

**CONTRACT FOR COMMISSION AND PURCHASE OF
PUBLIC ART BETWEEN THE CITY OF SUNRISE, FLORIDA
AND GUSTAVO OCAMPO LLC**

THIS CONTRACT is made and entered into this _____ day of _____, 2023, by and between THE CITY OF SUNRISE, A MUNICIPAL CORPORATION OF THE STATE OF FLORIDA, whose address is 10770 West Oakland Park Boulevard, Sunrise, Florida 33351 (hereinafter referred to as the "City") and GUSTAVO OCAMPO LLC, a Florida corporation authorized to conduct business in the State of Florida, with offices at 109 South Bayview Blvd., Suite C, Oldsman, FL 34677 (hereinafter referred to as the "Artist") for the design and construction of the Parking Lot Sculpture, (hereinafter referred to as the "Project"), the City and the Artist hereby agreeing as follows:

ARTICLE I

THE CONTRACT AND THE CONTRACT DOCUMENTS

1.1 **The Contract**

1.1.1 The Contract between the City and the Artist, of which this Contract is a part, consists of the Contract Documents. It shall be effective on the date this Contract is executed by the last party to execute it.

1.2 **The Contract Documents**

1.2.1 The Contract Documents consist of this Contract, the Specifications, Call to Artists, the Final Proposal including the Design Drawings (collectively referred to as the "Final Proposal"), the Addenda, any Supplemental Conditions, the Purchase Order, all Change Orders and Field Orders issued hereinafter, and any other amendments hereto executed by the parties hereafter.

1.3 **Entire Agreement**

1.3.1 This Contract constitutes the entire and exclusive agreement between the City and the Artist with reference to the Project. Specifically, but without limitation, this Contract supersedes all prior written or oral communications, representations and negotiations, if any, between the City and the Artist.

1.4 **No Privity with Others**

1.4.1 Nothing contained in this Contract shall create, or be interpreted to create, privity or any other contractual agreement between the City and any person or entity other than the Artist.

1.5 Intent and Interpretation

1.5.1 The intent of this Contract is to require complete, correct and timely execution of the Artwork, as that term is defined in Paragraph 2.1 below. Any Artwork that may be required, implied or inferred by the Contract Documents, or any one or more of them, as necessary to produce the intended result shall be provided by the Artist for the Contract Price.

1.5.2 This Contract is intended to be an integral whole and shall be interpreted as internally consistent. What is required by any one Contract Document shall be considered as required by the Contract.

1.5.3 When a word, term or phrase is used in this Contract, it shall be interpreted or construed, first, as defined herein; second, if not defined, according to its generally accepted meaning in the construction industry; and third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage.

1.5.4 The words "include", "includes", or "including", as used in this Contract, shall be deemed to be followed by the phrase, "without limitation".

1.5.5 The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of this Contract shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this Contract.

1.5.6 Words or terms used as nouns in this Contract shall be inclusive of their singular and plural forms, unless the context of their usage clearly requires a contrary meaning.

1.5.7 The Artist shall have a continuing duty to read, carefully study and compare each of the Contract Documents and shall give written notice to the City of any inconsistency, ambiguity, error or omission which the Artist may discover with respect to these documents before proceeding with the affected Artwork. The issuance, or the express or implied approval by the City of the Contract Documents shall not relieve the Artist of the continuing duties imposed hereby, nor shall any such approval be evidence of the Artist's compliance with this Contract.

1.5.8 In the event of any conflict in the Contract Documents, the following documents shall take precedence in the following order of precedence:

- (a) any Change Orders;

- (b) the Addenda;
- (c) the Contract;
- (d) any Supplemental Conditions;
- (e) the Purchase Order;
- (f) the Final Proposal; and
- (g) the Call to Artists

As between numbers and scaled measurements on the Final Proposal the numbers shall govern; as between larger scale and smaller scale drawings, the larger scale shall govern.

1.5.9 Neither the organization of any of the Contract Documents into divisions, sections, paragraphs, articles, (or other categories), nor the organization or arrangement of the Final Proposal, shall control the Artist in dividing the Artwork or in establishing the extent or scope of the Artwork to be performed by a Subcontractor, as defined in Paragraph 9.1.1 below.

1.5.10 Whenever the word "days" is used, it shall mean calendar days and not working days unless otherwise specified. Whenever the term "business days" is used it shall mean any day except any Saturday, any Sunday or any day which is a holiday that is recognized by the City of Sunrise.

1.6 Ownership of Contract Documents

1.6.1 The Contract Documents, and each of them, shall remain the property of the City. The Artist shall have the right to keep one record set of the Contract Documents upon completion of the Project; provided, however, that in no event shall Artist use, or permit to be used, any or all of such Contract Documents on other projects without the City's prior written authorization.

1.7 Public Records Law

1.7.1 The Artist shall comply with all applicable requirements contained in the Florida Public Records Law (Chapter 119, Florida Statutes), including but not limited to any applicable provisions in Section 119.0701, Florida Statutes. To the extent that the Artist and this Contract are subject to the requirements in Section 119.0701, Florida Statutes, the Artist shall: (a) keep and maintain public records required by the City to perform the services provided hereunder; (b) upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow public records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law; (c) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law for the duration of the term of this Contract and following completion of this Contract if the Artist does not transfer the records to the City; and (d) upon completion of the Contract, transfer, at no cost, to the City all public records in the possession of the Artist or keep and maintain public records required by the City to

perform the service. If the Artist transfers all public records to the City upon completion of the Contract, the Artist shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Artist keeps and maintains public records upon completion of the Contract, the Artist shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City. If the Artist fails to comply with the requirements in this Section, the City may enforce these provisions in accordance with the terms of this Agreement. If the Artist fails to provide the public records to the City within a reasonable time, it may be subject to penalties under Section 119.10, Florida Statutes.

IF THE ARTIST HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE ARTIST'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, THE ARTIST SHOULD CONTACT THE CITY'S CUSTODIAN OF PUBLIC RECORDS: THE CITY CLERK, FELICIA M. BRAVO, BY TELEPHONE (954/746-3333), E-MAIL (CITYCLERK@SUNRISEFL.GOV), OR MAIL (CITY OF SUNRISE, OFFICE OF THE CITY CLERK, 10770 WEST OAKLAND PARK BOULEVARD, SUNRISE, FLORIDA 33351).

1.8 Compliance with Laws

1.8.1 Artist and the Services must comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations including, without limitation, American with Disabilities Act (ADA), 42 U.S.C. § 12101, Section 504 of the Rehabilitation Act of 1973, and any related federal, state, or local laws, rules, and regulations.

1.8.2 ADA Compliance

Upon request, Artist will provide the City with any accessibility testing results and written documentation verifying accessibility for documents delivered by the Artist to the City, as well as promptly respond to and resolve accessibility complaints.

1.9 Electronic Recordkeeping

1.9.1 Artist certifies its services and products meet all recordkeeping requirements of the State of Florida, including but not limited to those in Chapter 119, Florida Statutes and Rule 1B-26.003(6)(g), Florida Administrative Code.

ARTICLE II

THE ARTWORK

2.1 The term "Artwork" shall mean whatever is done by or required of the Artist to perform and complete its duties under this Contract, including the following: completion of the Project as proposed in the Final Proposal; furnishing of any required insurance; and the provision or furnishing of labor, administration, management, supervision, services, materials, supplies, equipment, fixtures, tools, transportation, storage, power, permits and licenses required of the Artist to complete this Contract. The Artwork to be performed by the Artist is generally described as follows:

The Artwork to be performed under this Contract includes, but is not limited to: the design, community engagement, a public lecture (if requested by the City), meetings with City staff and consultants, materials, structural engineering, permitting, fabrication, construction, delivery and installation of one (1) sculpture project that will be located at 1200 Sunset Strip called "Caribbean Garden" which includes five (5) separate sculptures ("Sculpture") together with all services, labor, supplies, materials and equipment necessary for the completion of the Sculpture as shown and specified in the Final Proposal.

