

ST. PETERSBURG CITY COUNCIL

Consent Agenda

November 15, 2018

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

SUBJECT:

A resolution approving an agreement between the city of St. Petersburg, Florida, and Sherilyn Bailey d/b/a Xenobia Bailey (“Artist”), for Artist to design, fabricate, and install a piece of art entitled Morning “Stars” on the north side of the screen wall structure at the St. Pete Pier,TM (“Screen Wall”) for a firm fixed price of \$200,000, exempting and waiving the Florida Statute and City Code public construction bond requirement for the agreement for the artist to design, fabricate, and install Morning “Stars”; rescinding an unencumbered appropriation in the General Capital Improvement Fund (3001) in the amount of \$310,500 from the Pier Visioning Project (11988); approving a transfer in the amount of \$310,500 from the unencumbered balance of the General Capital Improvement Fund (3001), resulting from the rescission, to the Arts in Public Places Fund (1901); approving a supplemental appropriation in the amount of \$200,000 from the increase in the unappropriated balance of the Arts in Public Places Fund (1901), resulting from the transfer above, to the Mayor’s Office, Cultural Affairs Division (020-1777); 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 St. Petersburg Pier 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 project. A contract was entered into with Ann Wykell to act as project manager for the pier art selection process. Over a period of several meetings in early 2017, the project manager presented work by artists with qualifications to complete work of this nature to the Project Committee. At the October 18, 2017 meeting of the Project Committee, after discussion and review of artists’ works, the Project Committee voted on six (6) finalists and two (2) alternates. The Committee met on April 24, 2018 to review the finalists’ presentations of their proposals and based on the proposals presented by Xenobia Bailey, the Committee selected Ms. Bailey to fully design, fabricate and install a piece of art entitled Morning “Stars” (a mosaic tile installation) on the Screen Wall in the New St. Petersburg PierTM. 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, develop and install the Morning “Stars” on the Screen Wall.

Rescinding an unencumbered appropriation in the General Capital Improvement Fund (3001) in the amount of \$310,500 from the Pier Visioning Project (11988). Requesting a transfer in the amount of \$310,500 from the unencumbered balance of the General Capital Improvement Fund (3001), resulting from the rescission, to the Arts in Public Places Fund (1901); approving a supplemental appropriation in the amount of \$200,000 from the unappropriated balance of the Arts in Public Places Fund (1901), resulting from the above transfer, to the Mayor’s Office of Cultural Affairs Division (020-1777). The \$110,500 remaining from the total \$310,500 transfer has been reserved by the Public Arts Commission for an additional public art project at the St. Pete PierTM which will be presented to City Council for approval in the near future.

RECOMMENDATION:

Administration recommends that City Council accept the recommendation made by the St. Petersburg Pier Public Art Project Committee and approved by the Public Arts Commission.

COST/FUNDING/ASSESSMENT INFORMATION:

Funds will be available after approval of a rescission of an unencumbered appropriation in the General Capital Improvement Fund (3001) in the amount of \$310,500 from the Pier Visioning Project (11988); a transfer in the amount of \$310,500 from the unencumbered balance of the General Capital Improvement Fund (3001), resulting from the rescission, to the Arts in Public Places Fund (1901) and approving a supplemental appropriation in the amount of \$200,000 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 (020-1777).

ATTACHMENTS:

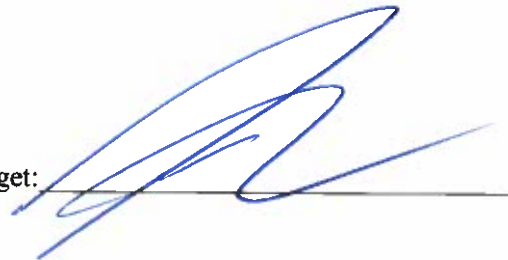
- (1) Sculpture Design Rendering
- (2) Resolution
- (3) Artist Agreement

APPROVALS:

Administration:



Budget:

