

**MODEL AGREEMENT FOR COMMISSION OF PUBLIC ARTWORK**

THIS AGREEMENT FOR COMMISSION OF PUBLIC ARTWORK made and entered into this 18<sup>th</sup> day of July, 2019 by and between Guy Kemper (hereafter called the “ARTIST”) whose address is 1425 Elliston Lane, Versailles, KY 40383 and the CITY OF CLEARWATER, FLORIDA, a municipal corporation of the State of Florida, located at 600 Cleveland Street, 6<sup>th</sup> Floor, Clearwater, FL 33755 (hereafter called the “CITY”) (each individually referred to herein as “PARTY” or collectively as the “PARTIES”).

**WITNESSETH:**

WHEREAS, the CITY has implemented the Clearwater Public Art and Design Program (hereafter called the “PROGRAM”) pursuant to ORDINANCE NO. 7489-05 as amended, in ORDINANCE NO. 8026-09, by allocating not less than one percent (1%) of the total construction budget of eligible capital improvement projects for the purchase and installation of on-site public artwork; and

WHEREAS, authority lies with the CITY to make payments for the acquisition, design execution, fabrication, transportation, and installation of ARTWORK, including payments for the support of an artist selection process, design execution, fabrication, transportation and installation of ARTWORK; and

WHEREAS, the CITY’s Morningside Recreation Complex, located at 2400 Harn Boulevard, Clearwater, FL 33764 is an eligible capital improvement project subject to PROGRAM requirements; and

WHEREAS, the ARTIST was selected by the CITY through an open Call to Artists process adopted by the CITY to commission the ARTWORK as further described in EXHIBIT A; and

WHEREAS, the ARTIST is a recognized artist whose work and reputation make the ARTIST uniquely qualified to create the ARTWORK; and

WHEREAS, the ARTIST wishes to create a unique ARTWORK valued at \$36,052.50 to be installed in a public space in proximity to the Morningside Recreation Complex located at or near 2400 Harn Boulevard, Clearwater FL 33764 hereafter called the "SITE"); and

WHEREAS, the ARTIST and CITY wish to undertake the obligations expressed herein;

NOW, THEREFORE, in consideration of the above-stated premises and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the PARTIES, subject to the conditions hereinafter set forth, the PARTIES agree as follows:

## **ARTICLE 1: SCOPE OF SERVICES**

### **1.1 Recitals**

The foregoing recitals are incorporated into and made a part of this AGREEMENT FOR COMMISSION OF PUBLIC ARTWORK, and the PARTIES acknowledge and agree that such recitals are true and correct.

### **1.2 ARTIST's Obligations**

- a. The ARTIST shall perform all services and furnish all supplies, materials and equipment as necessary for the design and fabrication of the ARTWORK at the ARTIST's studio in accordance with the specified schedule further described in EXHIBIT B. Services shall be performed in a professional manner and in strict compliance with all terms and conditions in this AGREEMENT.
- b. The ARTIST shall determine the artistic expression, design, dimensions and materials of the ARTWORK, subject to review and acceptance by the CITY as set forth in this AGREEMENT. To ensure that the ARTWORK as installed shall not interfere with the intended use of the SITE, underground utilities, pedestrian and other traffic flow, parking, and safety devices and procedures at the SITE, the ARTIST's proposal shall be reviewed and approved by the CITY,

other applicable city departments including, but not limited to: the Public Art & Design Board, Building, Engineering, Marine & Aviation, Parks & Recreation, Public Works, Risk Management, Traffic Engineering and others, where appropriate, to ensure compliance with these objectives.

- c. The ARTIST shall prepare the design concept and the corresponding budget described in Section 1.4 and EXHIBIT C of this AGREEMENT. The design concept shall include a description of all materials and products utilized in the ARTWORK and the required routine care and upkeep involved.
- d. The ARTIST shall prepare drawings detailing the ARTWORK and its integration and relation to the SITE. If applicable and as determined by the CITY, the ARTIST shall provide to the CITY a certification from a qualified, licensed engineer that the ARTWORK will be of adequate structural integrity (including foundation loads, wind loads, and potential live loads) to ensure the safety and welfare of the CITY and its officers, employees, agents, servants, and the general public. Such drawings will confirm to all applicable federal, state, and local laws and regulations.
- e. The ARTIST shall, if applicable, attend public information meetings with the general public, attend design and construction coordination meetings with the CITY, general contractor, architect and other parties, as appropriate, to communicate about the ARTWORK and ensure appropriate integration and/or installation of the ARTWORK.
- f. The ARTIST shall complete the fabrication of the ARTWORK by the scheduled installation date as provided in Section 1.5 and EXHIBIT B of this AGREEMENT.
- g. The ARTIST shall secure any and all required licenses, permits and similar legal authorizations, further detailed in Section 1.4 and EXHIBIT C of this AGREEMENT, as may be necessary for the installation and maintenance of the ARTWORK at the SITE.

- h. The ARTIST shall arrange the transportation and installation of the ARTWORK in consultation with the CITY. If the ARTIST does not install the ARTWORK themselves, the ARTIST shall supervise and approve of the installation.
- i. The ARTIST shall provide the required insurance in amounts and limits specified in Article 6 and EXHIBIT D of this AGREEMENT.
- j. The ARTIST shall provide a list of all their hired subcontractors along with a copy of the agreement between the ARTIST and each subcontractor.
- k. The ARTIST shall provide a maintenance manual with a description of all materials and products utilized in the ARTWORK and the required care and upkeep involved further described in EXHIBIT E.
- l. The ARTIST represents that the ARTWORK is made of durable materials;
- m. The ARTIST shall provide photographic documentation of the ARTWORK.
- n. The ARTIST shall provide the CITY with a written condition report of the ARTWORK after installation.
- o. The ARTIST shall be available with reasonable advance notice for meetings, ceremonies and the like, as necessary.

### 1.3 CITY's Obligations

- a. The CITY shall perform all obligations in compliance with all terms and conditions in this AGREEMENT.
- b. The CITY shall be responsible for providing the ARTIST, at no expense to the ARTIST, copies of existing designs, drawings, reports, list of required permits, and other existing relevant data, if



any, which is needed by the ARTIST in order to perform the ARTIST's obligations described in Section 1.2 of this AGREEMENT.

