructions for the care, maintenance and preservation requirements for the Artwork. The City acknowledges that the Artwork may suffer some ordinary wear and tear, but such wear and tear shall not be of such a nature to affect the integrity or overall visual quality of the Artwork. The Artwork shall be designed to withstand all conditions that could reasonably be expected to occur at the Site.
 - H. Artist shall provide a written warranty of the Artwork, guaranteeing the quality of materials and workmanship for a period of not less than three (3) years from the date of installation.
 - I. Artist is responsible for acquiring all City, county, state or federal permits or variances necessary for the fabrication and delivery of the Artwork.
 - J. Artist and the Artwork shall at all times comply with all current and future federal, state, and local statutes, rules, regulations, and ordinances, the federal and state constitutions and the orders and decrees of any lawful authorities having jurisdiction over the matter at issue (collectively, "Laws").
- 2.3. City's Right to Review Progress. The City shall have the right to review the progress of the Artwork at all reasonable times.
- 2.4. Ownership of Documents. Upon delivery of the Artwork, all studies, drawings, designs and photographs prepared and submitted to the City under this Agreement by Artist shall become the property of the City. The City will not be entitled to any other original drawings in the possession of Artist.

ARTICLE 3. COMPENSATION

- 3.1. Firm Fixed Price. City shall pay Artist a firm fixed price of two hundred twenty-six thousand dollars (\$226,000) ("Firm Fixed Price"), which shall constitute full compensation for all services performed (including any approved services provided prior to the Effective Date) and materials furnished by Artist under this Agreement, including Artist's fee.
- 3.2. Method and Schedule of Payment. The City shall pay each invoice within thirty (30) days after receipt, provided Artist is in compliance with the terms and conditions of this Agreement. The Firm Fixed Price shall be paid in the following installments, each payment installment to represent full and final payment for all services and materials provided prior to payment thereof. Each installment shall be paid upon receipt of the certifications and documentation described below, which shall be in a form acceptable to the City in its reasonable discretion.

- A. Phase I - The City shall pay Artist 20% of the Firm Fixed Price within thirty (30) days after the Effective Date. This amount is intended to cover the completion of the technical design and engineering of the Artwork and shall coincide with commencement of fabrication by Artist.
 - B. Phase II - Artist shall invoice the City for 40% of the Fixed Firm Price within thirty (30) days after the City's acceptance of the design and engineering documents. This amount is intended to cover materials and process fees.
 - C. Phase III – Artist shall invoice the City for 20% of the Firm Fixed Price after fabrication completion and the City's acceptance of the fabricated Artwork following City inspection.
 - D. Phase IV - Artist shall invoice the City for the remaining 20% of the Firm Fixed Price after delivery of the Artwork, acceptance of the installation of the Artwork, and after presenting to or obtaining from the City the following:
 - i. Photos and documentation of completed fabrication of the Artwork and evidence that all required permits have been obtained,
 - ii. A written bill of sale conveying title of the Artwork to the City,
 - iii. Written instructions for the care, maintenance, preservation and handling of the Artwork pursuant to this Agreement,
 - iv. A sworn statement of no liens, claims or other encumbrances for the Artwork pursuant to this Agreement,
 - v. A written warranty for the Artwork pursuant to this Agreement,
 - vi. Written assignment of any and all warranties for materials used or labor performed by subcontractors or other persons for the Artwork, and
 - vii. Obtaining Final Acceptance (as defined herein) of the Artwork pursuant to this Agreement.
- 3.3. Availability of Funds. The performance by the City of any of its obligations under this Agreement shall be subject to and contingent upon the availability of funds appropriated by the City for the purposes of this Agreement for the current and any future fiscal period. The City shall appropriate all funds necessary to fund this Agreement at the time this Agreement is approved by City Council.
- 3.4. Travel and Other Expenses. Travel and other expenses will not be reimbursed except as provided in this Agreement. Artist's sole compensation shall be the Firm Fixed Price as

described in this ARTICLE 3.