2.2 The Sculpture shall be durable and require minimal ongoing maintenance. South Florida has a sub-tropical climate and is hot and humid with intense sun and seasonal heavy rain. Problems with rust and fading shall be avoided. The Sculpture shall be designed and constructed in accordance with the Florida Building Code.

2.3 The Artist shall provide and install the lighting fixtures consistent with the Final Proposal and the City shall provide electrical service and conduit to the Project site.

2.4 The Artist shall secure any and all required licenses, permits, approvals and other legal authorizations at the Artist's expense necessary for the fabrication and installation of the Sculpture at the Project site, including but not limited to written approval from the City certifying structural compliance of the Sculpture with applicable building codes.

2.5 Once the Sculpture have been fabricated, Artist shall submit a report to the City, accompanied by photographs or other acceptable documentation substantiating that the fabrication has been completed in accordance with the Final Proposal. The report shall include plans for installation and a description of all activities requiring coordination with the City.

2.6 The Artist shall not perform operations of any nature on, over or across property owned or leased by third parties, except such operations as are specifically authorized in plans or specifications and as authorized by the City.

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

2.8 Except as set forth below, the risk of destruction or damage to the Sculpture or any part thereof shall be borne by the Artist until written acceptance by the City.

Accordingly, except as set forth herein, the Artist shall at its sole cost and expense, rebuild, repair and restore damage to any portion of the Sculpture until written acceptance of the Project by the City. Notwithstanding the foregoing, after delivery of the Sculpture to the Project site and during installation and until final acceptance of the Project by the City as installed, the Artist shall not be responsible for the cost of repair for any damage caused by job-site Artists or Subcontractors hired by City or otherwise not under the Artist's control or supervision or in the event of vandalism or natural disasters resulting in damage to the Sculpture.

2.9 Upon completion of the Project, the Artist shall provide and submit all information on the Sculpture as may be requested by the City for its files, including but not limited to technical and maintenance information and "As Built" drawings, photographs, plans, all required warranties as may be applicable, for use in maintaining and repairing the Sculpture, information regarding copyright of the Sculpture by the Artist, updated biographical information, and a statement regarding the Project.

2.10 The Artist shall perform all of the Artwork required, implied or reasonably inferable from this Contract.

2.11 Substitutions: Unless expressly permitted or allowed by the Contract Documents, substitutions of materials, articles, systems, equipment, or other components of the Artwork will not be considered. Where substitutions or approved equals are expressly permitted or allowed by the Contract Documents, the Artist must demonstrate to the City that a proposed substitution is equal in substance, quality and function to the material, article, or piece of equipment identified in the Contract Documents. The City shall have no obligation to accept a proposed substitution and no substitution shall be allowed without the prior written approval from the City. If the substitution results in a savings to the Artist, the City shall be entitled to a credit for the amount saved as a result of the substitution. Requests for substitutions and approved equals must be submitted to the City for evaluation no later than 14 days after issuance of the Notice of Award.

ARTICLE III

CONTRACT TIME

3.1 Time

3.1.1 The City shall notify the Artist in writing of the date on which the Artwork shall begin ("the Notice to Proceed Date"). The Artist shall commence the Artwork on the Notice to Proceed Date and carry on the Artwork regularly and without interruption. The **Artist shall achieve Substantial Completion of the Artwork** no later than TWO HUNDRED AND TEN **(210) calendar days** after the Notice to Proceed Date. If there are delays that are outside of the Artist's control, such as permitting delays attributed to the City, the Artist can request additional time and the City will not unreasonably deny the request. The number of calendar days from the Notice to Proceed Date, through the date set forth for Substantial Completion,

shall constitute the "Contract Time." The Artist shall furthermore achieve Final Completion of the Artwork no later than **SIXTY (60) calendar days** after date of Substantial Completion.

3.2 Notice to Proceed Date

3.2.1 Once the Notice to Proceed Date has been established, the Artist shall be responsible for the timely and successful completion of the Artwork and shall endeavor to provide all applicable agencies having jurisdiction with all the required documentation needed to successfully and timely continue the progress of the Artwork. This may include but is not limited to providing all necessary documentation in the form of shop drawings, clarifications, calculations, technical data, protocols, product approvals, etc.

3.2.2 Under no circumstances will the City accept claims or be responsible for delays arising from failed, unsuccessful, untimely or late inspections or rejections of inspected Artwork due to the fault of the Artist for not supplying all of the necessary documentation in the forms required or requested by the Building Official or the City's Engineer.

3.3 Substantial Completion

3.3.1 "Substantial Completion" shall mean that stage in the progression of the Artwork when the Sculpture is sufficiently complete in accordance with this Contract that the City can enjoy beneficial use of the Sculpture and can utilize the Sculpture for its intended purpose. A prerequisite for the achievement of Substantial Completion is the receipt by the City of any and all authorizations required for by any governmental or regulatory authority. Achievement of Substantial Completion must meet the requirements specified in Section 5.4.

3.4 Time is of the Essence

3.4.1 All limitations of time set forth in the Contract Documents are of the essence of this Contract.

ARTICLE IV

CONTRACT PRICE

4.1 The Contract Price

4.1.1 The City shall pay, and the Artist shall accept, as full and complete payment for all of the Artwork required herein, the fixed sum of **SEVENTY THOUSAND DOLLARS (\$ 70,000.00)**. The sum set forth in this Subparagraph 4.1.1 shall constitute the Contract Price which shall not be modified except by Change Order as provided in this Contract.

ARTICLE V

PAYMENT OF THE CONTRACT PRICE

5.1 Payment Procedure

5.1.1 The City shall pay the Contract Price to the Artist as provided below.

5.1.2 Progress Payments -- Based upon the Artist's Applications for Payment submitted to the City and the City's approval of such Applications the City shall make progress payments to the Artist on account of the Contract Price according to the following schedule:

25% (\$17,500) upon Notice to Proceed and a purchase order issued by the City and the Artist's submission to the City of proof of all insurance required herein.

25% (\$17,500) upon approval of City permits. Artist required to provide photographs to verify work in progress 25% and 50%. In addition to photographs the City may elect to inspect the progress in-person.

25% (\$17,500) upon the date on which the Artist notifies the City that the Artwork is 75% complete. The Artist shall provide photographs to verify the progress. Artwork finished ready for powder coating.

25% (\$17,500) within thirty (30) days of final acceptance of the Artwork by the City and the Artist's submission of a Final Invoice, Warranty of Title, and all additional documentation required under the post installation requirements set forth in Section 2.9 of this Agreement, to the City.

5.1.3 The Artist shall submit an Application for Payment to the City's Representative identified in Section 8.1 for each stage of completion set forth in Section 5.1.2, along with supporting photographs. Submission of the photographs as required herein shall be a condition precedent for payment to the Artist. Such Application for Payment shall be signed by the Artist and shall constitute the Artist's representation that the Artwork has progressed to the level for which payment is requested, that the Artwork has been properly performed in full accordance with this Contract, and that the Artist knows of no reason why payment should not be made as requested. Thereafter, the City will review the Application for Payment and may also review the Artwork at its place of fabrication, the Project site, or elsewhere to determine whether the quantity and quality of the Artwork is as represented in the Application for Payment and is as required by this Contract. The City, in its sole discretion, may require the Artist to meet and confer with the City with respect to said Application for Payment prior to any approval of same. The City shall make partial payments on account of the Contract Price to the Artist within twenty-five (25) days following the City's approval of each Application for Payment. The amount of each partial payment shall be the amount approved for payment by the City less such amounts, if any, otherwise owing by the Artist to the City or which the City shall have the right to withhold as authorized by this

Contract. The City's approval of an Application for Payment shall not preclude the City from the exercise of any of its rights as set forth in Subparagraph 5.2 below.

