

ST. PETERSBURG CITY COUNCIL

Consent Agenda

July 8, 2021

TO: The Honorable Ed Montanari, Chair and Members of City Council

SUBJECT:

A resolution approving an agreement between the city of St. Petersburg, Florida, and The Urban Conga, Inc. (“Artist”), for Artist to design, fabricate, and install a piece of exterior art entitled “Tidal” at the triangular planter area at the entrance to the City’s new Shore Acres Recreation Center (“Center”) for a total firm fixed price of \$81,500; approving the rescission of an unencumbered appropriation in the Recreation and Culture Capital Improvement Fund (3029) in the amount of \$86,509 from the Shore Acres Recreation Center Replacement FY17 Project (15651); approving a transfer in the amount of \$86,509 from the unappropriated balance of the Recreation and Culture Capital Improvement Fund (3029), resulting from this rescission, to the Arts in Public Places Fund (1901); approving a supplemental appropriation in the amount of \$86,000 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); authorizing the city attorney to make non-substantive changes to the agreement; authorizing the mayor or his designee to execute the agreements and all other documents necessary to effectuate these transactions; providing an effective date.

EXPLANATION:

The Shore Acres Recreation Center 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 Center. A Request for Qualifications was posted on CODAworx August 17, 2020 inviting artists to submit applications to create a piece of art or multiple pieces of art for the Center. As a result, the Committee received sixty (60) applications and selected three (3) of those as finalists to prepare and present to the Committee site-specific proposals. The Committee met on April 27, 2021 to hear the finalists’ presentations of their proposals and based on the site-specific proposals presented by Ryan Swanson of The Urban Conga, Inc., the Committee selected The Urban Conga, Inc. to fully design and fabricate a piece of exterior art entitled “TIDAL” to be installed in the . On May 4, 2021, the Public Arts Commission approved the Committee’s selection and recommends that City Council approve agreements for Artist to fully design and develop “TIDAL” for the planter area at the entrance to the new Shore Acres Recreation Center.

The cost breakdown includes \$81,500 for the cost of the artwork and \$4,500 for stipends to the finalist artists. The amount available in the Shore Acres Recreation Center Replacement FY17 Project (15651) for transfer into the Arts in Public Places Fund (1901) is \$86,509. The remaining

funds after the agreement costs and stipends (\$509) will stay in the Arts in Public Places Fund for future public arts projects.

RECOMMENDATION:

Administration recommends that City Council approve a resolution approving an agreement between the city of St. Petersburg, Florida, and The Urban Conga, Inc. (“Artist”), for Artist to (i) design, fabricate, and install a piece of art entitled “Tidal” at the entrance area of the City’s Shore Acres Recreation Center (“Center”) for a firm fixed price of \$86,000; approving the rescission of an unencumbered appropriation in the Recreation and Culture Capital Improvement Fund (3029) in the amount of \$86,509 from the Shore Acres Recreation Center Replacement FY17 Project (15651); approving a transfer in the amount of \$86,509 from the unappropriated balance of the Recreation and Culture Capital Improvement Fund (3029), resulting from this rescission, to the Arts in Public Places Fund (1901); approving a supplemental appropriation in the amount of \$86,000 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 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

COST/FUNDING/ASSESSMENT INFORMATION: Funding will be available after the approval of a rescission of an unencumbered appropriation in the Recreation and Culture Capital Improvement Fund (3029) in the amount of \$86,509 from the Shore Acres Recreation Center Replacement FY17 Project (15651), a transfer in the amount of \$86,509 from the unappropriated balance of the Recreation and Culture Capital Improvement Fund (3029), resulting from this rescission, to the Arts in Public Places Fund (1901), and a supplemental appropriation in the amount of \$86,000 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 Renderings
- (2) Resolution
- (3) Artist Agreement

APPROVALS:

Administration: Wayne David Atherholt Budget: Christopher Griffin

Final Design and Description of Artwork

Often, climate change is a challenging topic for people to want to hear or discuss. It is often talked about in a way that makes people feel uncomfortable or overwhelmed. With this project, The Urban Conga, Inc. creates an interactive platform for an open conversation around data drawn from the National Oceanic and Atmospheric Administration.