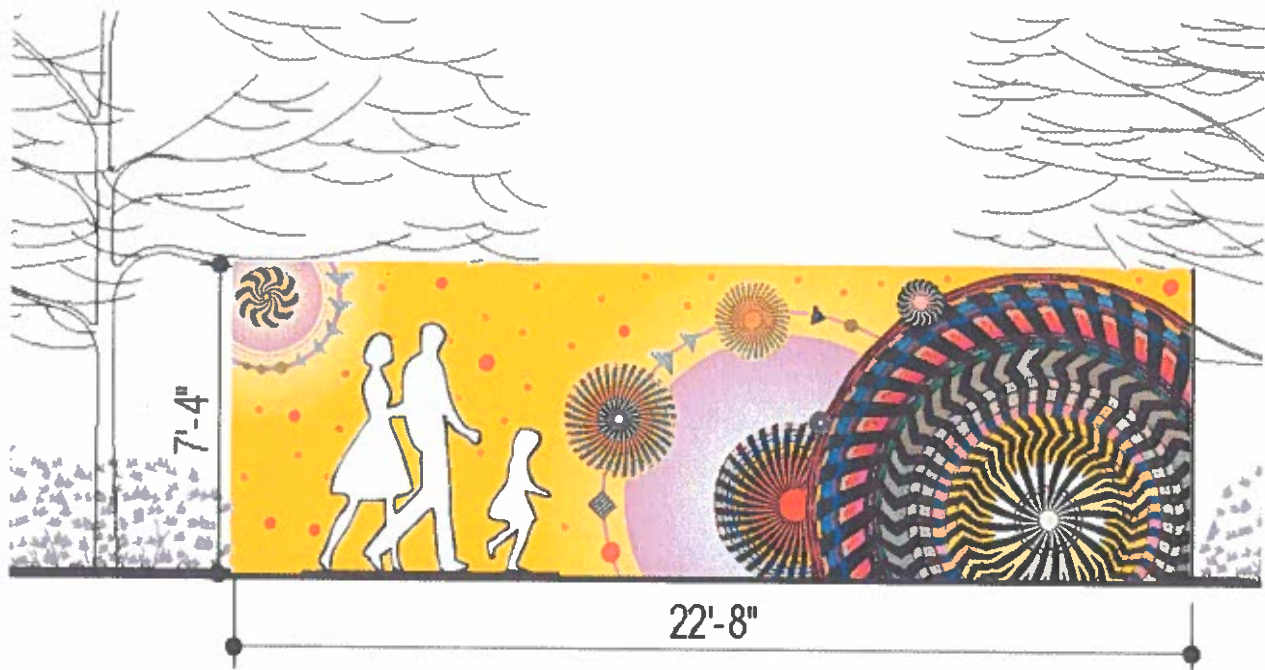


Morning "Stars"

As an artist, Xenobia primarily works in fiber arts, creating crocheted mandalas which consist of colorful concentric circles and repeating patterns. Her work ranges from costumes and hats to wall pieces. For projects such as the one she has proposed for St. Petersburg, she will crochet several mandalas with brightly colored fiber medium and will then work with her fabricators to scan the images and create the design digitally so it can be transferred and applied as a mosaic design to the surface. Her work on the St. Pete Pier™ will consist of colors as shown below, of these, a portion of the tiles will have an iridescent finish to allow them to sparkle like stars as the sun rises from the east and passes over the city.