5.1.4 The Artist warrants that title to all Artwork covered by an Application for Payment will pass to the City no later than the time of payment. The Artist further warrants that upon submittal of an Application for Payment, all Artwork for which payments have been received from the City shall be free and clear of liens, claims, security interests or other encumbrances in favor of the Artist or any other person or entity whatsoever.

5.1.5 The Artist shall promptly pay each Subcontractor out of the amount paid to the Artist on account of such Subcontractor's work, the amount to which such Subcontractor is entitled.

5.1.6 No progress payment, nor any use or of the Project by the City, shall be interpreted to constitute an acceptance of any Artwork not in strict accordance with this Contract.

5.2 Withheld Payment

5.2.1 The City may decline to make payment, may withhold funds, and, if necessary, may demand the return of some or all of the amounts previously paid to the Artist, to protect the City from loss because of:

- (a) defective Artwork not remedied by the Artist nor, in the opinion of the City, likely to be remedied by the Artist;
- (b) claims of third parties against the City or the City's property;
- (c) **failure by the Artist to pay Subcontractors or others in a prompt and proper fashion. However, notwithstanding the foregoing, and provisions of Section 255.05(11), Florida Statutes, the parties hereby agree that the City may condition its payment to the Artist on the production of a release, waiver, or like documentation from a Subcontractor or others demonstrating that the Subcontractor or others do not have an outstanding claim for payments due on labor, services or materials furnished under the Contract. In the event the City requires such documentation, the provisions of the Local Government Prompt Payment Act (Sections 218.70 through 218.80, Florida Statutes) shall be suspended until such time as the City obtains the requested documentation;**
- (d) evidence that the balance of the Artwork cannot be completed in accordance with the Contract for the unpaid balance of the Contract Price;

- (e) evidence that the Artwork will not be completed in the time required for Substantial or Final Completion;
- (f) persistent failure to carry out the Artwork in accordance with the Contract;
- (g) damage to the City or a third party to whom the City is, or may be, liable;
- (h) failure to comply with 5.1.3 of this Section; or
- (i) any and all sums or obligations owed by the Artist to the City under this Contract or any other agreement between City and Artist.

In the event that the City makes written demand upon the Artist for amounts previously paid by the City as contemplated in this Subparagraph 5.2.1, the Artist shall comply with such demand within ten (10) days of receipt of same.

5.3 Unexcused Failure to Pay. If within twenty-five (25) days after the date established herein for payment to the Artist by the City, the City, without cause or basis hereunder, fails to pay the Artist any amount then due and payable to the Artist, then the Artist may after ten (10) additional days' written notice to the City and without prejudice to any other available rights or remedies it may have, stop the Artwork until payment of those amounts due from the City have been received. Any payment not made within twenty-five (25) days after the date due shall bear interest at the City's investment earnings rate from the Florida State Board of Administration.

5.4 Substantial Completion. When the Artist believes the Artwork is substantially complete, the Artist shall submit a letter to the City stating that the Project is substantially complete and including a list of items to be completed or corrected. The City will inspect the Artwork and may supplement the list of items to be completed or corrected in the event the Artist has omitted any incomplete or defective Artwork. When the City, determines the Artwork is in fact substantially complete, it will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall state the responsibilities of the City and the Artist for Project security, maintenance, utilities, damage to the Artwork, and insurance, and shall fix the time within which the Artist shall complete the items listed therein. Guarantees required by the Contract shall commence on the date of Substantial Completion of the Artwork. The Certificate of Substantial Completion shall be submitted to the City and the Artist for their written acceptance of the responsibilities assigned to them in such certificate. If the City determines that the Artwork is not substantially complete, the City shall notify the Artist in writing within two (2) business days after the inspection. If the City is unable to issue its Certificate of Substantial Completion and is required to repeat its inspection of the Artwork, the Artist shall bear the cost of such repeat inspection(s), which cost may be deducted by the City from the Artist's next pay application. The Artist is responsible for all Project security, maintenance, damage to the Artwork, and insurance until issuance of the Certificate of Substantial Completion.

5.5 Completion and Final Payment

5.5.1 When all of the Artwork is finally complete and the Artist is ready for a final inspection, it shall notify the City thereof in writing. Thereupon, the City will make final inspection of the Artwork and, if the Artwork is complete in full accordance with this Contract and this Contract has been fully performed, the Artist shall be entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to this Contract. If the City is required to repeat its final inspection of the Artwork, the Artist shall bear the cost of such repeat final inspection(s) which cost may be deducted by the City from the Artist's final payment.

5.5.1.1 When the City reasonably believes that Final Completion will be inexcusably delayed, the City shall be entitled, but not required, to withhold from any amounts otherwise due the Artist an amount then believed by the City to be adequate to offset such delays. City is authorized to deduct from and offset against any and all payments or amounts otherwise due Artist under this Contract or any other agreement between City and Artist an amount equal to any and all sums or obligations owed by Artist to the City under any such agreement between City and Artist.

5.5.2 As a condition precedent to final payment to the Artist, the Artist shall deliver to the City the following documents in a form acceptable to the City; a final receipt and release of the City; the Artist's affidavit that all payrolls, invoices for materials and equipment, and other liabilities connected with the Artwork for which the City, or the City's property might be responsible, have been fully paid or otherwise satisfied; releases and waivers of lien from all Subcontractors of the Artist and of any and all other parties required by the City; a duly executed assignment of any and all warranties required by the Contract Documents; any and all manuals required by the Contract Documents; any and all manuals relating to Project materials or Project maintenance; and all as-built drawings required by the Contract Documents. If any third party fails or refuses to provide a release of claim or waiver of lien as required by the City, the Artist shall furnish a bond satisfactory to the City to discharge any such lien or indemnify the City from liability.

5.5.3 As a further condition precedent to final payment, the Artist shall furnish to the City a complete and comprehensive set of as-built drawings as required in the Contract Documents; said as-built drawings are to be submitted on minimum 24" x 36" bond paper and electronically in PDF format , and the City and the Artist agree and acknowledge that the Contract Price includes all cost and expense associated with the production of said as-built drawings.

5.5.4 The City shall make final payment of all sums due the Artist within twenty-five (25) days of the City's final inspection of the Artwork.

5.5.5 Acceptance of final payment shall constitute a waiver of all claims against the City by the Artist except for those claims previously made in writing against the City by the

Artist, pending at the time of final payment, and identified in writing by the Artist as unsettled at the time of its request for final payment.

ARTICLE VI

THE CITY

6.1 Information, Services and Items Required from City

6.1.1 The "City" -- The City of Sunrise, as represented by the City Commission and its designees which is the owner of this Project.

6.1.2 The Community Development Department: Building Division -- The Building Division is the City's Division responsible for assuring compliance with applicable regulations and the Florida Building Code as required. The Building Division is responsible for issuing permits, reviews, inspections, Certificates of Completion and any other actions as described to be the responsibility of the Building Official under the Florida Building Code. The Building Division is also responsible for the enforcement of other state, federal and county regulations which may fall under the jurisdiction of the Building Official.

6.1.3 The Community Development Department: Engineering Division -- The City's Engineering Division is the City's Division responsible for issuing permits, reviews, inspections and any other actions necessary for the enforcement of the City's Ordinances affecting the site, drainage, zoning, water, sewer, irrigation and distribution lines and coverage, paving, traffic, landscaping, and irrigation. The Engineering Division issues Final Inspection Approvals for the Artwork reviewed and inspected under the Engineering Division's permitted portion of the project's Artwork. The City's Engineering Division assures compliance with roads, drainage, landscaping, irrigation, and appearance of the site.

6.1.4 All City of Sunrise review, construction, and inspection fees will be paid by the City, save and except fees for re-inspection. All State and County permit fees will be paid for by the Artist.

6.1.5 The City shall furnish the Artist, free of charge, two (2) copies of the Contract Documents for execution of the Artwork. The Artist will be charged, and shall pay the City **FIFTY Dollars (\$50.00)** per additional set of Contract Documents which it may require.