Shore Acres is an area already feeling the impact of sea-level rise and is at a higher risk to its effects even more as time progresses. With the design of TIDAL, they used key data points from NOAA to create a piece of art that educates through moments of play. The artwork will showcase the flow and movement of the sea while reflecting and refracting light through a dichroic lens, creating an ever-changing experience much like the ocean itself.

The work will engage with the people, the architecture, and the interactions between the two as people enter the recreation center.

Prior to fabrication, Artist shall provide detailed final specifications for the City's approval.

A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF ST. PETERSBURG, FLORIDA, AND THE URBAN CONGA, INC. (“ARTIST”), FOR ARTIST TO DESIGN, DEVELOP, AND INSTALL A PIECE OF EXTERIOR ART ENTITLED “TIDAL” AT THE TRIANGULAR PLANTER AREA AT THE ENTRANCE TO THE CITY’S NEW SHORE ACRES RECREATION CENTER FOR A TOTAL FIRM FIXED PRICE OF \$81,500; APPROVING THE RESCISSION OF AN UNENCUMBERED APPROPRIATION IN THE RECREATION AND CULTURE CAPITAL IMPROVEMENT FUND (3029) IN THE AMOUNT OF \$86,509 FROM THE SHORE ACRES RECREATION CENTER REPLACEMENT FY17 PROJECT (15651); APPROVING A TRANSFER IN THE AMOUNT OF \$86,509 FROM THE UNAPPROPRIATED BALANCE OF THE RECREATION AND CULTURE CAPITAL FUND (3029), RESULTING FROM THIS RESCISSION, TO THE ARTS IN PUBLIC PLACES FUND (1901); APPROVING A SUPPLEMENTAL APPROPRIATION IN THE AMOUNT OF \$86,000 FROM THE INCREASE IN THE UNAPPROPRIATED BALANCE OF THE ART IN PUBLIC PLACES FUND (1901), RESULTING FROM THE ABOVE TRANSFER, TO THE MAYOR’S OFFICE, CULTURAL AFFAIRS DIVISION (020-1777); AUTHORIZING THE CITY ATTORNEY TO MAKE NON-SUBSTANTIVE CHANGES TO THE AGREEMENT; AUTHORIZING THE MAYOR OR HIS DESIGNEE TO EXECUTE THE AGREEMENT AND ALL OTHER DOCUMENTS NECESSARY TO EFFECTUATE THIS TRANSACTION 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 Shore Acres Recreation Center 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 Shore Acres Recreation Center (“Center”); and

WHEREAS, the Committee issued a Request for Qualifications (“RFQ”) on August 17, 2020 inviting artists to submit applications to create art to enhance the public spaces of the Center; and

WHEREAS, the Committee received sixty (60) applications in response to the RFQ and selected three (3) of those as finalists to prepare and present to the Committee site-specific proposals; and

WHEREAS, the Committee met on April 27, 2021 to hear the finalists’ presentations of their proposals; and

WHEREAS, based on the site-specific proposals for an exterior piece presented by Ryan Swanson of The Urban Conga, Inc. (“Artist”), one of the finalists, the Committee selected Artist to fully design, develop and install a piece of exterior art entitled “Tidal” in the triangular planter area at the entrance to the Center; and

WHEREAS, on May 4, 2021, the Public Arts Commission approved the Committee’s selection and recommends that City Council approve an agreement for Artist to fully design, develop, and install Tidal at the Center for a total cost of \$81,500; and

WHEREAS, pursuant to City Code Section 5-63, the total allocation of funds deposited into the Arts in Public Places fund for the Shore Acres Recreation Center project was \$86,590; and

WHEREAS, the Committee allocated \$4,500 from those funds to provide stipends for the finalists to prepare and present their proposals; and

WHEREAS, the remaining \$509 that was deposited into the Arts in Public Places fund will remain in that fund for future public art projects.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of St. Petersburg, Florida, an agreement between the City of St. Petersburg, Florida, and The Urban Conga, Inc. (“Artist”) for Artist to design, develop, and install a piece of exterior art entitled “Tidal” at the triangular shaped planter area at the entrance to the City’s new Shore Acres Recreation Center for a total firm fixed price of \$81,500.