- c. The CITY shall be responsible for compliance with all applicable laws and regulations, including but not limited to zoning or environmental regulations, and shall explain any limitations imposed by such laws and/or regulations to the ARTIST.
- d. The CITY shall prepare the SITE in accordance with the specifications contained in the approved design concept in Section 1.4 and EXHIBIT A of this AGREEMENT. The CITY shall be responsible for all expenses, labor and equipment to prepare the SITE for the timely transportation and installation of the ARTWORK. The CITY shall complete the SITE preparations by the scheduled installation date as provided in Section 1.4 and EXHIBIT B of this AGREEMENT or shall contact the ARTIST in writing informing them of any delays.
- e. The CITY shall provide and install a plaque on or near the ARTWORK containing a credit to the ARTIST and a copyright notice, if secured by the ARTIST, substantially in the following form:  
Copyright © Guy Kemper [date of completion].
- f. The CITY shall not use the ARTIST's name or misuse the ARTWORK which would reflect discredit on the ARTIST's reputation as an artist or which would violate the spirit of the ARTWORK, should such use, or misuse, be within the CITY's detection or control.
- g. The CITY shall be responsible for leading the ARTIST through the required review process. The CITY shall be responsible for organizing and scheduling meetings with review entities such as the City Council, Building Permit Review Committee and other applicable city departments, and for providing the ARTIST written instructions for the materials required at such meetings.

- h. The CITY shall routinely clean, care for, and maintain the ARTWORK after installation and final acceptance of the ARTWORK and will abide by the recommendations described and included in EXHIBIT E, the Maintenance Manual.

#### 1.4 Design

- a. Concept/Schematic
  - i. The ARTIST shall visit, examine, research and consider the SITE and surrounding area. If necessary, the ARTIST shall also be available to consult with representatives of the community and consider their input and concerns.
  - ii. The ARTIST was selected pursuant to a competition organized for the procurement of an artist to design and fabric an artwork suitable for the current project. Within thirty (30) days of the execution of this AGREEMENT, the ARTIST shall submit to the CITY the design concept (hereafter called the “DESIGN”) in the form of detailed drawings, models, and other supporting documents as necessary as are required to present a meaningful representation of the ARTWORK.
  - iii. The DESIGN will include: a description of the method by which the ARTWORK is to be fabricated and installed; a description of any operational, maintenance and conservation requirements for the ARTWORK; a description of the placement of the ARTWORK at the SITE and any preparations that the CITY may be required to furnish, including, but not limited to, any changes or modifications to any utility system, above or below ground, or structure of the SITE as necessary.
  - iv. The DESIGN must provide enough detail to allow for the CITY to assure compliance with applicable local, state or federal laws, ordinance and/or regulations.

- v. The ARTIST shall attach to the DESIGN a detailed budget for the design, fabrication and installation of the ARTWORK, including costs for SITE preparation as EXHIBIT C.
- b. Approval
  - i. Within thirty (30) days after the ARTIST submits the DESIGN, the CITY shall notify the ARTIST whether it approves or disapproves of the DESIGN. The CITY shall have discretion in approving outright or with conditions or rejecting the DESIGN. The CITY shall notify the ARTIST of any revisions to the DESIGN as are necessary for the ARTWORK to comply with any applicable laws, ordinances and/or regulations and other reasons including, but not limited to, ensuring the physical integrity of the ARTWORK or its installation at the SITE. If agreed upon by both PARTIES, such revisions will become a part of the accepted DESIGN.
  - ii. If the CITY disapproves of the DESIGN, the CITY will submit to the ARTIST in writing the reasons for such disapproval. In such event, the ARTIST will submit a revised DESIGN within thirty (30) days after the CITY has notified the ARTIST of its disapproval. The ARTIST will not be paid an additional fee for the revised DESIGN.
- c. Redesign
  - i. The revised DESIGN will reflect changes made to address the CITY's stated reasons for disapproval, as well as any adjustments in the budget or schedule that may be necessary. The CITY shall notify the ARTIST in writing whether it approves or disapproves of the revised DESIGN within thirty (30) days after the ARTIST submits the revised DESIGN.
  - ii. If the ARTIST refuses to revise the DESIGN or if the ARTIST fails to adequately revise the DESIGN in the judgment of the CITY, this AGREEMENT shall terminate, and the PARTIES shall be under no further obligation to each other as of the date of such

termination. The effective date of termination shall be the date the CITY submits its written disapproval of the revised DESIGN to the ARTIST. The CITY shall submit to the ARTIST a written termination notice with the disapproval. The termination notice shall advise the ARTIST that this AGREEMENT has been terminated pursuant to this article. The termination notice shall notify the ARTIST that the ARTIST is entitled to retain the compensation paid prior to the termination date, and that the PARTIES are under no further obligation to each other. The termination notice shall confirm that the ARTIST shall retain ownership of all DESIGNs, revised DESIGNs and renderings thereof submitted as part of the terms of this AGREEMENT.

d. Final/Construction Documents

- i. The ARTIST shall prepare drawings detailing all physical features of the construction of the ARTWORK and its integration with the SITE. These drawings shall indicate any risks involved in the construction, integration, and maintenance of the ARTWORK, as well as any third-party subcontractors needed to work on the project.
- ii. If applicable, the ARTIST shall present such drawings to a qualified engineer, licensed by the state and paid by the ARTIST, for certification that the ARTWORK will be of adequate structural integrity and the ARTIST shall provide the CITY with such certification.
- iii. Where appropriate, the ARTIST shall present the DESIGN to a qualified conservator, who will make recommendations on the maintenance of the ARTWORK, and the ARTIST shall provide a written copy of the conservator's recommendations to the CITY.
- iv. The ARTIST shall present to the CITY recommendations on the scheduled maintenance of the ARTWORK to be attached to this AGREEMENT as EXHIBIT E, the Maintenance Manual.



1.5 Budget, Payment Schedule, Construction Schedule and Progress Reports

a. Budget

- i. The ARTIST shall prepare a budget, which shall include all goods, services and materials, with such costs itemized, including, but not limited to costs for: materials and applicable sales tax; off-site fabrication costs; ARTIST's time invested in coordination, fabrication and supervision of installation; fees for required licenses, permits and similar legal authorizations; fees for the labor of assistants; itemized general contractor and subcontractor fees, if applicable; insurance; ARTIST's travel; transportation of the ARTWORK to the SITE; itemized installation costs; any applicable local, state or federal taxes; and a ten-percent (10%) contingency to cover any unforeseen costs that may arise. This budget will be attached to this AGREEMENT as EXHIBIT C.
- ii. Calculation of the budget will take into consideration the possible inflation of service and material costs between the date of execution of this AGREEMENT and the anticipated completion date.
- iii. The ARTIST shall keep a log of the ARTIST's project hours and shall retain all original receipts pertaining directly to the project.
- iv. If the ARTIST incurs costs in excess of the amount listed in the budget, the ARTIST shall pay such excess from the ARTIST's own funds unless the ARTIST previously obtained approval to expend project funds for such costs from the CITY.

b. Schedule

- i. The ARTIST shall notify the CITY of the tentative schedule for the fabrication and installation of the ARTWORK, attached to this AGREEMENT as EXHIBIT B. This will include a schedule for the submission of progress reports and inspections, and for the

payment of budget installments, if any. The schedule may be amended by written agreement of both PARTIES.