6.2 Right to Stop Artwork

6.2.1 If the Artist persistently fails or refuses to perform the Artwork in accordance with this Contract, the City shall have the right, but not an obligation, to order the Artist to stop the Artwork, or any described portion thereof, until the cause for stoppage has been corrected, no longer exists, or the City orders that Artwork be resumed. In such event, the Artist shall immediately obey such order. A stop Artwork directive provided under this paragraph shall not entitle the Artist to an extension of the completion date.

6.3 City's Right to Perform Artwork

6.3.1 If the Artist's Artwork is stopped by the City under Paragraph 6.2, or if the Artist persistently fails or refuses to perform the Artwork in accordance with this Contract, and the Artist fails prior to 5:00 p.m. three (3) days after such stoppage, failure, or refusal, to provide adequate assurance to the City that the cause of such stoppage will be eliminated or corrected, then the City may, without prejudice to any other rights or remedies the City may have against the Artist, proceed to carry out the subject Artwork. In such a situation, an appropriate Change Order shall be issued deducting from the Contract Price the cost of correcting the subject deficiencies. If the unpaid portion of the Contract Price is insufficient to cover the amount due the City, the Artist shall pay the difference to the City.

6.4 Inspections

6.4.1 No inspector shall have authority to waive any requirements of the Contract Documents. Any failure or omission on the part of any inspector or any agent of the City, to condemn any defective Artwork or material shall not release the Artist from its obligations to install the Artwork free from faults and defects and to promptly remove and repair any defective or deficient Artwork. The Artist hereby acknowledges and agrees that no inspector shall have authority to:

- (a) Authorize any deviation from the Contract Documents or approve any substitute materials or equipment;
- (b) Undertake any of the responsibilities of the Artist, Subcontractors or Artist's superintendent;
- (c) Expedite the Artwork for the Artist;
- (d) Advise on or issue directions relative to any aspect of the means, methods, techniques, sequences or procedures of construction unless such is specifically called for in the Contract Documents;
- (e) Advise on or issue directions as to safety precautions and programs in connection with the Artwork. Provided however, this shall not preclude the City inspector from notifying the Artist of any hazardous or dangerous condition; or
- (f) Participate in specialized field or laboratory tests.

6.5 Coordination and Scheduling of Artwork

6.5.1 The Artist shall cooperate with the City and any separate Artists retained by the City, and the Artist shall carefully coordinate and schedule the Artwork as may be

required to accommodate without delay or interference the Artwork of the City or any of its separate Artists.

6.6 Artist Responsible for Delays

6.6.1 The Artist shall be responsible for any damages caused to the City as a result of any delays caused by the Artist.

6.7 City's Right to Use

6.7.1 The City reserves the right to use any part of the Project when same is Substantially Complete. It is expressly agreed, however, that partial use of any part of the Project does not activate any warranty obligations of the Artist and any warranties which contain time limitations shall commence on the date of Final Completion unless otherwise expressly specified in the Contract Documents.

ARTICLE VII

THE ARTIST

7.1 Artist's Representative

The Artist's Representative for this Project is Gustavo and Lina Ocampo, 109 South Bayview Blvd, Suite C, Oldsmar, FL 34677, (727)804-2693, guslinafineart@hotmail.com. The Artist's Representative is designated as the Artist's designated representative for purposes of any and all written or verbal communications between the parties. The Artist shall notify the City of any change to the Artist's Representative.

7.2 The Artist is again reminded of its continuing duty set forth in Subparagraph 1.5.7. If the Artist performs any of the Artwork knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the City the Artist shall bear responsibility for such performance and shall bear the cost of correction.

7.3 The Artist shall perform the Artwork strictly in accordance with this Contract. The Artist shall also be responsible for all cutting, fitting or patching incidental to the Artwork not identified on the Final Proposal to provide a professional, complete, and functional Project.

7.4 Artist's Professional Standard

7.4.1 City's engagement of the Artist is based upon the Artist's representations to the City that:

- (a) Artist has carefully reviewed all Contract Documents prior to signing this Contract.
- (b) Artist is an organization experienced in, and qualified, willing and able to provide construction of the nature and type necessary to perform the Artwork;
- (c) Artist is authorized and licensed to do business in the State of Florida, Broward County, and the City of Sunrise; and
- (d) Artist shall furnish labor, material, equipment and services (i) which expeditiously, economically and properly complete the Artwork in the manner most consistent with the Owner's interests and objectives, (ii) in accordance with the Contract Documents, and (iii) in accordance with the highest standards currently practiced by persons and entities performing comparable labor, material, equipment and services on projects of similar size and complexity.

7.4.2 The Artist shall administer, manage, supervise and direct the Artwork using the Artist's best skill, effort and attention. The Artist shall be responsible to the City for any and all acts or omissions of the Artist, its employees and others engaged in the Artwork on behalf of the Artist.

7.5 Artist's Warranties and Representations

7.5.1 The Artist warrants to the City that all labor furnished to progress the Artwork under this Contract will be competent to perform the tasks undertaken, that the product of such labor will yield only first-class results, that materials and equipment furnished will be of good quality and new unless otherwise permitted by this Contract, and that the Artwork will be of good quality, free from faults and defects and in strict conformance with this Contract for a period of three (3) years from the Final Completion date unless a longer warranty period is a requirement of the drawings and/or specification for either individual elements of the Project or the entire Project. All Artwork not conforming to these requirements may be considered defective. The Artist will, at its own expense, remedy any defects due to faulty workmanship or materials that arise within such warranty period.

7.5.2 The Artist represents and warrants to the City that the Sculpture will not contain sharp points or edges which may pose a danger to the public and agrees to cooperate in making or permitting adjustments to the Sculpture if necessary to eliminate any sharp points or edges which become apparent within one (1) year of the date of Final Completion.

7.5.3 The Artist represents and warrants to the City that the Sculpture are solely the result of the Artistic efforts of the Artist and that it will be installed free and clear of any liens, claims or other encumbrances of any type from any source whatsoever.

7.5.4 The personal skill, judgment and creativity of the Artist are essential elements of this Contract. Therefore, although the parties recognize that the Artist may employ qualified personnel to Artwork under the Artist's supervision, the Artist shall not assign, transfer or subcontract the creative or Artistic portions of the Project to a person other than the Artist without the prior written consent of the City.

7.5.5. The Artist represents and warrants to the City that the Sculpture will be unique and that the Sculpture do not infringe upon any copyright. The Artist will not execute or authorize another to execute a duplicate work of art consisting of the same design and dimensions as the Sculpture for placement anywhere in the State of Florida. For the purposes of this warranty, if the dimensions of another work of art exceeds 75% of the dimensions of the commissioned Sculpture, the other works of art shall be deemed to be of the same dimensions as the commissioned Sculpture. This warranty shall continue in effect for a period consisting of the life of the Artist plus 50 years and shall be binding on the Artist's heirs and assigns.

7.5.6 Any warranty required or received from a Subcontractor, manufacturer, or supplier is herein assigned by the Artist to the City effective immediately upon issuance of the fully executed Certificate of Substantial Completion. Furthermore, the Artist agrees to supply to the City the originals of all such warranties where same are in writing, and further agrees to execute, if requested by the City, separate assignments of warranty on a form furnished by the City.

7.6 The Artist shall obtain and pay for all permits, fees and licenses necessary and ordinary for the Artwork save and except as set forth in Subparagraph 6.1.4 hereinabove. The Artist shall comply with all lawful requirements applicable to the Artwork and shall give and maintain any and all notices required by applicable law pertaining to the Artwork.