ARTICLE 4. TIME OF PERFORMANCE

- 4.1. *Time of Performance Described.* All services by Artist shall be completed pursuant to this Agreement. Artist agrees to be available to begin this project immediately on the Effective Date. Artist shall complete and deliver the Artwork and submit all required documentation to the City no later than March 1, 2019.
- 4.2. *Extensions by City.* The City may grant Artist a reasonable extension of time in the event there is a delay on the City's part in performing obligations under this Agreement or if conditions beyond Artist's control or acts of God render timely performance of Artist's services impossible or unreasonably burdensome. Artist agrees and understands that the City shall be the sole judge of what constitutes "beyond Artist's control." Further, Artist agrees that there will be no extension of time for any reason if such extension of time would result in an increase in the Fixed Firm Price.
- 4.3. *Special Extensions.* The City's Mayor or his designee shall have the authority to grant one extension for up to ninety (90) days for good cause, as determined by the City in its sole and absolute discretion.
- 4.4. *Failure to Fulfill Obligations.* Except as otherwise provided herein, failure to fulfill obligations due to conditions beyond either party's reasonable control will not be considered a breach of this Agreement, provided that such obligations shall be suspended only for the duration of such conditions.
- 4.5. *Presentations of Artwork While in Progress.* During the performance of this Agreement, Artist specifically grants to the City the right, at the City's discretion, to make presentations, photographs or otherwise reproduce faithful images of the Artwork while in progress for presentation purposes.
- 4.6. *Acceptance of Artwork upon Completion.* Artist shall provide the City with written notice of completion after Artist completes fabrication and delivery of the Artwork, approves the installation of the Artwork, and provides to the City all documentation required pursuant to this Agreement. The City shall, in writing, accept or reject the Artwork within ten (10) business days of the City's receipt of Artist's written notice of completion. The City may only reject the Artwork if it does not meet the design plans, drawings or specifications described herein or if Artist has not provided documentation as required pursuant to this Agreement. If the City fails to accept the Artwork due to noncompliance with the design plans, drawings or specifications or failure to provide documentation required pursuant to this Agreement ("Noncompliance"), the City shall give Artist (i.e., MGA Sculpture Studio, LLC) written notice of such failure to accept, the reasons therefore and a reasonable

opportunity to correct such Noncompliance, provided, however, that in no event shall the period to correct the Noncompliance exceed thirty (30) calendar days from the date the City provides notice of Noncompliance to Artist. For purposes of this Agreement, "Final Acceptance" means that Artist has cured all Noncompliance (if any), and the City has issued written approval of the Artwork and associated documentation.

ARTICLE 5. GENERAL CONDITIONS

- 5.1. Assignment, Transfer or Subcontracting. A material element of this Agreement is the personal skill, judgment and creativity of Mark Aeling at MGA Sculpture Studio, LLC. Therefore, Artist shall not assign, transfer or subcontract the creative or artistic portions of the Artwork to another party without the prior written approval of the City, which approval may be withheld in the City's sole and absolute discretion.
- 5.2. Nameplate. Artist may, at Artist's expense, include a permanent and proper nameplate, which shall include the name of the Artwork, the name of Artist, and the date of installation. The content, design and location thereof must be mutually agreed to by Artist and the City. If Artist provides a nameplate or if no nameplate is provided and the City wishes to provide a nameplate, or if the nameplate provided by Artist is replaced, the nameplate should, at a minimum, include the information set forth in this Section 5.2.
- 5.3. Public Records.
 - A. Artist shall (i) keep and maintain public records (as defined in Florida's Public Records law) required by the City to perform the services pursuant to this Agreement; (ii) upon request from the City Clerk's Office, provide the City (at no cost to 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 under Florida's Public Records law or other applicable Laws; (iii) ensure that public records in Artist's possession that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by applicable Laws from the Effective Date until the City issues its Final Acceptance ("Services Term") or until earlier termination of this Agreement; and (iv) during the Services Term or earlier termination of this Agreement, at the City's request, either transfer, at no cost, to the City all public records in Artist's possession within ten (10) days following the City's request and/or keep and maintain any public records required by the City to perform the services pursuant to this Agreement. If Artist transfers all public records to the City upon expiration of the Services Term or earlier termination of this Agreement, 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 after

the expiration of the Services Term or earlier termination of this Agreement, Artist shall meet all applicable requirements for retaining public records in accordance with this Agreement and all applicable Laws. At the City's request, all public records stored electronically by Artist shall be provided to the City in a format approved by the City.

B. IF ARTIST HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, AS TO ARTIST'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CITY CLERK'S OFFICE (THE CUSTODIAN OF PUBLIC RECORDS) AT (727) 893-7448, CITY.CLERK@STPETE.ORG, OR 175 FIFTH ST. N., ST. PETERSBURG FL 33701.

C. Nothing contained herein shall be construed to affect or limit Artist's obligations including but not limited to Artist's obligations to comply with all applicable Laws.

ARTICLE 6. WARRANTIES

- 6.1. Warranty of Title. Artist warrants that the Artwork shall be the result of the artistic efforts of Artist and that, unless otherwise stipulated herein, the Artwork shall be unique, an edition of one, and not infringe on any copyright. Artist shall deliver the Artwork free and clear of any liens, claims or other encumbrances of any type arising from the acts of Artist.
- 6.2. Warranty of Quality. Artist warrants that the Artwork shall be free of defects in material and workmanship and that Artist shall correct any such defects which appear for a period of three (3) years from installation at Artist's expense. This warranty of quality shall not require Artist to correct any damage caused by vandalism or any act of the City so long as such damage is not the result of a defect in material or workmanship of Artist. It is understood by the City that the Artwork has been designed and built by Artist as a work of art. Any use by the City of the Artwork for purposes other than for adornment of the Site as a work of art hereby voids this warranty of quality.
- 6.3. Warranty Regarding Useful Life. Artist warrants that the Artwork will be designed, fabricated, and installed to have a useful life of at least twenty-five (25) years after installation.

ARTICLE 7. TITLE AND COPYRIGHT

- 7.1. Artist Responsibility. Artist shall execute any and all lawful documents, including assignments, which the City deems necessary or desirable to fully acknowledge the City's

ownership interest in the Artwork and to effectuate any assignment and this Agreement.