1.6     Fabrication

- a.     The ARTIST shall fabricate and install or supervise the installation of the ARTWORK in substantial conformity with the DESIGN. The ARTIST may not deviate from the approved DESIGN without written approval of the CITY.
- b.     The ARTIST shall take reasonable measures to protect or preserve the integrity of the ARTWORK such as the application of protective or anti-UV or anti-graffiti coatings, if applicable, unless the CITY disapproves.
- c.     The CITY shall have the right to review the ARTWORK at reasonable times during the fabrication thereof upon reasonable notice.
- d.     If the CITY, upon review of the ARTWORK, determines the ARTWORK does not conform to the DESIGN or revised DESIGN, the CITY reserves the right to notify the ARTIST in writing of the deficiencies and that the CITY intends to withhold the next budget installment as projected in EXHIBIT B.
- e.     The ARTIST will promptly cure the CITY's objections and will notify the CITY in writing of completion of the cure. The CITY shall promptly review the ARTWORK, and upon approval shall release the next budget installment. If the ARTIST disputes the CITY's determination that the ARTWORK does not conform, the ARTIST shall promptly submit reasons in writing to the CITY within thirty (30) days of the CITY's prior notification to the contrary. The CITY shall make reasonable efforts to resolve the dispute with the ARTIST in good faith. However, final determination as to whether the ARTIST has complied with the terms of this AGREEMENT shall remain with the CITY.

- f. The ARTIST shall notify the CITY in writing when the fabrication of the ARTWORK has been completed, and that the ARTWORK is ready for delivery and installation at the SITE, if the ARTWORK was fabricated off-site.
- g. The CITY shall inspect photographic documentation of the completed ARTWORK within thirty (30) days after receiving notification to determine that the ARTWORK conforms to the DESIGN or revised DESIGN and to give final approval of the ARTWORK. The CITY shall not unreasonably withhold final approval of the fabricated ARTWORK. If the CITY does withhold final approval, the CITY shall submit the reasons for such disapproval in writing within thirty (30) days of examining the fabricated ARTWORK. The ARTIST shall then have sixty (60) days from the date of the CITY's notice of the disapproval to make the necessary adjustments to the fabricated ARTWORK in accordance with such writing. The ARTIST shall not be penalized for any delay in the delivery and installation of the ARTWORK to the SITE unless the ARTIST has willfully and substantially deviated from the DESIGN without the prior approval of the CITY. The ARTIST shall then be held responsible for any expenses incurred in correcting such deviation.
- h. The CITY shall promptly notify the ARTIST of any delays impacting installation of the ARTWORK. Any additional storage fees incurred as a result of such delays are the responsibility of the CITY. The ARTIST shall be required to inspect the SITE prior to the transportation and installation of the ARTWORK and shall notify the CITY of any adverse SITE conditions that will impact the installation of the ARTWORK which need correction.

#### 1.7 Changes to Approved Design

- a. Prior to the execution of any change in the approved DESIGN, the ARTIST shall present all proposed changes in writing to the City for further review and approval. The ARTIST must provide a detailed rationale and description of any significant changes to the artistic expression,

dimensions and materials of the ARTWORK that is not permitted by nor in substantial conformity with the already approved DESIGN. Such notice will also include a detailed description of any additional costs that may be incurred or changes in the budget. A significant change is any change which materially affects installation, scheduling, site preparation or maintenance of the ARTWORK or the concept of the ARTWORK as represented in the approved DESIGN.

- b. If the CITY approves the changes to the DESIGN, the CITY shall promptly notify the ARTIST in writing. The CITY will also make the required presentations to the appropriate approval bodies including, but not limited to: City Council, the Public Art & Design Board, and the appropriate city departments including Engineering, Environmental, Planning and Public Works.
- c. If the CITY disapproves of the changes, the CITY shall promptly notify the ARTIST in writing and the ARTIST shall continue to fabricate the ARTWORK in substantial conformity with the approved DESIGN.
- d. The ARTIST's fee shall be equitably adjusted for any increase or decrease in the ARTIST's cost of, or time required for, performance of any services under this AGREEMENT as a result of revisions made, requested by the CITY, in writing, to the approved DESIGN under Section 1.7(a). Any claim of the ARTIST for adjustment under this paragraph must be asserted in writing within thirty (30) days of the date of the revision by the ARTIST.

#### 1.8 Installation

- a. Upon the CITY's final approval of the fabricated ARTWORK, as being in conformity with the DESIGN, the ARTIST shall deliver and install, or supervise the installation, of the completed ARTWORK to the SITE in accordance with the schedule provided for in Section 1.5(b) and EXHIBIT B. Transportation fees shall be paid by the ARTIST.



- b. The ARTIST will coordinate closely with the CITY to ascertain that the SITE is prepared to receive the ARTWORK. The ARTIST must notify the CITY of any adverse conditions at the SITE that would affect or impede the installation of the ARTWORK. The ARTIST is responsible for the timely installation of the ARTWORK. The ARTIST will confer and coordinate with the CITY to ensure the timely coordination with the CITY's construction team. The ARTIST may not install the ARTWORK until authorized to do so by the CITY.
- c. The ARTIST shall be present to install, or supervise the installation of, the ARTWORK.
- d. Upon written acceptance of the installation, the ARTWORK shall be deemed to be in the custody of the CITY for purposes of this AGREEMENT.
- e. Within fifteen (15) days after installation of the ARTWORK, the ARTIST shall furnish the CITY with the following photographs of the ARTWORK as installed:

A set of three (3) digital, 300 dpi, JPG or TIFF files, of the ARTWORK, one taken from each of three different viewpoints, provided to the CITY. Photographs must be identified with the name of the ARTWORK, the date upon which the photograph was taken, and the viewpoint from which the photograph was taken. The ARTIST shall also furnish the CITY with a full written narrative description of the ARTWORK.