7.7 Supervision

7.7.1 Key administrative, managerial and supervisory personnel assigned by the Artist to this Project are as follows:

<u>Name</u>	<u>Function</u>

The Artist shall furnish to the City complete resumes of each of the individuals named above. So long as the individuals named above remain actively employed or retained by the Artist, they shall perform the functions indicated next to their names unless the City agrees to the contrary in writing or unless the City requests the removal of any such individual from the

Project. In the event the City requests the removal of any of the individuals named above, the Artist shall immediately comply and shall immediately replace such individual with a qualified substitute to whom the City makes no objection. In the event one or more individuals not listed above subsequently assumes one or more of those functions listed above, the Artist shall be bound by the provisions of this Subparagraph 7.7.1 as though such individuals had been listed above.

7.8 Schedule. The Artist, within fifteen (15) days of commencing the Artwork, shall submit to the City for their information, the Artist's schedule for completing the Artwork. The Artist's schedule shall be revised no less frequently than monthly (unless the City's Representative otherwise agrees in writing) and shall be revised to reflect conditions encountered from time to time and shall be related to the entire Project. Each such revision shall be furnished to the City with each Application for Payment. Failure by the Artist to strictly comply with the provisions of this Paragraph 7.8 shall constitute an incomplete Application for Payment and subject to rejection by the City.

7.9 Cleaning the Site and the Project. The Artist shall keep the Project site reasonably clean during installation of the Sculpture, shall remove debris, trash and garbage from the site daily and allow no accumulation of debris, garbage or trash on the site. Upon final installation of the Sculpture, the Artist shall clean the site and remove all waste, together with all of the Artist's property therefrom.

7.10 Access to Artwork. The City and representatives of any authorities having jurisdiction over the Artwork shall have access to the Artwork at all times from commencement of the Artwork through Final Completion. The Artist shall take whatever steps necessary to provide access when requested.

7.11 Safety. The Artist shall take all reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to, its employees on the Artwork and all other persons who may be affected thereby; the Artwork and materials and equipment to be incorporated therein; and all other property at the Site or adjacent thereto including, but not limited to, trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction. The Artist shall comply with all applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss, and shall give all notices required by same; this requirement includes, but is not limited to, the United States Occupational Safety and Health Act and the Florida Trench Safety Act, Florida Statute § 553.60.

7.12 Indemnity

7.12.1 To the fullest extent permitted by law, the Artist agrees to indemnify, defend and hold harmless the City, its officers, agents, volunteers, and employees from and against all claims, damages, losses, and expenses, including but not limited to attorneys' fees, court costs, or other alternative dispute resolution costs arising out of or resulting from the

performance of the Artwork under this Agreement (1) provided that any such claims, damages, losses or expenses are attributable to bodily injury, sickness, disease, death, or personal injury, or property damage, or patents, copyrights, intellectual property right violations, and (2) are caused in whole or in part by the negligent acts, errors, or omissions of the Artist, Artist's Subcontractor(s), or anyone directly or indirectly employed or hired by Artist or anyone for whose acts Artist may be liable, REGARDLESS OF WHETHER OR NOT CAUSED IN PART BY CITY OF SUNRISE, ITS OFFICERS, AGENTS, VOLUNTEERS, OR EMPLOYEES. The City reserves the right, but not the obligation, to participate in the defense without relieving Artist of any obligation hereunder. The Artist agrees this indemnity obligation shall survive the expiration or earlier termination of the Agreement.

7.13 Intellectual Property Rights and Ownership

7.13.1 Unless otherwise expressly agreed to in writing by the City, ownership of all art acquired through expending City funds shall be vested in the City, which shall obtain title to each work of art including the Sculpture. Additionally, all proposals, drawings, photographs, shop drawings, plans, materials and specifications shall become the property of the City upon completion of the Project, and shall be delivered to the City prior to completion of the Contract. Artist shall provide a waiver of rights. Title to the Sculpture shall pass to the City upon written notice to the Artist of final acceptance of the Artwork and complete payment to the Artist under this Contract. The Artist shall provide the City a Transfer of Title to the Sculptures in a form approved by the City.

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

7.13.3 The Artist hereby grants the City the sole and exclusive right to display the Sculpture, and two-dimensional reproductions of the Sculpture, and upon the prior consent of the Artist, which consent shall not be unreasonably withheld, to loan the Sculpture and such reproductions to others with authority to display them publicly with proper attribution to the Artist. Except for those rights retained as provided herein, the Artist agrees that the Artist shall not undertake any public display of the Sculptures in a three-dimensional form. Further, as the Sculpture shall be unique and shall constitute the Artistic expression of the Artist, the Artist shall not make any additional exact duplicate three-dimensional reproductions of the Sculptures, with the exception of any model(s) used in the process of creating the Sculpture for the City, nor shall the Artist grant permission to others to do so except with the written permission of the City. However, nothing shall prevent the Artist from making two-dimensional reproductions of the Sculpture for any purpose or from creating future works of art in the Artist's manner and style of Artistic expression for any purpose.

7.13.4 The City may use photographs and other two-dimensional reproductions of the

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

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

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

7.13.7 The Artist also shall be available at such time or times as may be agreed between the City and the Artist to attend inauguration or presentation ceremonies relating to the final installation of the Sculptures and the transfer of title to the Sculptures to the City. The City shall use its best efforts to arrange for publicity for the completed Sculptures in such art publications and otherwise as may be determined between the City and the Artist as soon as practicable following installation. The Artist shall be entitled to be reimbursed by the City for travel and expenses for the Artist for such events in accordance with the City's standard travel policies and procedures.

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

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

ARTICLE VIII

CONTRACT ADMINISTRATION

8.1 The City's Representative

8.1.1 The City's Representative for this Project is Danielle Lima, 10770 W. Oakland Park Blvd., Sunrise, FL 33351, (954)746-3432, DaLima@SunrsieFL.gov. In the event the City should find it necessary or convenient to replace the City's Representative the City shall retain a replacement Representative and the status of the replacement Representative shall be that of the former Representative.

8.2 City's Representative's Administration

8.2.1 The City's Representative, unless otherwise directed by the City in writing, will perform those duties and discharge those responsibilities allocated to the City's Representative as set forth in this Contract. The City's Representative shall be the City's representative from the effective date of this Contract until final payment has been made. The City's Representative shall be authorized to act on behalf of the City only to the extent provided in this Contract.

8.2.2 The City and the Artist shall communicate with each other in the first instance through the City's Representative, who shall be the City's designated representative for the receipt of any such communications, or copies of same. The City reserves the right to change the City's Representative upon written notice to the Artist.

8.3 Claims by the Artist

8.3.1 Except as prohibited in Paragraph 8.3.5.1 herein below, all Artist claims shall be initiated by written notice and claim to the City, as applicable.

Such written notice and claim must be furnished within three (3) days after occurrence of the event, or the first appearance of the condition giving rise to the claim.

8.3.2 Pending final resolution of any claim of the Artist, the Artist shall diligently proceed with performance of this Contract and the City shall continue to make payments to the Artist in accordance with this Contract. The resolution of any claim under this Paragraph 8.3 shall be reflected by a Change Order executed by the City and the Artist.

8.3.3 Claims for Concealed and Unknown Conditions -- Should concealed and unknown conditions encountered in the performance of the Artwork (a) below the surface of the ground or (b) in an existing structure be at variance with the conditions indicated by this Contract, or should unknown conditions of an unusual nature differing materially from those ordinarily encountered in the area and generally recognized as inherent in Artwork of the character provided for in this Contract, be encountered, the Contract Price shall be equitably

adjusted by Change Order upon the written notice and claim by either party made within three (3) days after the first observance of the condition. As a condition precedent to the City having any liability to the Artist for concealed or unknown conditions, the Artist must give the City written notice of, and an opportunity to observe, the condition prior to disturbing it. The failure by the Artist to make the written notice and claim as provided in this Subparagraph shall constitute a waiver by the Artist of any claim arising out of or relating to such concealed or unknown condition.