Xenobia Bailey Crocheting Mandalas collection for installation



SCREEN WALL NORTH ELEVATION

Resolution No. 2018-_____

A RESOLUTION AUTHORIZING THE MAYOR OR HIS DESIGNEE TO EXECUTE AN AGREEMENT BETWEEN THE CITY OF ST. PETERSBURG, FLORIDA, AND SHERILYN BAILEY D/B/A XENOBIA BAILEY ("ARTIST"), AND ALL OTHER NECESSARY DOCUMENTS, FOR ARTIST TO DESIGN, DEVELOP AND INSTALL A PIECE OF EXTERIOR ART ENTITLED MORNING "STARS" ON THE NORTH SIDE OF THE SCREEN WALL STRUCTURE AT THE ST. PETE PIER™ FOR A FIRM FIXED PRICE OF \$200,000; EXEMPTING AND WAIVING THE FLORIDA STATUTE AND CITY CODE PUBLIC CONSTRUCTION BOND REQUIREMENT; AUTHORIZING THE CITY ATTORNEY TO MAKE NON-SUBSTANTIVE CHANGES TO THE AGREEMENT; RESCINDING AN UNENCUMBERED APPROPRIATION IN THE GENERAL CAPITAL IMPROVEMENT FUND (3001) IN THE AMOUNT OF \$310,500 FROM THE PIER VISIONING PROJECT (11988); APPROVING A TRANSFER IN THE AMOUNT OF \$310,500 FROM THE UNENCUMBERED BALANCE OF THE GENERAL CAPITAL IMPROVEMENT FUND (3001), RESULTING FROM THE RESCISSION, TO THE ARTS IN PUBLIC PLACES FUND (1901); APPROVING A SUPPLEMENTAL APPROPRIATION IN THE AMOUNT OF \$200,000 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 (020-1777); 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 Pier Public Art Project Committee ("Committee") was established pursuant to Section 5-58 of the City Code to ensure that proper considerations were given to the design, siting, facility operation, and neighborhood interests for artwork to be commissioned for the St. Pete Pier™; and

WHEREAS, the Committee posted a call to artists online, inviting artists from around the world to express their interest in the project and submit their qualifications; and

WHEREAS, the Committee performed a rolling review of potential artists who expressed interest in the project and submitted their qualifications; and

WHEREAS, the Committee narrowed down the potential artists to six finalists and two alternates at the Committee's October 18, 2017 meeting; and

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

WHEREAS, based on the site-specific proposal for an exterior piece presented by Sherilyn Bailey d/b/a Xenobia Bailey ("Artist"), one of the finalists, the Committee selected Artist to fully design, develop and install an exterior mosaic tile installation entitled Morning "Stars" on the north side of the screen wall structure at the St. Pete Pier™; and

WHEREAS, on May 1, 2018, the Public Arts Commission approved the Committee's selection and recommends approval of the agreement; and

WHEREAS, the agreement 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; and

WHEREAS, Administration, in conjunction with the Public Arts Commission, recommends approval of the agreement; and

WHEREAS, the total allocations of funds to be deposited into the Arts in Public Places Fund is \$310,500; and

WHEREAS, the full amount to be deposited into the Arts in Public Places Fund (1901) from the Pier Visioning Project (11988) pursuant to Chapter 5 of the City Code is \$348,000; and

WHEREAS, on April 4, 2017, the Public Arts Commission voted to reimburse the Pier Visioning Project (11988) with \$37,500 from the Arts in Public Places Fund (1901) in the event the City proceeded with the second phase of the JEI Feasibility Study Agreement; and

WHEREAS, on April 6, 2017, City Council approved a two-phase agreement with Janet Echelman, Inc. in the amount of \$75,000 ("JEI Feasibility Study Agreement"), with \$37,500 allocated out of the Arts in Public Places Fund (1901) for the first phase, and \$37,500 to come from the Pier Visioning Project (11988) for the second phase; and

WHEREAS, the City proceeded with the second phase of the JEI Feasibility Study Agreement, so \$37,500 will remain in the Pier Visioning Project (11988); and

WHEREAS, the remaining \$110,500 resulting from the transfer of \$310,500, in addition to a portion of the \$37,500 remaining from the JEI Feasibility Study Agreement, has been reserved by the Public Arts Commission for an additional public art project at the St. Pete Pier™ which will be presented to City Council for approval in the near future.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of St. Petersburg, Florida, that the Mayor or his designee is authorized to execute an agreement between the City of St. Petersburg, Florida, and Sherilyn Bailey d/b/a Xenobia Bailey ("Artist") and all other necessary documents, for Artist to design, develop and install a piece of exterior art entitled Morning "Stars" on the north side of the screen wall structure at the St. Pete Pier™ for a firm fixed price of \$200,000.

BE IT FURTHER RESOLVED that Artist is exempted from executing a public construction bond pursuant to Florida Statute Section 255.05.

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

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

BE IT FURTHER RESOLVED that an unencumbered appropriation in the amount of \$310,500 in the General Capital Improvement Fund (3001) from the Pier Visioning Project (11988) is hereby rescinded.