- 7.2. Title. Title to the Artwork shall vest in the City upon delivery of the Bill of Sale by Artist. As owner of the Artwork, the City may exercise any and all rights of ownership including but not limited to sale, removal or destruction of the Artwork, subject to the requirements set forth in this Agreement.
- 7.3. Copyright. Except ownership and possession, Artist retains all rights in and to the Artwork, including the right to use images of the Artwork for promotional purposes, and also including all rights under the Copyright Act of 1976, 17 U.S.C. §§ 101 et. seq., except as such rights are limited by this Agreement or waived by Mark Aeling in Exhibit D, which is attached hereto and made a part hereof. In the event Artist records Artist's identity and address with the Copyright Office, Artist shall notify the City of such recordation.
- 7.4. Limitations on Artist Copyright. The Artwork in its final dimension shall be unique. Artist shall not make any exact duplicates of the final Artwork or grant permission to others to do so except with the written permission of the City.
- 7.5. License to City. Artist grants to the City and its assigns an irrevocable license to make reproductions of the Artwork for noncommercial purposes, including but not limited to reproductions used in marketing, advertising, brochures, media publicity, web sites, and catalogues or other similar publications, provided that such reproductions of the Artwork must be made in a professional and tasteful manner.
- 7.6. Credit to Artist. The City shall use reasonable efforts, in all reproductions based on the Artwork, to give credit to Artist. This section 7.6 shall not apply if Mark Aeling exercises his right to prevent the use of his name as the author of the Artwork in accordance with applicable Laws or if Artist exercises its right to prevent the use of its name in association with the Artwork in accordance with this Agreement.
- 7.7. Credit to City. Artist shall use best efforts to give a credit reading substantially, "all original work owned by the City of St. Petersburg, Florida" in any public showing or distribution to the public of any reproductions of the Artwork which have been authorized by the City and which are under Artist's control.

ARTICLE 8. RISK OF LOSS AND INSURANCE

- 8.1. Damage. Should any repairs to any structure or the Site become necessary or if the Artwork is damaged in any way prior to Artist delivering the Artwork, the City shall not have any liability or responsibility for replacement or repair of the Artwork.
- 8.2. Damage to Materials. If, before the City issues its Final Acceptance, the Artwork, art materials or any portion of the art materials are substantially damaged by fire, explosion, or other casualty or occurrence, the City may elect to repair or replace the art materials or

immediately terminate this Agreement. In the event of termination pursuant to this Section 8.2, the City shall not be obligated to pay Artist any remaining monies in connection with this Agreement. The City shall not have any liability to Artist in the event of termination of this Agreement pursuant this Section 8.2 and Artist shall not be required to repay any money paid to Artist from the City pursuant to this Agreement, unless such damage to the art materials was caused or contributed to by the negligence of Artist or Artist's employees, subcontractors, representatives or agents. Nothing contained herein shall limit the City's rights and remedies against Artist if Artist, any other occupant of the Site, or their respective agents, employees, representatives, guests, invitees, customers, contractors or subcontractors, caused or contributed to the damage to the art materials.

8.3. **Insurance.** In addition to Artist's obligations set forth in Section 2.2C of this Agreement, Artist shall arrange for, and/or ensure that Artist and all subcontractors have, or are covered by, public liability and property damage insurance to protect Artist, the Indemnified Parties (as defined herein), and any subcontractor performing work covered by or related to this Agreement, from claims for damage for personal and bodily injury, including accidental death, as well as from claims of property damage, which may arise from operations under this Agreement whether such operations are by Artist and by any subcontractor or anyone directly employed by either of them in the amounts as follows, which shall remain in effect until Final Acceptance by the City:

- A. General Liability Insurance including contractual liability and products and completed operations with coverage limits of at least \$300,000 per occurrence protecting the City against all claims or demands that may arise.
- B. Automobile Liability Insurance with minimum limits as set forth by Florida Statute.
- C. Workers' Compensation Insurance in compliance with the laws of the State of Florida. Employers Liability coverage with minimum limits of \$100,000 for each accident, \$100,000 for each employee for disease, and \$500,000 total for all disease.
 - i. The Indemnified Parties (as defined herein) must be shown as an additional named insured with respect to this coverage.
 - ii. The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operations of Artist.
 - iii. The insurance policy required above shall be issued by a company authorized to do business in the State of Florida, with the following qualifications as to management and financial strength: the company must be rated not less than "A" as to management, and not less than Class "X" as

to strength, by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent.

- iv. Artist shall furnish a certificate of insurance on a standard ACORD form to the City prior to commencement of operations on the Site, which certificate shall clearly indicate that Artist and/or its subcontractors have obtained insurance in the type, amount and classification as required for strict compliance with this article and that no material changes or cancellation of insurance will be effective without thirty (30) days prior written notice to the City, despite changes to or cancellation of insurance.
- v. Compliance with the foregoing requirements shall not relieve Artist of its liability and obligations under this Agreement.