8.3.4 Claims for Additional Costs -- Except as prohibited in Paragraph 8.3.5 below, if the Artist wishes to make a claim for an increase in the Contract Price, as a condition precedent to any liability of the City therefore, the Artist shall give the City written notice of such claim within three (3) days after the occurrence of the event, or the first appearance of the condition giving rise to such claim. Such written notice shall be given by the Artist before proceeding to execute any additional or changed Artwork. The failure by the Artist to give such notice and to give such notice prior to executing the Artwork shall constitute a waiver of any claim for additional compensation.

8.3.4.1 In connection with any claim by the Artist against the City for compensation in excess of the Contract Price, any liability of the City for the Artist's cost shall be strictly limited to direct costs incurred by the Artist. Direct costs do not include the Artist's home office overhead, loss of efficiency, consequential damages of the Artist, or equipment costs in excess of actual equipment rental paid by the Artist to a third party. The City shall not be liable to the Artist for claims of third parties, including Subcontractors, unless and until liability of the Artist has been established therefore in a court of competent jurisdiction.

8.3.5 Claims for Additional Time -- If the Artist is delayed in progressing any task which at the time of the delay is then critical or which during the delay becomes critical, as the sole result of any act or neglect to act by the City or someone acting in the City's behalf, or by changes ordered in the Artwork, unusual delay in transportation, named tropical storms and hurricanes, rain events that continue for more three consecutive days, fire or any causes beyond the Artist's reasonable control, then the date for achieving Substantial Completion of the Artwork shall be extended upon the written notice and claim of the Artist to the City for such reasonable time as the City may determine. Any notice and claim for an extension of time by the Artist shall be made not more than three (3) days after the occurrence of the event or the first appearance of the condition giving rise to the claim and shall set forth in detail the Artist's basis for requiring additional time in which to complete the Project. Said claim shall specifically include, among other things, an adjusted critical path (CPM) schedule reflecting precisely the delay and its claimed impact upon the Artist's future performance. In the event the delay to the Artist is a continuing one, only one notice and claim for additional time shall be necessary. If the Artist fails to make such claim as required in this Subparagraph, any claim for an extension of time shall be waived.

8.3.5.1 In no event, and under no circumstances, shall the Contract Sum be increased for, nor shall the Artist claim, recover, or receive payment for, any cost, expense, damages, or compensation of any kind by reason of any delay to the Project, whether critical or non-

critical, and whether caused in whole or in part by the City. The Artist shall not be entitled to any direct, indirect, consequential, impact, or other costs, expenses, or damages, including but not limited to, costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance from any cause whatsoever, whether such delay, disruption, interference, or hindrance be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable.

It is further agreed that such direct costs do include the Artist's home office overhead, loss of efficiency, consequential damages, or equipment costs in excess of actual equipment rental paid by the Artist to a third party. The Artist's sole and exclusive remedy for delay, hindrance, and disruption shall be an extension of the Contract Time provided a claim for same is made and is allowable pursuant to the provisions of Paragraph 8.3.5 hereinabove.

8.4 Field Orders

8.4.1 The City shall have authority to order minor changes in the Artwork not involving a change in Contract Time and not inconsistent with the intent of the Contract. Such changes shall be effected by Field Order and shall be binding upon the Artist. The Artist shall carry out such Field Orders promptly.

ARTICLE IX

SUBCONTRACTORS

9.1 Definition

9.1.1 A Subcontractor is an entity which has a direct contract with the Artist to perform a portion of the Artwork.

9.2 Award of Subcontracts

9.2.1 Upon execution of the Contract the Artist shall furnish the City, in writing, the names of persons or entities proposed by the Artist to act as a Subcontractor on the Project. The City shall promptly reply to the Artist, in writing, stating any objections the City may have to such proposed Subcontractor. The Artist shall not enter into a Subcontract with a proposed Subcontractor with reference to whom the City has made timely objection. The Artist shall not be required to subcontract with any party to whom the Artist has objection.

9.2.2 All subcontracts shall afford the Artist rights against the Subcontractor which correspond to those rights afforded to the City against the Artist herein, including those rights afforded to the City by Subparagraph 12.2.1 below.

ARTICLE X

CHANGES IN THE ARTWORK

10.1 Any material changes proposed by the Artist in the scope, design, color, size, material or texture of the Sculpture as depicted in the Final Proposal and Final proposal shall be presented to the City for approval in writing prior to implementation. A change shall be deemed "material" if it alters the form, fit or function of the Sculpture, or modifies the dimensions by more than ten percent (10%). Any such change shall be evidenced by the execution of a written amendment or change order to this Contract signed by both parties. Changes in the Artwork shall be performed under applicable provisions of this Contract and the Artist shall proceed promptly with such changes.

10.2 Change Order Defined

10.2.1 Change Order shall mean a written order to the Artist executed by the City issued after execution of this Contract, authorizing and directing a change in the Artwork or an adjustment to the Contract Time, or any combination thereof. The Contract Time may be changed only by Change Order.

10.3 Minor Changes

10.3.1 The City shall have authority to order minor changes in the Artwork not involving an extension of the Contract Time and not inconsistent with the intent of this Contract. Such minor changes shall be made by written Field Order, and shall be binding upon the City and the Artist. The Artist shall promptly carry out such written Field Orders as described in Section 8.4.

10.4 Effect of Executed Change Order

10.4.1 The execution of a Change Order by the Artist shall constitute conclusive evidence of the Artist's agreement to the ordered changes in the Artwork, this Contract as thus amended, and the Contract Time. The Artist, by executing the Change Order, waives and forever releases any claim against the City for additional time for matters relating to or arising out of or resulting from the Artwork included within or affected by the executed Change Order.

10.5 Emergency Change Orders

10.5.1 In an emergency which presents immediate danger to person or property, the City's designated representative may order a change in the Artwork which shall be documented no later than 5:00 p.m. three (3) business days after the inception of said emergency in accordance with the Change Order requirements of Article X of this Contract.

ARTICLE XI

CORRECTING ARTWORK

11.1 Correcting Artwork

11.1.1 The Artist shall immediately proceed to correct Artwork rejected by the City as defective or failing to conform to this Contract. The Artist shall pay all costs and expenses associated with correcting such rejected Artwork, including any additional testing and inspections, and reimbursement to the City for services and expenses made necessary thereby.

11.1.2 If within three (3) years after Final Completion of the Artwork any of the Artwork is found to be defective or not in accordance with this Contract, the Artist shall correct it promptly upon receipt of written notice from the City. This obligation shall survive final payment by the City and termination of this Contract. With respect to Artwork completed after Final Completion, this three (3)-year obligation to specifically correct defective and non-conforming Artwork shall be extended by the period of time which elapses between Final Completion and acceptance of the subject Artwork by the City.

11.1.3 Nothing contained in this Paragraph 11.1 shall establish any period of limitation with respect to other obligations which the Artist has under this Contract. Establishment of the three-year time period in Subparagraph 11.1.2 relates only to the duty of the Artist to specifically correct the Artwork.

11.2 The City May Accept Defective or Non-conforming Artwork

11.2.1 If the City chooses to accept defective or non-conforming Artwork, the City may do so. In such event, the Contract Price shall be reduced by the greater of (a) the reasonable cost of removing and correcting the defective or non-conforming Artwork, and (b) the difference between the fair market value of the Project as constructed and the fair market value of the Project had it not been constructed in such a manner as to include defective or non-conforming Artwork.

If the remaining portion of the unpaid Contract Price, if any, is insufficient to compensate the City for its acceptance of defective or non-conforming Artwork, the Artist shall, upon written demand from the City, pay the City such remaining compensation for accepting defective or non-conforming Artwork.

ARTICLE XII

CONTRACT TERMINATION

12.1 Termination by the Artist

12.1.1 If the Artwork is stopped for a period of ninety (90) days by an order of any court or other public authority, or as a result of an act of the Government, through no fault of the Artist or any person or entity working directly or indirectly for the Artist, the Artist may, upon twenty (20) days' written notice to the City terminate performance under this Contract

and recover from the City payment for the actual reasonable expenditures of the Artist for all Artwork performed to the termination date.