- f. Upon installation of the ARTWORK, the ARTIST shall provide the CITY with written instructions for the appropriate maintenance and preservation of the ARTWORK along with product data sheets for any material or finish used, attached as EXHIBIT E. The ARTWORK must be durable, taking into consideration that the SITE is a public space that may be exposed to elements such as temperature variation, and considerable movement of people and equipment. The ARTIST must ensure that all maintenance requirements will be reasonable in terms of time and expense. The CITY is responsible for the proper care and maintenance of the ARTWORK.

1.9 Approval and Acceptance

- a. The ARTIST shall notify the CITY in writing when all services as required of both PARTIES by this AGREEMENT prior to this paragraph have been completed in substantial conformity with the DESIGN.
- b. The CITY shall promptly notify the ARTIST of its final acceptance of the ARTWORK within fifteen (15) days after the ARTIST submitted written notice pursuant to Section 1.9(a). The effective date of final acceptance shall be the date the CITY submits written notice to the ARTIST of its final acceptance of the ARTWORK. The final acceptance shall be understood to mean that the CITY acknowledges completion of the ARTWORK in substantial conformity with the DESIGN, and that the CITY confirms that all services as required of both PARTIES by this AGREEMENT prior to this paragraph have been completed. Title to the ARTWORK passes upon final acceptance and final payment.
- c. If the CITY disputes that the services have been performed, the CITY shall notify the ARTIST in writing of those services the ARTIST has failed to perform within fifteen (15) days after the ARTIST submitted written notice pursuant to Section 1.9(a). The ARTIST shall promptly perform those services indicated by the CITY.
- d. If the ARTIST disputes the CITY's determination that not all services have been performed, the ARTIST shall submit reasons in writing to the CITY within fifteen (15) days of the CITY's prior notification to the contrary. The CITY shall make reasonable efforts to resolve the dispute with the ARTIST in good faith. However, final determination as to whether all services have been performed shall remain with the CITY.
- e. Upon the resolution of any disputes that arise under paragraphs (c) and (d) of this section the CITY shall notify the ARTIST of its final acceptance of the ARTWORK pursuant to paragraph (b).

- f. After final acceptance of the ARTWORK, the ARTIST shall be available at such time(s) as may be mutually agreed upon by the CITY and the ARTIST to attend any public meetings and community outreach functions, as well as any inauguration or presentation ceremonies relating to the dedication of the ARTWORK.
  - i. During such public presentations by the ARTIST, the ARTIST shall acknowledge the CITY's role in funding the ARTWORK.
  - ii. The CITY shall be solely responsible for coordinating public information materials and activities related to public presentations.

## **ARTICLE 2: TAXES**

Any state or federal sales, use of excise taxes, or similar charges relating to the services and materials under this AGREEMENT shall be paid by the ARTIST in a timely fashion. The CITY shall report payments made to the ARTIST annually to the Internal Revenue Department in a 1099 statement.

## **ARTICLE 3: TERM OF AGREEMENT**

### **a. Duration**

This AGREEMENT shall be effective on the date that this contract has been signed by both PARTIES, and, unless terminated earlier pursuant to such provisions in the AGREEMENT, shall extend until final acceptance by the CITY under Section 1.9(b), or submission of final payment to the ARTIST by the CITY under EXHIBIT B, whichever is later. Extension of time of performance hereunder may be granted upon request of one PARTY and the consent of the other thereto, which consent shall not be unreasonably withheld. Such extension shall be in writing, signed by both PARTIES, and attached to the schedule under Section 1.5(b)(i), attached as EXHIBIT B.

b. Force Majeure

The CITY shall grant to the ARTIST a reasonable extension of time if conditions beyond the ARTIST's control render timely performance of the ARTIST's services impossible or unduly burdensome. All such performance obligations shall be suspended for the duration of the condition. Both PARTIES shall take all reasonable steps during the existence of the condition to assure performance of their contractual obligations when the condition no longer exists. Failure to fulfill contractual obligations due to conditions beyond either PARTY's reasonable control will not be considered a breach of contract, provided that such obligations shall be suspended only for the duration of such conditions.

**ARTICLE 4: RISK OF LOSS**

The ARTIST shall bear the risk of loss or damage to the ARTWORK until the CITY's final acceptance of the ARTWORK under Section 1.9(b). These risks include, but are not limited to: theft; vandalism or any act by a third party; damage caused by acts of god, war or natural conditions/disasters; and any loss occurring during the fabrication, storage, transportation, delivery and installation regardless of where such loss occurs until the CITY's final acceptance of the ARTWORK. The ARTIST shall take such measures as are reasonably necessary to protect the ARTWORK from loss or damage. The CITY shall bear the risk of loss or damage to the ARTWORK prior to final acceptance only if, during such time, the partially or wholly completed ARTWORK is in the custody, control or supervision of the CITY or its agent(s) for the purposes of transporting, storing, installing or performing other services to the ARTWORK.

**ARTICLE 5: ARTIST'S REPRESENTATIONS AND WARRANTIES**

**5.1 Warranties of Title**



The ARTIST represents and warrants that, and hereby fully indemnifies the CITY for any infringements or claims related to the following:

- a. The ARTWORK is solely the result of the artistic effort of the ARTIST.
- b. Except as otherwise disclosed in writing to the CITY, the ARTWORK is unique and original and does not infringe upon any copyright or the rights of any third party.
- c. The ARTWORK (or any duplicate thereof) has not been accepted for sale elsewhere.
- d. The ARTIST has not sold, assigned, transferred, licensed, granted, encumbered or utilized the ARTWORK or any element thereof or any copyright related thereto which may affect or impair the rights granted pursuant to this AGREEMENT.
- e. The ARTWORK is free and clear of any liens from any source whatsoever.
- f. All ARTWORK created or performed by the ARTIST under this AGREEMENT, whether created by the ARTIST alone or in collaboration with others, shall be wholly original with the ARTIST and shall not infringe upon or violate the rights of any third party.
- g. The ARTIST has the full power to enter into and perform this AGREEMENT and to make the grant of rights contained in this AGREEMENT.
- h. All services performed hereunder shall be performed in accordance with all applicable laws, regulations, ordinances, etc. and with all necessary care, skill and diligence.
- i. These representations and warranties shall survive the termination or other extinction of this AGREEMENT.