ARTICLE 9. INDEMNIFICATION AND RELEASE

9.1. Indemnification.

- A. Artist shall defend at its expense, pay on behalf of, hold harmless and indemnify the City, its officers, employees, agents, elected and appointed officials and volunteers (collectively, "Indemnified Parties") from and against any and all claims, demands, liens, liabilities, penalties, fines, fees, judgments, losses and damages (collectively, "Claims"), whether or not a lawsuit is filed, including, but not limited to Claims for damage to property or bodily or personal injuries, including death at any time resulting therefrom, sustained by any persons or entities; and costs, expenses and attorneys' and experts' fees at trial and on appeal, which Claims are alleged or claimed to have arisen out of or in connection with, in whole or in part, directly or indirectly:
 - (i) The performance of this Agreement (including any amendments thereto) by Artist, its employees, agents, representatives or subcontractors; or
 - (ii) The failure of Artist, its employees, agents, representatives or subcontractors to comply and conform with applicable Laws; or
 - (iii) Any negligent act or omission of Artist, its employees, agents, representatives, or subcontractors, whether or not such negligence is claimed to be either solely that of Artist, its employees, agents, representatives or subcontractors, or to be in conjunction with the claimed negligence of others, including that of any of the Indemnified Parties; or
 - (iv) Any reckless or intentional wrongful act or omission of Artist, its employees, agents, representatives, or subcontractors; or

- (v) Infringement or alleged infringement of the Artwork or any materials or parts contained in the Artwork upon any copyright, trademark, patent, or trade secret right of any party; or
 - (vi) Artist's failure to maintain, preserve, retain, produce, or protect records in accordance with this Agreement and applicable Laws (including but not limited to Florida laws regarding public records).
 - B. The provisions of this Section 9.1 are independent of, and will not be limited by, any insurance required to be obtained by Artist pursuant to this Agreement or otherwise obtained by Artist, and shall survive the expiration or earlier termination of this Agreement with respect to any claims or liability arising in connection with any event occurring prior to such expiration or termination.
- 9.2. Notice. The Parties each agree to give the other party prompt notice of any claim coming to its knowledge that in any way directly or indirectly affects the other party.
- 9.3. Release. Artist releases and forever waives any and all present and future claims, covenants not to sue, and holds harmless the Indemnified Parties from and against all actions, claims, damages, liabilities, costs and expenses, including but not limited to, attorneys' fees and costs, on account of injury to the person or property in connection with Artist's performance pursuant to this Agreement, whether arising out of or caused by the negligence of any or all of the Indemnified Parties or otherwise, or whether arising out of or caused by any defect, or presence or absence of any condition of, or in or on any real property, premises, the Site, City property or thoroughfare while the undersigned is participating in any phase of the design, fabrication and overseeing installation of the Artwork. Artist shall require all workers engaged in the performance of this Agreement to execute the release set forth Exhibit B.

ARTICLE 10. MAINTENANCE, RESTORATION, MODIFICATION, AND REMOVAL

- 10.1. Maintenance. The City recognizes that the maintenance of the Artwork on a regular basis will be necessary and shall clean and maintain the Artwork in conjunction with the normal maintenance and cleaning procedures based on Artist's written instructions therefore provided pursuant to this Agreement for as long as the Artwork remains at the Site.
- 10.2. Failure to Maintain Artwork. In the event the City fails to maintain the Artwork in good condition, Artist shall have the right to prevent the use of Artist's name as author of the Artwork. In such event, Artist may require, by providing written notice to the City of such requirement, that the City remove any references to Artist on the nameplate accompanying the Artwork (if applicable) unless and until the Artwork is satisfactorily repaired.
- 10.3. Restoration. After Final Acceptance, the City shall have the right to determine when and if repairs and restoration to the Artwork will be made. During Mark Aeling's lifetime, to

the extent practical, the City shall give Artist notice of any intended repairs or restoration and the opportunity to make or approve all repairs and restorations; provided, however, that Artist shall not unreasonably withhold approval for any repair or restoration of the Artwork. If, within ninety (90) days, Artist does not respond to the City's reasonable attempts to give Artist the opportunity to make or approve any repair or restoration, or if Artist unreasonably fails to approve any repair or restoration, the City shall have the right to make such repair or restoration. To the extent practical, Artist shall be given the opportunity to make or personally supervise significant (as determined by the City) repairs or restoration and shall be paid a reasonable fee for any such services, provided that the City and Artist agree in writing, prior to commencement of any significant repairs or restoration, upon Artist's fee for such services. If no agreement is reached as to Artist's fee for such repairs or restoration, then the City may make repairs, restoration or other arrangements the City deems appropriate for the Artwork.