12.1.2 If the City shall persistently or repeatedly fail to perform any material obligation to the Artist for a period of thirty (30) days after receiving written notice from the Artist of its intent to terminate hereunder, the Artist may terminate performance under this Contract by written notice to the City. In such event, the Artist shall be entitled to recover from the City as though the City had terminated the Artist's performance under this Contract for convenience pursuant to Subparagraph 12.2.1 hereunder.

12.2 Termination by the City

12.2.1 For Convenience

12.2.1.1 The City may for any reason whatsoever terminate performance under this Contract by the Artist for convenience. The City shall give written notice of such termination to the Artist specifying when termination becomes effective.

12.2.1.2 The Artist shall incur no further obligations in connection with the Artwork and the Artist shall stop Artwork when such termination becomes effective. The Artist shall also terminate outstanding orders and subcontracts. The Artist shall settle the liabilities and claims arising out of the termination of subcontracts and orders. The City may direct the Artist to assign the Artist's right, title and interest under terminated orders or subcontracts to the City or its designee.

12.2.1.3 The Artist shall transfer title and deliver to the City such completed or partially completed Artwork and materials, equipment, parts, fixtures, information and Contract rights as the Artist has.

12.2.1.4

- (a) The Artist shall submit a termination claim to the City specifying the amounts due because of the termination for convenience. If the Artist fails to file a termination claim within one (1) year from the effective date of termination, the City shall pay the Artist, an amount derived in accordance with subparagraph (c) below.
- (b) The City and the Artist may agree to the compensation, if any, due to the Artist hereunder.
- (c) Absent agreement to the amount due to the Artist, the City shall pay the Artist the following amounts:
 - (i) Contract prices for labor, materials, equipment and other services accepted under this Contract;

- (ii) Reasonable costs incurred in preparing to perform and in performing the terminated portion of the Artwork, and in terminating the Artist's performance, plus a fair and reasonable allowance for overhead in the amount of seven percent (7%) of the Artist's direct costs, and a reasonable allowance for profit in the amount of five percent (5%) of the Artist's direct costs (such profit shall not include anticipated profit or consequential damages); and profit thereon (such profit shall not include anticipated profit or consequential damages); provided however, that if it appears that the Artist would have not profited or would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any;
- (ii) Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Subparagraph 12.2.1.2 of this Paragraph. These costs shall not include amounts paid in accordance with other provisions hereof.

The total sum to be paid the Artist under this Subparagraph 12.2.1 shall not exceed the total Contract Price, as properly adjusted, reduced by the amount of payments otherwise made, and shall in no event include duplication of payment.

12.2.2 For Cause

12.2.2.1 If the Artist refuses or fails to prosecute the Artwork in a timely manner, supply enough properly skilled workers, administrative, managerial and supervisory personnel or proper equipment or materials, or if it fails to make prompt payment to Subcontractors or for materials or labor, or persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a substantial violation of a material provision of this Contract, then the City may by written notice to the Artist, without prejudice to any other right or remedy, terminate the Contract and take possession of the Project site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Artist, and may finish the Artwork by whatever methods it may deem expedient. In such case, the Artist shall not be entitled to receive any further payment until the Artwork is finished.

12.2.2.2 If the unpaid balance of the Contract Price exceeds the cost of finishing the Artwork, such excess shall be paid to the Artist. If such costs exceed the unpaid balance, the Artist shall pay the difference to the City. This obligation for payment shall survive the termination of the Contract.

12.2.2.3 In the event the Contract is terminated by the City for cause pursuant to Subparagraph 12.2.2 and it is subsequently determined by a Court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under Subparagraph 12.2.1 and the provisions of Subparagraph 12.2.1 shall apply.

ARTICLE XIII

INSURANCE

13.1 Artist agrees, at its sole expense, to maintain on a primary, non-contributory basis during the life of this Contract, or the performance of the Artwork under this Project, insurance coverages, limits, and endorsements as required herein. The Artist agrees the insurance requirements herein as well as City's review or acknowledgement, is not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the Artist under this Contract. Any coverage maintained by the City shall apply excess of, or contingent upon the absence of, other insurance required or maintained by Artist. In the event the Artist subcontracts or hires a contractor or Subcontractor to install the Sculpture, the Artist shall require the same insurance requirements herein be maintained by the Artist's contractor or Subcontractor.

13.2 Commercial General Liability. The Artist agrees to maintain Commercial General Liability at a limit of liability not less than \$1,000,000.00 Each Occurrence, \$2,000,000 Annual Aggregate. The Artist agrees its coverage shall not contain any restrictive endorsement(s) excluding or limiting Product/Completed Operations, Independent Artists, Broad Form Property Damage, X-C-U Coverage, Contractual Liability or Separation of Insureds. If rigging or crane operations are necessary, then Commercial General Liability shall also include an endorsement for Riggers Liability, or similar endorsement, providing property damage to that is part of your Artwork when such property damage is caused by any rigging or crane operations.

13.3 Business Automobile Liability. Artist agrees to maintain Business Automobile Liability at a limit of liability not less than \$1,000,000 Each Occurrence. Coverage shall include liability for Owned, Non-Owned & Hired automobiles. In the event Artist does not own automobiles, Artist agrees to maintain coverage for Hired & Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.

13.4 Worker's Compensation & Employer's Liability. Artist agrees to maintain Worker's Compensation & Employers Liability Insurance in accordance with Florida Statutes Chapter 440.

13.5 Additional Insured Endorsement. Artist agrees to endorse the City as an Additional Insured on the Commercial General Liability with the following Additional Insured endorsement, or similar endorsement providing equal or broader Additional Insured

coverage, the CG 20 26 07 04, or CG 20 26 04 13, Additional Insured – Designated Person or Organization endorsement; or the CG 20 10 07 04, or CG 20 10 04 13, Additional Insured – Owners, Lessees, or Artists endorsement, including the additional endorsement of GC 20 37 07 04, or GC 20 04 13, Additional Insured – Owners, Lessees, or Artists Completed Operations. The name of the organization endorsed as Additional Insured for all endorsements shall read “City of Sunrise”.

13.6 Waiver of Subrogation. Artist agrees by entering into this Contract to a Waiver of Subrogation for each required policy herein. When required by the insurer, or should a policy condition not permit Artist to enter into a pre-loss agreement to waive subrogation without an endorsement, then Artist agrees to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition specifically prohibiting such an endorsement, or voids coverage should Artist enter into such an agreement on a pre-loss basis.

13.7 Right to Revise or Reject. City reserves the right, but not the obligation, to revise any insurance requirement, not limited to limits, coverages and endorsements, or to reject any insurance policies which fail to meet the criteria stated herein. Additionally, City reserves the right, but not the obligation, to review and reject any insurer providing coverage due to its poor financial condition or failure to operate legally.

13.8 Certificate(s) of Insurance. Artist agrees to provide City a Certificate of Insurance evidencing that all coverages, limits and endorsements required herein are maintained and in full force and effect, and Certificates of Insurance shall provide a minimum thirty (30) day endeavor to notify, when a manuscript notice endorsement is available by Artist’s insurer. If the Artist receives a non-renewal or cancellation notice from an insurance carrier affording coverage required herein, or receives notice that coverage no longer complies with the insurance requirements herein, Artist agrees to notify the City by fax or email within five (5) business days with a copy of the non-renewal or cancellation notice, or written specifics as to which coverage is no longer in compliance. The Certificate Holder(s) address shall read:

Original to:

City of Sunrise
Purchasing Office
Attn: Procurement Manager
10770 W. Oakland Park Blvd, 3rd Floor
Sunrise, FL 33351
Fax (954) 572-2278

Copy to:

City of Sunrise
Risk Management Division
Attn: Risk Manager
10770 W. Oakland Park Blvd, 4th Floor
Sunrise, FL 33351
riskmanagement@sunrisefl.gov

13.9 Other Terms. City shall have the right, but not the obligation, of prohibiting Artist from entering the Project site until a new Certificate of Insurance is provided to the City evidencing the replacement coverage. The Artist agrees the City reserves the right to

withhold payment to Artist until evidence of reinstated or replacement coverage is provided to the City. If the Artist fails to maintain the insurance as set forth herein, the Artist agrees the City shall have the right, but not the obligation, to purchase replacement insurance, which the Artist agrees to reimburse any premiums or expenses incurred by the City.