BE IT FURTHER RESOLVED that a transfer in the amount of \$310,500 from the unencumbered balance of the General Capital Improvement Fund (3001), resulting from the rescission, to the Arts in Public Places Fund (1901) is hereby approved:

<u>General Capital Improvement Fund (3001)</u>	
Arts in Public Places Fund (1901)	\$310,500

BE IT FURTHER RESOLVED that a supplemental appropriation in the amount of \$200,000 from the increase in the unappropriated balance of the Arts in Public Places Fund (1901), resulting from the above transfer, is hereby approved for FY 2019:

<u>Arts in Public Places Fund (1901)</u>	
Mayor's Office, Cultural Affairs Division (020-1777)	\$200,000

This Resolution shall become effective immediately upon its adoption.

Approvals:



Administration



Budget



City Attorney (Designee)

00409959

ARTIST AGREEMENT

THIS AGREEMENT (“Agreement”) is made and entered into this 19th day of OCTOBER, 2018 (“Effective Date”), by and between the City of St. Petersburg, Florida, a municipal corporation of the State of Florida, (“City”) and Sherilyn Bailey d/b/a Xenobia Bailey (“Artist”) (collectively, “Parties”).

WHEREAS, it is the desire of City and Artist to establish the terms and conditions under which a work of art shall be designed, fabricated and installed 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 to this Agreement agree as follows:

ARTICLE 1. DEFINITIONS

- 1.1 Artwork - The work of art entitled Morning “Stars” which is designed, built, and installed by the Artist under this Agreement.
- 1.2 Site – On the north side of the screen wall structure of the St. Pete Pier™ in the area depicted and identified on Exhibit A, which is attached hereto and made a part hereof.

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.
- 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 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. 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.

- C. Artist shall submit monthly progress reports to the City upon written request.
- D. 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.
- E. 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.
- F. 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.
- G. Artist shall provide a written warranty of the Artwork, guaranteeing the quality of materials and workmanship for a period of not less than five (5) years.
- H. Artist is responsible for acquiring all City, county, state or federal permits or variances necessary for the construction and/or installation of the Artwork.
- I. 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"). Artist hereby makes all certifications required by Florida Statute section 287.135.
- J. If access to the Site is required prior to the completion of the St. Pete Pier,TM which is currently under construction, Artist must obtain permission from the City's construction manager and comply with all procedures and requirements of the City's construction manager related to access and safety, including but not limited to any requirement that the City's construction manager be listed as an additional insured on this Agreement or otherwise.

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. In the event the City determines that the Artist has failed to comply with any of the deadlines set forth in this Agreement, Artist grants the City the right to complete the installation of the Artwork, and Artist further agrees to a

reduction in the Fixed Firm Price by the costs incurred by the City to complete the installation in such event.

- 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 two hundred thousand dollars (\$200,000) ("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. Artist shall invoice the City for the Firm Fixed Price in accordance with the following schedule. Each payment represents full and final payment for all services and materials provided prior to payment thereof. Each installment shall be paid within 30 days after receipt of a proper invoice and any applicable certifications or documentation described below, which shall be in a form acceptable to the City in its reasonable discretion.
- A. Phase I - Artist shall invoice the City for forty thousand dollars (\$40,000) within thirty (30) days after the Effective Date. This amount is intended to cover completion of the final design.
 - B. Phase II – Artist shall invoice the City for eighty thousand dollars (\$80,000) within thirty (30) days after the City's acceptance of the design and engineering documents. The amount is intended to cover materials and process fees.
 - C. Phase III - Artist shall invoice the City for forty thousand dollars (\$40,000) within thirty (30) days after 50% of fabrication is complete. Photo documentation will be provided.
 - D. Phase IV - Artist shall invoice the City for the remaining forty thousand dollars (\$40,000) of the Firm Fixed Price upon completion and installation of the Artwork and 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 pursuant to this Agreement,
 - v. A written warranty pursuant to this Agreement,
 - vi. Written assignment of any and all warranties for materials used or labor performed by subcontractors or other persons, 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 begin installation of the Artwork upon receipt of a written notice from the City that Artist is to begin installation. Artist shall then complete the installation within 30 days after receiving such notice from the City. Artist shall complete and install the Artwork and submit all required documentation to the City no later than September 30, 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. The Artist shall provide the City with written notice of completion after the 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 the Artist's written notice of completion. The City may only reject the Artwork if it does not meet the design plans, drawings or specifications set forth herein or if the 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 Artist. 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 upon completion, 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 upon completion, 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 five (5) 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 all rights under the Copyright Act of 1976, 17 U.S.C. §§ 101 et. seq., except as such rights are limited or waived by this Agreement. In the event Artist records Artist's identity and address with the Copyright Office, Artist shall notify the City of such recordation.
- 7.4. VARA Rights. Artist hereby waives, disclaims and terminates Artist's rights to prevent any intentional or accidental distortion, damage, destruction, or mutilation of the Artwork, which would be prejudicial to Artist's 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). Artist retains Artist's rights to disclaim authorship of the Artwork during Artist's lifetime as granted by 17 U.S.C. § 106A(a)(1)-(2). The Parties agree that the waiver set forth herein applies to the use of the Artwork to enhance the Site or to enhance any other site chosen by the City in the event the City relocates the Artwork to another site.
- 7.5. 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.