- 10.4. Alteration of the Artwork. Except to the extent the City may alter the Site or remove, relocate, maintain, restore, sell, donate, dispose of, destroy, or store the Artwork pursuant to this Agreement, the City agrees that it will not intentionally damage, alter, modify or change the Artwork without the prior written approval of Artist to the extent the City deems it is practical to obtain such approval.
- 10.5. Alteration of the Site. To the extent the City deems practical, the City shall notify Artist of any proposed alteration of the Site that would affect the intended character and appearance of the Artwork and shall consult with Artist in the planning and execution of any such alteration and shall make a reasonable effort to maintain the integrity of the Artwork consistent with the provisions of this Agreement.
- 10.6. Removal of Artwork. The City has the right to remove the Artwork from the Site for any reason in the City's sole and absolute discretion, subject to the requirements of this Agreement. If the City removes the Artwork, the City may then, in the City's discretion, subject to the requirements of this Agreement, place the Artwork on other property of the City that the City deems suitable, store the Artwork in its entirety in a safe location, place the Artwork on non-City owned property that the City deems suitable, or dispose of, destroy, sell or donate the Artwork.
 - A. Relocation or Storage. To the extent practical, during Mark Aeling's lifetime, the City shall notify Artist (i.e., MGA Sculpture Studio, LLC) if the City elects to remove and relocate or store the Artwork, and shall give Artist the opportunity to remove the Artwork at Artist's expense, or to personally supervise the removal of the Artwork to the location chosen by the City. In the event that Artist fails, within ninety (90) days of receipt of such notice, to participate in the planning or execution of the removal of the Artwork, the City shall have the right to proceed with the removal and relocation or storage of the Artwork without any input or participation by Artist. Artist expressly acknowledges and understands that removal and subsequent relocation or storage of the Artwork may subject the Artwork to

destruction, distortion, mutilation, or other modification, and Artist hereby expressly agrees to waive any rights it may have to prevent the destruction, distortion, mutilation, or other modification of the Artwork that may result from the Artwork's removal and relocation or storage.

- B. Disposition, Destruction, Sale, or Donation. To the extent practical, during Mark Aeling's lifetime, the City shall give Artist (i.e., MGA Sculpture Studio, LLC) reasonable notice and opportunity (not to exceed ninety (90) days) to have the Artwork returned to Artist at Artist's expense in the event the City elects to dispose of, destroy, sell, or donate the Artwork. Artist hereby expressly agrees to waive any rights Artist may have to prevent the destruction, distortion, mutilation, or other modification of the Artwork that may occur as a result of such disposition, destruction, sale, or donation of the Artwork.

ARTICLE 11. DEFAULT AND TERMINATION

- 11.1. Default Defined. Failure of either party to comply with any provisions of this Agreement shall place that party in default. Except as otherwise provided in Section 5.3 and Section 8.2, concerning public records and damage to materials, respectively, the defaulting party shall be entitled to thirty (30) days to cure the default upon receipt of written notice specifying the default.
- 11.2. Termination. In the event the default is not timely cured in the thirty (30) day period referenced in Section 11.1, this Agreement may be terminated immediately by written notice. Prior to terminating this Agreement and except as otherwise provided herein, the non-defaulting party shall notify the defaulting party in writing stating specifically the provisions which are alleged to give rise to the default. If the City terminates this Agreement pursuant to this Section 11.2 before Final Acceptance by the City, Artist shall immediately repay all payments paid to Artist under this Agreement. If Artist terminates this Agreement pursuant to this Article, the City shall forfeit any right to repayment of any payments made through the date Artist notifies the City that the Agreement is terminated.
- 11.3. Termination for Convenience. This Agreement may be terminated at any time by the City for convenience upon thirty (30) days written notice. In the event of termination for convenience, the City shall only be liable to Artist for payment milestones reached prior to the effective date of termination.

ARTICLE 12. NOTICE TO PARTIES

- 12.1. Notice of Documents. All notices, requests, demands, or other communications hereunder shall be in writing and shall be deemed to be served as of the delivery date appearing upon the return receipt if sent by certified mail, postage prepaid with return receipt requested, at the address listed below, or upon the actual date of delivery if hand delivered to the address below:

TO CITY:

City of St. Petersburg
Attention: Lynn Goodwin
P.O. Box 2842
St. Petersburg, FL 33731

TO ARTIST:

MGA Sculpture Studio, LLC
515 22nd St. S., Unit E
St. Petersburg, FL 33712
Attn: Mark Aeling

- 12.2. Change of address. Any party may change its address for the giving of notice pursuant to notice given in accordance with the provisions of Section 12.1, which notice shall be effective upon receipt by the other party.
- 12.3. Failure to Notify City of Change of Address. If Artist fails to notify the City of a change of address, Artist waives all rights that are granted in this Agreement that require notice to Artist.

ARTICLE 13. MISCELLANEOUS

- 13.1. Entirety of Agreement. This writing embodies the entire agreement and understanding between the Parties hereto, and there are no other agreements and understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby. No alteration, change, or modification of the terms of this Agreement shall be valid unless made in writing and signed by both Parties hereto.
- 13.2. Surviving Covenants. The covenants and obligations set forth in this Agreement shall survive the delivery of the Artwork and Final Acceptance and associated documentation and shall be binding upon the Parties, their heirs, legatees, executors, administrators, assigns, transferees, and all their successors in interest.
- 13.3. Severability. If any provision of this Agreement is contrary to, prohibited by, or deemed invalid by applicable Laws of any jurisdiction in which it is sought to be enforced, then such provision shall be deemed inapplicable and omitted, but such omissions shall not invalidate the remaining provisions of this Agreement.
- 13.4. Captions. Captions are inserted only as a matter of convenience and for reference, and in no way define, limit, nor describe the scope of this Agreement, nor the intent or content of any provision contained herein.
- 13.5. Waiver. No waiver of any provision of this Agreement or any breach thereof shall be construed as a continuing waiver nor shall it constitute a waiver of any other provision or breach. Further, the failure of either party to exercise its rights under this Agreement shall not be construed as a waiver to such a right.