## 5.2 Warranties of Quality and Condition

- a. The ARTIST represents and warrants that all work will be performed in accordance with professional “workmanlike” standards and free from defective or inferior materials and technique including any defects consisting of “inherent vice,” or qualities that cause or accelerate deterioration of the ARTWORK for one (1) year after the date of final acceptance by the CITY under Section 1.9(b).
- b. The ARTIST represents and warrants that the ARTWORK and the materials used are not currently known to be harmful to public health and safety.
- c. The ARTIST represents and warrants that reasonable maintenance of the ARTWORK will not require procedures substantially in excess of those described in the maintenance and preservation recommendations submitted by the ARTIST pursuant to Section 1.8(f) and EXHIBIT E.
- d. If within one (1) year the CITY observes any breach of warranty that is curable by the ARTIST, the ARTIST shall, at the request of the CITY, cure the breach promptly, satisfactorily and consistent with professional conservation standards, at no expense to the CITY. The CITY shall give notice to the ARTIST of such breach with reasonable promptness.
- e. If after one (1) year the CITY observes any breach of warranty that is curable by the ARTIST, the CITY shall contact the ARTIST to make or supervise repairs or restorations at a reasonable fee during the ARTIST’s lifetime. The ARTIST shall have the right of first refusal to make or supervise repairs or restorations. Should the ARTIST be unavailable or unwilling to accept reasonable compensation under the industry standard, the CITY may seek the services of a qualified restorative conservator and maintenance expert.
- f. If within one (1) year the CITY observes a breach of warranty that is not curable by the ARTIST, the ARTIST is responsible for reimbursing the CITY for damages, expenses and loss incurred by

the CITY as a result of the breach. However, if the ARTIST disclosed the risk of this breach in the proposal and the CITY accepted that it may occur, it shall not be deemed a breach for purposes of this AGREEMENT.

g. Acceptable Standard of Display

The ARTIST represents and warrants that:

- i. General routine cleaning and repair of the ARTWORK and any associated working parts and/or equipment will maintain the ARTWORK within an acceptable standard of public display.
- ii. Foreseeable exposure to the elements and general wear and tear will cause the ARTWORK to experience only minor repairable damages and will not cause the ARTWORK to fall below an acceptable standard of public display so long as general routine cleaning and repair is performed.
- iii. With general routine cleaning and repair, and within the context of foreseeable exposure to the elements and general wear and tear, the ARTWORK will not experience irreparable conditions that do not fall within an acceptable standard of public display, including but not limited to: mold, rust, fracturing, staining, chipping, tearing, abrading and peeling.
- iv. To the extent the ARTWORK incorporates products covered by a manufacturer's warranty, the ARTIST shall provide copies of such warranties to the CITY. The foregoing warranties are conditional and shall be voided by the failure of the CITY to maintain the ARTWORK in accordance with the ARTIST's specifications and the applicable conservation standards. If the CITY fails to maintain the ARTWORK in good condition, the ARTIST, in addition to other

rights or remedies the ARTIST may have in equity or at law, shall have the right to disown the ARTWORK as the ARTIST's creation and request that all credits be removed from the ARTWORK and reproductions thereof until the ARTWORK is satisfactorily repaired.

## **ARTICLE 6: INSURANCE**

### **6.1 General**

- a. The ARTIST acknowledges that until final acceptance of the ARTWORK by the CITY under Section 1.9(b), any injury to property or persons caused by the ARTWORK or any damage to, theft of, vandalism to, or acts of God affecting the ARTWORK are the sole responsibility of the ARTIST, including, but not limited to, any loss occurring during the creation, storage, transportation or delivery of the ARTWORK, regardless of where such loss occurs.
- b. Terms for the procurement and duration of insurance as well as required insurance policies are provided and described in EXHIBIT D.
- c. The ARTIST shall, prior to the execution of this AGREEMENT, provide certificates of insurance evidencing Worker's Compensation, Employer's Liability, General Liability and Automobile Liability insurance. If any insurance policy is due to expire during the period of installation, the ARTIST shall provide a certificate of renewal evidencing the required insurance coverage to the CITY not less than fifteen (15) days prior to the expiration date.

### **6.2 Indemnification**

- a. The ARTIST shall indemnify and hold free and harmless, assume legal liability for and defend the CITY and its officers, employees, agents and servants, whether they are current or former, from and against all actions, claims, liabilities, assertions of liability, losses, costs and expenses,



in law or in equity, including, but not limited to: attorney's fees at trial and appellate levels; reasonable investigative and discovery costs; court costs; claims for bodily injury or death of persons and for loss or damage to property, except as provided herein, of every kind and nature whatsoever, which in any manner directly or indirectly may arise or be alleged to have arisen from the fabrication, transportation and/or installation of the ARTWORK as a result of the duties and obligations as required by this AGREEMENT or that which has resulted or alleged to have resulted from the negligent acts or omissions or other wrongful conduct of, or the infringement of any copyright by the ARTIST and/or their subcontractors, employees and agents in connection with the ARTIST's performance pursuant to this AGREEMENT.

- b. This provision shall not be deemed a waiver of the doctrine of sovereign immunity or the limits of Florida Statute 768.28, and shall no way be construed as consent to be sued by third parties.
- c. The ARTIST shall immediately notify the CITY of any written claim regarding any such matter resulting from or relating to the ARTIST's obligations under this AGREEMENT. The ARTIST shall cooperate, assist and consult with the CITY in the defense or investigation of any such claim arising out of or relating to the performance of this AGREEMENT.
- d. This indemnification shall survive the termination or expiration of this AGREEMENT.

## **ARTICLE 7: OWNERSHIP AND INTELLECTUAL PROPERTY RIGHTS**

### **7.1 Title**

Title to the ARTWORK shall pass to the CITY upon the CITY's written final acceptance and payment for the ARTWORK pursuant to EXHIBIT F. The ARTIST shall provide the CITY with a Transfer of Title in substantially the form attached hereto as EXHIBIT F.

## 7.2 Ownership of Documents

One set of presentation materials prepared and submitted under this AGREEMENT shall be retained by the CITY to hold for permanent safekeeping.

## 7.3 Copyright Ownership

The ARTIST retains all rights under the Copyright Act of 1976, 17 U.S.C. § 101 et seq., as the sole author of the ARTWORK for the duration of the copyright.