- 7.6. 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.
- 7.7. Credit to Artist. The City shall use reasonable efforts, in all reproductions based on the Artwork, to give credit to Artist. This Section 7.7 shall not apply if Artist exercises Artist's right to prevent the use of Artist's name as the author of the Artwork in accordance with this Agreement.
- 7.8. 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.* Artist shall defend at its expense, pay on behalf of, hold free and harmless, indemnify and assume legal liability for the City and its officers, employees, agents, and elected and appointed officials and volunteers (collectively, "Indemnified

Parties”), from and against any and all actions, claims, liabilities, assertions of liability, losses, costs and expenses, whether or not a lawsuit is filed, in law or in equity, including but not limited to attorneys’ fees at trial and appellate levels, reasonable investigative and discovery costs, court costs, or claims for bodily injury or death of persons and for loss of or damage to property, of every kind and nature whatsoever, which in any manner directly or indirectly may arise or be alleged to have arisen, or resulted or alleged to have resulted from the negligent acts or omissions or other wrongful conduct of or the infringement of any copyright, protected patent or trademark by Artist and/or its subcontractors, employees, and agents in connection with Artist’s performance pursuant to this Agreement.

- 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 restorations to the Artwork will be made. During Artist’s lifetime, to the extent practical, the City shall give the Artist notice of any intended repairs or restorations and the opportunity to 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 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 and 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 restorations, 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 it 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 Artist's lifetime, the City shall notify Artist if the City elects to remove and relocate or store the Artwork, and shall give Artist the opportunity to remove the Artwork at the 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 the 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 all of Artist's rights 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. The City shall give the Artist reasonable notice and opportunity (not to exceed ninety (90) days) to have the Artwork returned to the 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 Artist's rights 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 for Default. 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. In addition to the termination provisions set forth in this Section 11.2, the City may terminate this Agreement as provided in Florida Statute section 287.135.
- 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

TO ARTIST:

Xenobia Bailey

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

Post Office Box 1114
New York, NY 10156
Attn: Xenobia Bailey

- 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.

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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)

SHERILYN BAILEY D/B/A XENOBIA BAILEY:

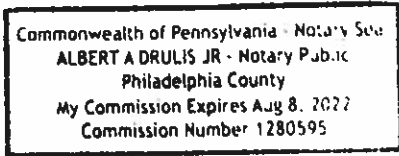
**WITNESSES
AS TO ARTIST:**

Sign: Sherilyn Bailey d/b/a Xenobia Bailey
Print: SHERILYN BAILEY D/B/A XENOBIA BAILEY
Address: P.O. BOX 1114
N.Y.C. N.Y. 10156

Sign: [Signature]
Print: Sherifas Wen
Sign: [Signature]
Print: DOMINIQUE DOUGLAS

STATE OF Pennsylvania
COUNTY OF Philadelphia

The foregoing instrument was acknowledged before me this 19th day of October, 2019, by Sherilyn Bailey, personally known to me or who has produced Drivers License as identification and who did take an oath.



NOTARY PUBLIC:
Sign: [Signature]
Print: Albert A. Drulis Jr.
State of Pennsylvania
My Commission No.: 1280595

APPROVED AS TO FORM AND CONTENT:

City Attorney (designee)

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