- 13.6. Law and Forum. This Agreement shall be construed under the laws of the State of Florida, and any action arising hereunder shall be brought in Pinellas County, Florida, or, if in Federal Court, the Middle District of Florida, Tampa Division.
- 13.7. Construction. Should any provision of this Agreement require judicial interpretation, the court interpreting or construing the same shall not construe it against one party more strictly by reason of the rule of interpretation that a document is to be construed more strictly against the party who itself or through its agents prepared the same, as each party has participated in the preparation of this Agreement and each party consulted with independent legal counsel of its own selection or waived its right to do so prior to the execution of this Agreement.
- 13.8. No Third Party Beneficiaries. Neither Artist nor the City intends to directly or indirectly benefit a third party by this Agreement. Therefore, the Parties agree that no third party shall be entitled to assert a claim against either of them based upon this Agreement. The Parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement.
- 13.9. Incorporation by Reference. Composite Exhibit C, the Bill of Sale, Warranty, Affidavit of No Liens, Approval and Acceptance of Artwork, and Copyright Agreement and Assignment are upon their execution by a party to this Agreement incorporated into and made a part of this Agreement.
- 13.10. Further Assurances. The Parties shall promptly execute all documents reasonably required and take such other steps in addition to the execution of this Agreement to effectuate the intent and purpose of this Agreement.
- 13.11. Exhibits. Each exhibit to this Agreement is an essential part hereof and is incorporated herein by reference.

(THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, the Parties hereto have executed these presents for the purposes herein expressed.

CITY OF ST. PETERSBURG, FLORIDA

By: _____
Print: _____
Title: _____
Address: P. O. Box 2842
St. Petersburg, FL 33731



ATTEST:

City Clerk

MGA SCULPTURE STUDIO, LLC:

Sign: _____
Print: Mark Helwig
Address: 51522 1st St.
St. Pete, FL 33712

WITNESSES

AS TO ARTIST:

Sign: Patricia Beneby
Print: Patricia Beneby
Sign: [Signature]
Print: Lynne C. Goodwin

STATE OF Florida
COUNTY OF Pinellas

The foregoing instrument was acknowledged before me this 5th day of June, 2018, by Mark Helwig, personally known to me or who has produced _____ as identification and who did take an oath.

NOTARY PUBLIC:

Sign Cathy E. Davis
Print Cathy E. Davis
State of Florida
My Commission No.: G-052592

APPROVED AS TO FORM AND CONTENT:

City Attorney (designee)

document # 00380161



ATTACHMENTS:

Exhibit A – Final Design and Description of Artwork

Exhibit B - Release of any person working on the Site or the Artwork

**Composite Exhibit C - Bill of Sale, Warranty, Affidavit of No Liens, Approval and
Acceptance of Artwork, and Copyright Agreement and Assignment**

Exhibit D – Release and Waiver of Rights under 17 U.S.C. § 106A

Exhibit A
Final Design and Description of Artwork

“Gladiolus Blossom” – The artwork to be installed at the entry plaza of the Police Station will be constructed of 316 stainless steel with a guided metal sphere. The sculpture will be approximately 20' tall including a cast concrete base and approximately 6' in diameter at the base increasing to approximately 18' in diameter at the top. The base element will allow seating around it's perimeter as space allows. LED lighting is to be incorporated into the base design and will be coordinated with the existing lighting on the exterior of the building.

The sculpture shown on the right in this rendering is referenced above.



Exhibit B
Release and Hold Harmless Agreement

THIS RELEASE and HOLD HARMLESS AGREEMENT ("Agreement") is made this ____ day _____, 201_, by _____, its heirs, successors and assigns (collectively "Worker") for the benefit of the City of St. Petersburg, Florida ("City").

WHEREAS, at the request of MGA Sculpture Studio, LLC ("Artist"), the City has agreed to purchase a work of art (herein "Artwork") and Worker has agreed with Artist to help implement the Artwork by providing labor or other services.

WHEREAS, pursuant to the artist agreement between Artist and the City dated _____, 2018 ("Artist Agreement"), Worker must execute this Agreement in favor of the City prior to working on the Artwork or Site (as defined in the Artist Agreement) in order to protect the Releasees (as defined herein) from certain liabilities.