## 7.4 Reproduction Rights

- a. In view of the intention that the final ARTWORK shall be unique, the ARTIST shall not make any additional exact duplicate three-dimensional reproductions of the final ARTWORK, 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 creating future ARTWORKS in the ARTIST's manner and style of artistic expression.
- b. The ARTIST grants to the CITY and its assigns an irrevocable license to make two-dimensional reproductions of the ARTWORK for non-commercial purposes, including, but not limited to, reproductions used in brochures, media publicity, and exhibition catalogues or other similar publications provided that these rights are exercised in a tasteful and professional manner.
- c. All reproductions by the CITY shall contain a credit to the ARTIST and a copyright notice, if secured by the ARTIST, in substantially the following form: Copyright © Guy Kemper [date of completion].
- d. The ARTIST shall use the ARTIST's best efforts in any public showing or resume use of reproductions to give acknowledgment to the CITY in substantially the following form: "an original artwork commissioned by the city of Clearwater's Public Art & Design Program."

- e. The ARTIST shall, if desired and at the ARTIST's expense, cause to be registered with the United States Register of Copyrights, a copyright of the ARTWORK in the ARTIST's name.
- f. If the CITY wishes to make reproductions of the ARTWORK for commercial purposes, including, but not limited to, tee shirts, post cards and posters, the PARTIES shall execute a separate AGREEMENT to address the terms of the license granted by the ARTIST and the royalty the ARTIST shall receive.
- g. Third Party Infringement

The CITY is not responsible for any third-party infringement of ARTIST's copyright and is not responsible for protecting the intellectual property rights of the ARTIST.

## **ARTICLE 8: ARTIST'S RIGHTS**

### **8.1 General**

- a. The ARTIST retains all rights under state and federal laws including §106A of the Copyright Act of 1976.
- b. The CITY agrees that it will not intentionally alter, modify, change, destroy or damage the ARTWORK without first obtaining permission from the ARTIST.
- c. If any alteration or damage to the ARTWORK occurs, the ARTIST shall have the right to disclaim authorship of the ARTWORK in addition to any remedies the ARTIST may have in law or equity under this contract. Upon written request, the CITY shall remove the identification plaque and all attributive references to the ARTIST at its own expense within thirty (30) days of receipt of the notice. No provision of this AGREEMENT shall obligate the CITY to alter or remove any such attributive reference printed or published prior to the CITY's receipt of such

notice. The ARTIST may take such other action as the ARTIST may choose in order to disavow the ARTWORK.

## 8.2 Alterations of Site or Removal of Artwork

- a. The CITY shall notify the ARTIST in writing upon the adoption of a plan or alteration of the SITE which would entail removal or relocation of the ARTWORK which might result in the ARTWORK being destroyed, distorted or modified. The ARTIST shall be granted the right of consultation regarding the removal or relocation of the ARTWORK. If the ARTWORK cannot be successfully removed or relocated as determined by the CITY, the ARTIST may disavow the ARTWORK or have the ARTWORK returned to the ARTIST at the ARTIST's expense.
- b. The ARTWORK may be removed or relocated or destroyed by the CITY should the ARTIST and the CITY not reach mutual agreement on the removal or relocation of the ARTWORK after a period not to exceed ninety (90) days after written notice to the ARTIST. During the ninety (90) day period, the PARTIES shall engage in good faith negotiations concerning the removal or relocation of the ARTWORK.
- c. In the event of changes in building codes or zoning laws or regulations that cause the ARTWORK to conflict with such codes, laws or regulations, the CITY may authorize the removal or relocation of the ARTWORK without the ARTIST's prior permission. In the alternative, the CITY may commission the ARTIST by a separate agreement to make any necessary changes to the ARTWORK to render it in conformity with such codes, laws or regulations.
- d. If the CITY reasonably determines that the ARTWORK presents imminent harm or hazard to the public, other than as a result of the CITY's failure to maintain the ARTWORK as required under this AGREEMENT, the CITY may authorize the removal of the ARTWORK without the prior approval of the ARTIST.



- e. This clause is intended to replace and substitute for the rights of the ARTIST under the Visual Artists' Rights Act of 1990 to the extent that any portion of this AGREEMENT is in direct conflict with those rights. The PARTIES acknowledge that this AGREEMENT supersedes that law to the extent that this AGREEMENT is in direct conflict therewith.

#### **ARTICLE 9: PERMANENT RECORD**

The CITY shall maintain on permanent file a record of this AGREEMENT and of the location and disposition of the ARTWORK.

#### **ARTICLE 10: ARTIST AS AN INDEPENDENT CONTRACTOR**

The ARTIST agrees to create and/or perform all ARTWORK under this AGREEMENT as an independent contractor and not as an agent or employee of the CITY. The ARTIST acknowledges and agrees that the ARTIST shall not hold himself or herself out as an authorized agent of the CITY with the power to bind in any manner. The ARTIST shall provide the CITY with the ARTIST's Tax Identification Number and any proof of such number as requested by the CITY.

#### **ARTICLE 11: NONDISCRIMINATION**

The ARTIST shall not discriminate, in any way, against any person based on race, sex, color, age, religion, sexual orientation, disability, ethnicity or national origin, in connection with or related to the performance of this AGREEMENT.

#### **ARTICLE 12: ASSIGNMENT OF ARTWORK**

The ARTWORK and services required of the ARTIST are personal and shall not be assigned, sublet or transferred. Any attempt by the ARTIST to assign this AGREEMENT or any rights, duties or obligations

arising hereunder shall be void and of no effect unless prior written consent is given by the CITY. The CITY shall have the right to assign or transfer any and all the CITY's rights and obligations under this AGREEMENT, subject to the ARTIST's consent, if ownership of the SITE is transferred; if the ARTIST refuses to give consent, this AGREEMENT shall terminate.

#### **ARTICLE 13: DEFAULT AND TERMINATION**

- a. Failure or refusal of the ARTIST to perform or do any act herein required shall constitute a default. In the event of a default, in addition to any other remedy available to the CITY, the CITY, upon thirty (30) days written notice, may terminate this contract. Such termination does not waive any other legal remedies available to the CITY.
- b. Either PARTY may terminate this AGREEMENT without recourse by the other where performance is rendered impossible or impractical for reasons beyond such PARTY's reasonable control such as, but not limited to: acts of nature; war or warlike operations; invasion by extraterrestrial entity or entities; superior governmental regulation or control, public emergency or strike or other labor disturbance. Notice of termination of this AGREEMENT shall be given to the non-terminating PARTY in writing not less than thirty (30) days prior to the effective date of termination.
- c. The CITY may terminate this AGREEMENT without cause upon thirty (30) days written notice to the ARTIST. The CITY shall pay the ARTIST for services performed and commitments made prior to the date of termination, consistent with the schedule of payments set forth in EXHIBIT B of this AGREEMENT. The ARTIST shall have the right to an equitable adjustment in the fee for services performed and expenses incurred beyond those for which the ARTIST has been compensated to date under EXHIBIT B with allowance for lost opportunities, unless the PARTIES come to a settlement otherwise.