BE IT FURTHER RESOLVED that an unencumbered appropriation in the Recreation and Culture Capital Improvement Fund (3029) in the amount of \$86,509 from the Shore Acres Recreation Center Replacement FY17 Project (15651) is hereby rescinded.

BE IT FURTHER RESOLVED that there is hereby approved the following transfer

from the unappropriated balance of the Recreation and Culture Capital Improvement Fund (3029), resulting from the above rescission, to the Art in Public Places Fund (1901):

<u>Recreation and Culture Capital Improvement Fund (3029)</u>	
Transfer to: Art in Public Places Fund (1901)	\$86,509

BE IT FURTHER RESOLVED that there is hereby approved from the increase in the unappropriated balance of the Art in Public Places Fund (1901), resulting from the above transfer, the following supplemental appropriation for FY 2021:

<u>Art in Public Places Fund (1901)</u>	
Mayor's Office, Cultural Affairs Division (020-1777)	\$86,000

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

BE IT FURTHER RESOLVED that the Mayor or his designee is authorized to execute the agreement and all other documents necessary to effectuate this transaction.

This Resolution shall become effective immediately upon its adoption.

Approvals:

Wayne David Atherholt

Administration

Sharon Michnowicz

City Attorney (Designee)

00570572

Jim Chism

Budget

ARTIST AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered into this 14th day of June, 2021 ("Effective Date"), by and between the City of St. Petersburg, Florida, a municipal corporation of the State of Florida, ("City") and The Urban Conga, Inc. ("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 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 "TIDAL" which is to be fully designed, fabricated, and installed by Artist under this Agreement. The Artwork is generally depicted and described in Exhibit A, which is attached hereto and made a part of this Agreement.

1.2 Site – Triangular planter area at the entrance to the new Shore Acres Recreation Center, 4230 Shore Acres Blvd NE, St. Petersburg, FL 33703.

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 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. 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 three (3) years after Final Acceptance (as hereinafter defined).
 - 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. Artist is not responsible for site preparation, which includes electric, concrete slab, foundation, and landscaping.
- 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 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 Eighty-one thousand five hundred dollars (\$81,500) ("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 installment represents full and final payment for all services and materials provided prior to payment thereof. Each installment shall be paid after receipt of the applicable certifications or documentation described below, which shall be in a form acceptable to the City in its reasonable discretion.
- A. Artist shall invoice the City for twenty percent (20%) or sixteen thousand three hundred dollars (\$16,300) within thirty (30) days after the Effective Date, and the City shall pay such invoice within thirty (30) days after receipt (provided Artist is in compliance with the terms and conditions of this Agreement). This amount is intended to cover completion of the final design.
 - B. Artist shall invoice the City for sixty percent (60%) or forty-eight thousand nine hundred dollars (\$48,900) of the Firm Fixed Price, and the City shall pay such invoice within thirty (30) days of receipt. This amount is intended to cover the fabrication of the work.
 - C. Artist shall invoice the City for the remaining twenty percent (20%) or sixteen thousand three hundred dollars (\$16,300) within thirty (30) days provided the Artist is in compliance with the terms and conditions of this Agreement, has completed and installed the Artwork, and has presented to or obtained 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 of the Artwork pursuant to this Agreement.
- 3.3. Non-Appropriation. The obligations of the City as to any funding required pursuant to this Agreement shall be limited to an obligation in any given year to budget, appropriate and pay from legally available funds, after monies for essential City services have been budgeted and appropriated, sufficient monies for the funding that is required during that year. Notwithstanding the foregoing, the City shall not be prohibited from pledging any legally available non-ad valorem revenues for any obligations heretofore or hereafter incurred, which pledge shall be prior and superior to any obligation of the City pursuant to this Agreement.
- 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 December 1, 2021. The City may, in its sole and absolute discretion, extend this date for up to two weeks upon a written request from Artist that includes a justification for such extension.
- 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 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 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 Ryan Swanson and Maeghann Coleman of The Urban Conga, Inc.. 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 of permanent character, as defined in St. Petersburg City Code section 5-54 (i.e., fixed in location and constructed of materials that are durable against vandalism, theft, and weather, such that a low level of maintenance is required for a period of at least 25 years).