NOW, THEREFORE, in order to induce the City to fund the Artwork and allow Worker to work for Artist on the Artwork or Site and as consideration therefore, the Worker agrees as follows:

1. Worker hereby releases and forever waives any and all present and future claims, covenants not to sue, and holds harmless the City of St. Petersburg, its City Council, its employees, servants, representatives, officers, agents, successors, assigns and volunteers (hereinafter referred to as "Releasees"), from and against all actions, claims, damages, liabilities, costs and expenses, including but not limited to attorney's fees and costs, on account of injury to the person or property or resulting in death of the undersigned, whether arising out of or caused by the negligence of any or all of the Releasees, or otherwise, or whether arising out of or caused by any defect, or presence or absence of any condition of, or in or on any real property, premises, City property, the Site or any thoroughfare while the undersigned is participating in any phase of the Artwork.
2. Worker agrees to indemnify and hold and save the Releasees harmless from any and all damages, loss or liability occurring by reason of any injury of any person or property which may occur as a result of or in connection with the implementation of the Artwork or occasioned by an act or omission, neglect, or wrongdoing of the Worker.
3. Worker will, at Worker's own cost and expense, defend and protect the Releasees against any and all such claims or demands which may be claimed to have arisen as a result of or in connection with the implementation of the Artwork.
4. The undersigned expressly agrees personally that this Agreement is intended to be as broad and inclusive as is permitted by the law of the State of Florida, and if any portion thereof is held to be invalid, it is agreed that the balance shall, notwithstanding, continue in full legal force and effect.

WORKER

Sign: _____

Print: _____

Address: _____

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____,
201__, by _____, who is personally known to me or who has produced
_____ as identification, and who did take an oath.

NOTARY PUBLIC

Sign _____

Print _____

My Commission No.:

COMPOSITE EXHIBIT C

BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS that MGA Sculpture Studio, LLC, for and in consideration of the sum of two hundred twenty-six thousand dollars (\$226,000), lawful money of the United States, and other good and valuable consideration, the receipt whereof is hereby acknowledged, has granted, bargained, sold, transferred and delivered, and by these presents does grant, bargain, sell, transfer and deliver to the City of St. Petersburg, Florida, its successors and assigns, the work of art entitled "Gladiolus Blossom" consisting of 316 stainless steel, cast concrete base, an LED lighting system, and a gilded sphere to be installed outdoors in the entry plaza at the Police Station, located at 1301 1st Avenue North, St. Petersburg Florida.

TO HAVE AND TO HOLD the same unto the City of St. Petersburg, Florida, its successors and assigns forever.

IN WITNESS WHEREOF, _____, has hereunto set his hand and seal this ____ day of _____, 201__.

Address: _____

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 201__, by _____, who is personally known to me or who has produced _____ as identification and who did take an oath.

NOTARY PUBLIC:

Sign _____
Print _____
State of _____
My Commission No.: _____
My Commission expires: _____

WARRANTY: GLADIOLUS BLOSSOM

MGA Sculpture Studio, LLC ("Artist"), hereby warrants the work of art entitled "Gladiolus Blossom" consisting of 316 stainless steel, cast concrete base, an LED lighting system, and a gilded sphere installed at the entry plaza at the Police Station to be free from defects in materials or workmanship for three (3) years from the date of installation. Artist shall immediately correct any such defects which appear during that period at Artist's own cost and expense.

This warranty is in addition to all other warranties, statutory or otherwise, express or implied, all other representations to the City and all other obligations or liabilities with respect to such work of art including implied warranties of merchantability and fitness.

IN WITNESS WHEREOF, _____ has hereunto set his hand and seal this ____ day of _____, 201__.

Address: _____

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 201__, by _____, who is personally known to me or who has produced _____ as identification and who did take an oath.

NOTARY PUBLIC:

Sign _____

Print _____

State of _____

My Commission No.: _____

My Commission expires: _____

AFFIDAVIT OF NO LIENS: GLADIOLUS BLOSSOM

STATE OF _____)
COUNTY OF _____)

On this day personally appeared before me, the undersigned authority, duly authorized to administer oaths and take acknowledgments, _____, who after being first duly sworn by me on oath deposes and says:

1. _____ is the owner of a work of art consisting of 316 stainless steel, cast concrete base, an LED lighting system, and a gilded sphere installed at the entry plaza at the Police Station.
2. There are no liens, claims or other encumbrances on the work of art and _____ is the sole owner and creator of said work of art.
3. _____ has paid and discharged all subcontractors or materialmen, if any, and there are no liens outstanding of any nature nor any debts or obligations out of which could arise a lien or encumbrances on the work of art.
4. I am making this Affidavit upon consideration of the payment of two hundred twenty-six thousand dollars (\$226,000).

Address: _____

STATE OF _____)
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 201__, by _____, who is personally known to me or who has produced _____ as identification and who did take an oath.

NOTARY PUBLIC:

Sign _____
Print _____
State of _____
My Commission No.: _____
My Commission expires: _____

APPROVAL AND ACCEPTANCE OF ARTWORK

“Gladiolus Blossom”

MGA Sculpture Studio, LLC ("Artist") has completed the work of art consisting of 316 stainless steel, cast concrete base, an LED lighting system, and a gilded sphere ("Artwork"), installed at the entry plaza of the Police Station, in a manner that meets all the requirements of the Artist Agreement dated _____, 2018, by and between Artist and the City of St. Petersburg, Florida ("Owner"). Owner hereby approves and accepts ownership of the Artwork.