- d. If either PARTY to this AGREEMENT shall willfully or negligently fail to fulfill in a timely and proper manner, or otherwise violate any of the covenants or stipulations material to this AGREEMENT, the other PARTY shall thereupon have the right to terminate this AGREEMENT by giving written notice to the defaulting PARTY of its intent to terminate specifying the grounds for termination. The defaulting PARTY shall have thirty (30) days after the effective date of the notice to cure the default. If it is not cured by that time, this AGREEMENT shall terminate.
- e. If the ARTIST defaults for cause other than death or incapacitation, the ARTIST shall return to the CITY all funds provided by the CITY in excess of expenses already incurred. The ARTIST shall provide an accounting of such. All finished and unfinished drawings, sketches, photographs and other ARTWORK products prepared and submitted or prepared for submission by the ARTIST under this AGREEMENT shall be retained by the ARTIST. The CITY shall retain the right to have the ARTWORK completed, fabricated, executed, delivered and installed, however the ARTIST shall retain the copyright in the ARTWORK and all rights under Article 7 and Article 8.
- f. If the CITY defaults, the CITY shall promptly compensate the ARTIST for all services performed by the ARTIST prior to termination. The CITY shall pay the ARTIST for services performed and commitments made prior to the date of termination, consistent with the schedule of payments set forth in EXHIBIT B. The ARTIST shall have the right to an equitable adjustment in the fee for services performed and expenses incurred beyond those for which the ARTIST has been compensated to date with reasonable allowance for lost opportunities. The ARTIST shall retain possession and title to any studies, drawings, designs, maquettes and models already prepared and submitted or prepared for submission to the CITY by the ARTIST under this AGREEMENT prior to the date of termination.

- g. Upon notice of termination, the ARTIST and the ARTIST's subcontractors shall cease all services affected.

#### **ARTICLE 14: DEATH OR INCAPACITY**

If the ARTIST becomes unable to complete this AGREEMENT due to death or incapacitation, such death or incapacity will not be deemed a breach of this AGREEMENT or a default on the part of the ARTIST for the purpose of Article 14. However, nothing in this article shall obligate the CITY to accept the ARTWORK.

- a. In the event of incapacity, the ARTIST shall assign the ARTIST's obligations and services under this contract to another artist provided that the CITY, in the CITY's sole discretion, approves of the new artist. Alternatively, the CITY may elect to terminate this AGREEMENT. The ARTIST shall retain all rights under Article 7 and Article 8. The ARTWORK and any reproductions thereof shall contain a credit to the ARTIST and a copyright notice, if secured by the ARTIST, in substantially the following form: Copyright © Guy Kemper [date of completion].
- b. In the event of the ARTIST's death, this AGREEMENT shall terminate the effective date of death. The ARTIST's heirs shall retain all rights under Article 6 and Article 7. The ARTIST's executor shall deliver to the CITY the ARTWORK in whatever form or degree of completion it may be at the time. Title to the ARTWORK shall then transfer to the CITY. However, the ARTWORK shall not be represented to be the completed ARTWORK of the ARTIST unless the CITY is otherwise directed to do so by the ARTIST's estate.

#### **ARTICLE 15: NOTICES AND DOCUMENTS**

Any notices regarding this AGREEMENT given by either PARTY to the other must be in writing and shall be deemed to have been given, delivered or made, as the case may be when: (1) delivered by



personal delivery; or (2) five (5) business days after having been deposited in the U.S. mail, certified or registered, return receipt requested, with sufficient postage affixed and prepaid; or (3) one (1) business day after having been deposited with an expedited overnight courier service, such by way of example but not limited to: U.S. Express Mail, Federal Express, or UPS; addressed to the party to whom notice is intended to be given at the address set forth below:

For the City:	City Manager City of Clearwater 600 Cleveland Street 6 <sup>th</sup> Floor Clearwater, FL 33755
For the Artist:	Guy Kemper 1425 Elliston Lane Versailles, KY 40383

#### **ARTICLE 16: WAIVER**

The PARTIES agree that a waiver of any breach of violation of any term or condition of this AGREEMENT shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term of condition.

#### **ARTICLE 17: AUDIT**

The CITY shall maintain records of all documents, notices, checks and other records required or produced under this AGREEMENT or related thereto. The ARTIST agrees to the maintenance of such records for archival purposes. Such records shall be made available for inspection or audit upon written request by the CITY. Copies of such documents shall be provided to the CITY for inspection when it is practical to do so. Access to such records and documents shall also be granted to any party authorized by the ARTIST, the ARTIST's representatives, or the ARTIST's successors-in-interest. The CITY will comply with any open records law applicable to these records.

#### **ARTICLE 18: CONFLICT OF INTEREST**

The ARTIST and CITY shall avoid all conflicts of interest or appearance of conflicts of interest in the performance of this AGREEMENT.

#### **ARTICLE 19: MEDIATION**

- a. If, during the creation of the ARTWORK, its installation and subsequent existence, either PARTY breaches this AGREEMENT, each PARTY agrees to submit to mediation upon the request of the other provided that the breach is not cured with a reasonable time under Article 13.
- b. If an ambiguity arises regarding this AGREEMENT upon which the PARTIES cannot agree or a dispute arises as to the completion of a provision, the PARTIES shall submit to mediation.
- c. Each PARTY agrees to be responsible for its own attorney's fees except as otherwise provided by law.

#### **ARTICLE 20: AMENDMENTS**

No alteration change or modification of the terms of this AGREEMENT shall be valid unless made in writing and signed by both PARTIES hereto.

#### **ARTICLE 21: CONFLICTS OF LAW**

If any term, covenant, condition or provision of this AGREEMENT, or the application thereof to any person or circumstance, shall be held by a court of competent jurisdiction, arbitration panel or mediation procedure to be in conflict with the laws, rules, and/or regulations of the United States or the State of Florida, invalid, void, or unenforceable, the remainder of the terms covenants, conditions or provisions of this AGREEMENT, or the application thereof to any person or circumstance, shall remain in full force

and effect and shall in no way be affected, impaired or invalidated thereby to the extent the remainder of the terms, covenants, conditions or provisions of this AGREEMENT are capable of execution.