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 by this Agreement or waived by Ryan Swanson and Maeghann Coleman of The Urban Conga, Inc. 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 Ryan Swanson or Maeghann Coleman exercise their rights to prevent the use of their names as the authors 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 hereinafter defined), 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.

- D. The Indemnified Parties must be shown as an additional named insured with respect to this coverage.
- E. The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operations of Artist.
- F. 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.
- G. 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.
- H. Compliance with the foregoing requirements shall not relieve Artist of its liability and obligations under this Agreement.

ARTICLE 9. LIABILITY, 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".

9.4. No Punitive Damages. Upon Final Acceptance, except as otherwise prohibited by applicable Laws, neither party will be liable to the other party for any punitive damages in any way arising out of or related to this Agreement, even if the party has been advised of the possibility of such damages.

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 Ryan Swanson and Maeghann Coleman's lifetimes, to the extent practical, the City shall give Artist (i.e., The Urban Conga, Inc.) notice of any intended repairs or restorations 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 Ryan Swanson and Maeghann Coleman's lifetimes, the City shall notify Artist (i.e., The Urban Conga, Inc.) 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 Ryan Swanson and Maeghann Coleman's lifetimes, the City shall give Artist (i.e., The Urban Conga, Inc.) 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 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 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 sections 287.135 and 448.095.

- 11.3. Termination for Convenience. This Agreement may be terminated at any time by the City for convenience upon sixty (60) 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: Wayne Atherholt
P.O. Box 2842
St. Petersburg, FL 33731

TO ARTIST:
The Urban Conga, Inc.
6250 42nd Street N, Unit #11
Pinellas Park, FL 33781
Attn: Ryan Swanson

- 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

ATTEST:

By: _____

City Clerk

Print: _____

(SEAL)

Title: _____

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

THE URBAN CONGA, INC.:

Sign: _____

Print: Ryan Swanson

Address: 6250 42nd St N Unit 11
Pineles Park FL 33781

STATE OF NEW YORK)
COUNTY OF KING)

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization this 14 day of JUNE, 2021, by RYAN SWANSON, personally known to me or who has produced DRIVER LICENSE as identification and who did take an oath.

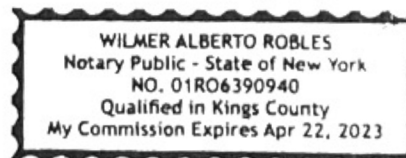
NOTARY PUBLIC:

Sign: W. Ayala

Print: WILMER ROBLES

State of NEW YORK

My Commission No.: 01R06390940



APPROVED AS TO FORM AND CONTENT:

City Attorney (designee)
00568517

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 – Ryan Swanson and Maeghann Coleman’s Releases and Waivers of Rights under 17 U.S.C. § 106A

Exhibit A

Final Design and Description of Artwork



Often, climate change is a challenging topic for people to want to hear or discuss. It is often talked about in a way that makes people feel uncomfortable or overwhelmed. With this project, The Urban Conga, Inc. creates an interactive platform for an open conversation around data drawn from the National Oceanic and Atmospheric Administration.

Shore Acres is an area already feeling the impact of sea-level rise and is at a higher risk to its effects even more as time progresses. With the design of TIDAL, they used key data points from NOAA to create a piece of art that educates through moments of play. The artwork will showcase the flow and movement of the sea while reflecting and refracting light through a dichroic lens, creating an ever-changing experience much like the ocean itself.

The work will engage with the people, the architecture, and the interactions between the two as people enter the recreation center.

Prior to fabrication, Artist shall provide detailed final specifications for the City's approval.

Exhibit A

Signature: 
Wayne Atherholt (Jun 24, 2021 12:35 EDT)
Email: wayne.atherholt@stpete.org

Signature: 
Jim Chism (Jun 24, 2021 15:41 EDT)
Email: Jim.Chism@stpete.org

Signature: 
Christopher Griffin (Jun 24, 2021 13:37 EDT)
Email: christopher.griffin@stpete.org

Signature: 
Sharon Michnowicz (Jun 24, 2021 15:44 EDT)
Email: sharon.michnowicz@stpete.org