DATE: _____

CITY OF ST. PETERSBURG, FLORIDA

BY: _____

Print: _____

Address: P. O. Box 2842

St. Petersburg, FL 33731

COPYRIGHT AGREEMENT & ASSIGNMENT: GLADIOLUS BLOSSOM

_____ for and in consideration of the purchase by the City of St. Petersburg of the work of art consisting of 316 stainless steel, cast concrete base, an LED lighting system, and a gilded sphere installed at the entry plaza of the Police Station, which work of art ("Artwork") is owned by _____, hereby assigns to the City of St. Petersburg, Florida, title and full rights of ownership as well as the irrevocable license to make reproductions of the Artwork for noncommercial purposes, including but not limited to reproductions used in marketing, advertising, brochures, media publicity, web sites, and catalogues or other similar publications, provided that such reproductions of the Artwork must be made in a professional and tasteful manner.

_____ further assigns to the City of St. Petersburg, Florida, any and all warranties for materials used and labor performed by subcontractors or other persons, if any, which _____ holds to the City of St. Petersburg, Florida.

_____ further agrees to execute any and all further lawful documents including assignments which the City of St. Petersburg, Florida shall deem necessary or desirable to fully effectuate this Copyright Agreement and Assignment.

Address: _____

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____, who is personally known to me or who has produced _____ as identification and who did take an oath.

NOTARY PUBLIC:

Sign _____
Print _____
State of _____
My Commission No.: _____
My Commission expires: _____

Exhibit D
Release and Waiver of Rights under 17 U.S.C. § 106A

In consideration of payment received by MGA Sculpture Studio, LLC ("Artist") from the City of St. Petersburg, Florida ("City") for Artist designing, fabricating, and delivering a work of art ("Artwork") to be installed outdoors in the main entrance plaza of the City of St. Petersburg's new police headquarters complex, located at 1301 1st Avenue North, St. Petersburg Florida, pursuant to the agreement between the City and Artist dated _____, 2018 ("Agreement"), and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, I, Mark Aeling, hereby waive, disclaim and terminate my rights to prevent any intentional or accidental distortion, damage, destruction, or mutilation of the Artwork, which would be prejudicial to my honor or reputation and the right to prevent any intentional or grossly negligent destruction of the Artwork if it is of a recognized stature as provided under 17 U.S.C. § 106A (Visual Artist Rights Act of 1990), in the following circumstances:

- The distortion, damage, destruction, or mutilation results, in whole or in part, from the acts of a party other than the City or the City's officers, employees, agents, elected or appointed officials acting in their official capacity; or
- The distortion, damage, destruction, or mutilation occurs as a result of the City's failure to repair or restore the Artwork, regardless of the cause necessitating such repair or restoration; or
- The distortion, damage, destruction, or mutilation occurs as a result of the City's attempts to repair or restore the Artwork, provided that the City first gave Artist a reasonable opportunity to perform the repairs or restorations in accordance with Section 10.3 of the Agreement; or
- The distortion, damage, destruction, or mutilation occurs as a result of the City's alteration of the installation site, provided the City complies with the requirements set forth in Section 10.5 of the Agreement; or
- The distortion, damage, destruction, or mutilation occurs as a result of the City's temporary or permanent removal of the Artwork from the installation site and/or subsequent relocation, storage, disposition, destruction, sale, or donation of the Artwork, provided that the City complied with the requirements set forth in Section 10.6 of the Agreement; or
- The distortion, damage, destruction, or mutilation otherwise occurs in accordance with the process set forth in Section 10.6 of the Agreement.

This waiver applies to the use of the Artwork to enhance the City's police headquarters complex or to enhance any other site chosen by the City in the event the City relocates the Artwork to another site.

I am retaining my rights to disclaim authorship of the Artwork as granted by 17 U.S.C. § 106A(a)(1)-(2); provided, however, that I agree if I exercise such rights to disclaim authorship, I thereby waive all other rights to the Artwork set forth in 17 U.S.C. § 106A, including all rights to prevent its distortion, damage, destruction, or mutilation, however caused.

I have read and voluntarily sign this Release and Waiver, and further agree that no oral representations, statements or inducements apart from the foregoing written release and waiver have been made.

I acknowledge that I have been hereby encouraged to seek the advice of attorney prior to signing this Release and Waiver, and have been given the opportunity to seek such counsel.

I acknowledge the fact that this Release and Waiver could become a public record pursuant to Chapter 119, Florida Statutes, and will be available to members of the public upon their request.

By signing this Release and Waiver I am waiving and releasing valuable legal rights. I have read this Release and Waiver carefully before signing it.

IN WITNESS WHEREOF, the undersigned has caused this Release and Waiver to be executed this ____ day of _____, 201__.

BY:

Sign:

Mark Aeling

Telephone:

Address:

727 327 3473
515 24th St. S. St. Pete, FL 33712