ARTICLE XIV

MISCELLANEOUS

14.1 Governing Law/Jurisdiction/Venue

14.1.1 The Contract shall be governed by the laws of the State of Florida. Except as set forth in Article 7, should the parties be involved in legal action arising under, or connected to this Contract, each party will be responsible for its own attorneys' fees and costs. The venue for any litigation will be Broward County, Florida.

14.2 Successors and Assigns

14.2.1 The City and Artist bind themselves, their successors, assigns and legal representatives to the other party hereto and to successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in this Contract. The Artist shall not assign this Contract without the prior written consent of the City.

14.3 Non-Discrimination

14.3.1 The Artist warrants and represents that all of its employees are treated equally during employment without regard to race, color, national origin, sex, gender identity, sexual orientation, age, disability/handicap, religion, family or income status.

14.4 Discriminatory Vendor List

14.4.1 Pursuant to Section 287.134, Florida Statutes, an entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity. By execution of this Contract, Artist represents that it has not been placed on the discriminatory vendor list as provided in Section 287.134, Florida Statutes.

14.5 Public Entity Crimes

14.5.1 Pursuant to Section 287.133, Florida Statutes, a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may

not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list. By execution of this Contract, Artist represents that it has not been placed on the convicted vendor list as provided in Section 287.133, Florida Statutes.

14.6 Scrutinized Company

14.6.1 Pursuant to Section 287.135, Florida Statutes, Artist certifies that it is not on the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes and that it is not engaged in a boycott of Israel.

14.6.2 Pursuant to Section 287.135, in the event the Contract is for one million dollars or more, Artist certifies that it is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List created pursuant to Section 215.473, Florida Statutes; and Artist further certifies that it is not engaged in business operations in Cuba or Syria.

14.6.3 Pursuant to Section 287.135, Florida Statutes, City may, at the option of the City Commission, terminate this Contract if Artist is found to have submitted a false certification as provided under subsection 287.135(5), Florida Statutes; has been placed on the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of Israel; has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; or has been engaged in business operations in Cuba or Syria.

14.7 Notice

14.7.1 In order for a notice to a party to be effective under this Contract, notice must be sent via U.S. certified mail, overnight delivery, or hand delivery to the addresses listed below and shall be effective upon mailing if sent by certified mail or overnight delivery and effective upon receipt if hand delivered. The addresses for notice shall remain as set forth herein unless and until changed by providing notice of such change in accordance with the provisions of this Section.

If to Artist, to:

Gustavo Ocampo LLC
109 South Bayview Blvd., Suite C
Oldsman, FL 34677

If to City, to: Danielle Lima
Economic Development Director
City Manager's Office – 5th Floor
10770 W. Oakland Park Blvd.
Sunrise, FL 33351

With a copy to: City Attorney
City Attorney's Office – 4th Floor
City of Sunrise
10770 West Oakland Park Boulevard
Sunrise, FL 33351

14.8 No Third Party Beneficiaries

14.8.1 Except as may be expressly set forth to the contrary herein, the parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Contract. None of the parties intend to directly or substantially benefit a third party by this Contract. The parties agree that there are no third party beneficiaries to this Contract and that no third party shall be entitled to assert a claim against any of the parties based on this Contract. Nothing herein shall be construed as consent by City to be sued by third parties in any manner arising out of this Contract.

14.9 Preparation of Contract

14.9.1 The parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Contract has been their joint effort. The language agreed to herein express their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

14.10 Non-Waiver of Breach

14.10.1 The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Contract and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Contract shall not be deemed a waiver of such provision or modification of this Contract. A waiver of any breach of a provision of this Contract shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Contract.

14.11 E-Verify – Employment Eligibility

14.11.1 Artist warrants and represents that it complies with Section 448.095, Florida Statutes, as may be amended. Artist has: (1) registered with and use the E-Verify System

(E-Verify.gov), to electronically verify the work authorization status of all newly hired employees; and (2) verified that all of the Artist's subcontractors performing the duties and obligations of this Contract are registered with and use the E-Verify System to electronically verify the employment eligibility of all newly hired workers.

14.11.2 Artist shall obtain from each of its subcontractors an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an Unauthorized Alien, as that term is defined in Section 448.095(1)(k), Florida Statutes, as may be amended. Artist shall maintain a copy of any such affidavit from a subcontractor for, at a minimum, the duration of the subcontract and any extension thereof. This provision shall not supersede any provision of this Contract which requires a longer retention period.

14.11.3 City shall terminate this Contract if it has a good faith belief that Artist has knowingly violated Section 448.09(1), Florida Statutes, as may be amended. If City has a good faith belief that Artist's subcontractor has knowingly violated Section 448.09(1), Florida Statutes, as may be amended, City shall notify Artist to terminate its contract with the subcontractor and Artist shall immediately terminate its contract with the subcontractor.

14.11.4 If City terminates this Contract pursuant to the subsection 14.11.3 above, Artist shall be barred from being awarded a future contract by City for a period of one (1) year from the date on which this Contract was terminated. In the event of such Contract termination, Artist shall also be liable for any additional costs incurred by City as a result of the termination.

14.12 Foreign Gifts and Contracts

14.12.1 Pursuant to Fla. Stat. §286.101(3), where the amount of the grant or contract is 100,000.00 or more, Artist shall disclose any current or prior interest of, any contract with, or any grant or gift received from a country of foreign concern with a value of \$50,000 or more that was received or in force during the previous five (5) years. Definitions, disclosure requirements and exceptions are found in Fla. Stat. §268.101. Artist represents and warrants it has complied with Fla. Stat. §286.101, it has properly disclosed such interests, contracts, grants or gifts to City before execution of this Contract, and it will remain in compliance with Fla. Stat. §286.101 for the duration of this Contract.

14.13 Prohibited Telecommunications Equipment

14.13.1 Artist represents and certifies that Artist and all Subcontractors do not use any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, as such terms are used in 48 CFR §§ 52.204-24 through 52.204-26. Artist represents and certifies that Artist and all Subcontractors shall not provide or use such covered telecommunications equipment, system, or services during the Term.

ARTICLE XV

WAIVER OF JURY TRIAL

15.1 City and Artist hereby knowingly, irrevocably, voluntarily and intentionally waive any right either may have to a trial by jury in respect to any action, proceeding, lawsuit or counterclaim based upon the Contract, arising out of, under, or in connection with the performance of the Artwork, or any course of conduct, course of dealing, statements (whether verbal or written) or the actions or inactions of any party.

ARTICLE XVI

FORMS

16.1 The following forms are attached hereto as Attachments and are incorporated into this Contract and shall be used as applicable:

Certificate of Substantial Completion – Attachment ‘1’

Waiver and Release of Lien Upon Final Payment – Attachment ‘2’

REMAINDER OF PAGE LEFT INTENTIONALLY BLANK

IN WITNESS WHEREOF, the City Manager, authorized to execute same by City Commission, has made and executed this Contract on behalf of the City the day and year below written and Artist has hereunto set its hand the day and year below written.

CITY OF SUNRISE

By: _____

Print: _____

Title: City Manager

Date: _____

Approved as to Form and Legal Sufficiency for the
City:

By: _____

Kimberly A. Kisslan
City Attorney

WITNESSES

By: _____

Print: _____

By: _____

Print: _____

ARTIST

By: _____

Print: _____

Title: _____

Date: _____

Address

END OF DOCUMENT