#### **ARTICLE 22: CHOICE OF LAW**

This AGREEMENT shall be governed by the laws of the State of Florida. Any proceeding related hereto shall be brought and heard in Pinellas County, Florida.

#### **ARTICLE 23: ENTIRE AGREEMENT**

This AGREEMENT, including the exhibits, comprises all the covenants, promises and conditions between the PARTIES. No verbal agreements or conversations between the PARTIES prior to the execution of this AGREEMENT shall affect or modify any of the terms or obligations.

#### **ARTICLE 24: SURVIVING COVENANTS**

The covenants and obligations set forth in this AGREEMENT shall survive the design, fabrication, transportation and installation of the ARTWORK unless otherwise provided for herein and shall be binding upon the PARTIES, their heirs, legatees, executors, administrators, assigns, transferees and their successors in interest.

#### **ARTICLE 25: INTERPRETATION**

This AGREEMENT shall be interpreted under and in accordance with the laws of the State of Florida.

#### **ARTICLE 26: CONSTRUCTION OF AGREEMENT**

This AGREEMENT shall not be construed more strictly against one PARTY than another merely by virtue of the fact that it may have been prepared by one of the PARTIES, it being acknowledged that both

the ARTIST and the CITY have substantially and materially contributed to the preparation thereof.

**ARTICLE 27: SEVERABILITY**

If any provision of this AGREEMENT is contrary to, prohibited by, or deemed invalid by applicable laws or regulations 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.

**ARTICLE 28: 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.



IN WITNESS THEREOF, the parties hereto have caused this Agreement for Commission of Public Artwork to be executed on the date first above written.

**CITY OF CLEARWATER, FLORIDA**

By: \_\_\_\_\_

William B. Horne II  
City Manager

Approved as to Form:

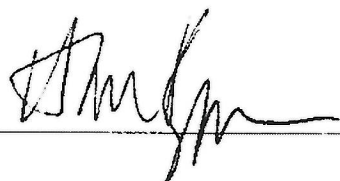
Attest:

\_\_\_\_\_  
Owen Kohler  
Assistant City Attorney

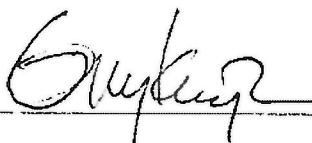
\_\_\_\_\_  
Rosemarie Call  
City Clerk

Witness:

Artist:

  
\_\_\_\_\_

Witness

  
\_\_\_\_\_

Guy Kemper

EXHIBIT A

ARTWORK



## EXHIBIT B

### SCHEDULE

\*\*\*This schedule is subject to change upon mutual agreement of both the CITY and the ARTIST\*\*\*

PHASE I	DATE
City Council review and approval of contract	August 14, 2019
Payment #1 authorized and invoiced (\$12,017.50)	August 15, 2019
Fabrication begins	August 15, 2019
50% fabrication update (with photographs of progress)	September 12, 2019
Payment #2 authorized and invoiced (\$12,017.50)	September 25, 2019
Fabrication completed (with photographs of progress)	October 14, 2019
PHASE II	
Payment #3 authorized and invoiced (\$6,008.75)	October 14, 2019
Crating and shipping of completed sculpture	October 17, 2019
Sculpture arrives on site; inspection of sculpture	December 13, 2019
PHASE III	
Installation begins	January 6, 2020
City inspection of installation; punch-list created	January 8, 2020
Artwork accepted by City	January 8, 2020
Payment #4 authorized and invoiced (\$6,008.75)	January 8, 2020
PROJECT COMPLETE	January 8, 2020

**EXHIBIT C****BUDGET**

<b>MATERIALS</b>	
Mosaic components	\$4,261.50
<b>DESIGN</b>	
Artist rendering and design	\$5,000.00
<b>FABRICATION</b>	
Mosaic fabrication	\$6,000.00
<b>LABOR AND EQUIPMENT</b>	
Installation	\$5,000.00
Scissor-lift rental	\$1,500.00
<b>GENERAL</b>	
Insurance	\$1,000.00
Documentation	\$375.00
Shipping	\$100.00
Travel and lodging (as reimbursable)	\$2,000.00
<b>CONTINGENCY AND FEES</b>	
Contingency (15%)	\$5,408.00
Artist fee (15%)	\$5,408.00
<b>TOTAL</b>	<b>\$36,052.50</b>



**EXHIBIT D**

**INSURANCE**

\*\*\*To be provided by the ARTIST prior to execution of this AGREEMENT\*\*\*



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

07/19/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> PSA Financial 11311 McCormick Road, Ste 500 Hunt Valley MD 21031-8622		<b>CONTACT</b> Jeremy Brown <b>PHONE</b> (410) 821-7766 <b>A/C, No, Ext):</b> (410) 821-7766 <b>E-MAIL</b> jbrown@psafinancial.com <b>FAX</b> (410) 828-0242 <b>A/C, No):</b>	
<b>INSURED</b> Guy Kemper Studio, DBA: Guy Kemper Studio 1425 Elliston Lane Versailles KY 40383		<b>INSURER(S) AFFORDING COVERAGE</b> <b>INSURER A:</b> Selective Insurance Co of Amer <b>INSURER B:</b> <b>INSURER C:</b> <b>INSURER D:</b> <b>INSURER E:</b> <b>INSURER F:</b>	

**COVERAGES****CERTIFICATE NUMBER:** CL1822761729**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:			2185481	10/09/2018	10/09/2019	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000 MED EXP (Any one person) \$ 15,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
	<input type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> HIRE AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$
	<input type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	<input type="checkbox"/> Y <input type="checkbox"/> N	N/A				PER STATUTE E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Evidence of Insurance

**CERTIFICATE HOLDER****CANCELLATION**

City of Clearwater Florida 600 Cleveland St. 6th Floor Clearwater FL 33755	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE 
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## Additional Named Insureds

### Other Named Insureds

Guy Kemper Studio

Doing Business As



AUTO | HOME

Date: July 22, 2019

Dear Guy & Heather,

Please see the enclosed form(s) from Liberty Mutual.

- Certificate of Automobile Insurance (Binder)

Thank you for insuring with Liberty Mutual. We look forward to providing you with quality coverage and outstanding service.

Sincerely,

Liberty Mutual



### **ACTION REQUIRED:**

Please review and keep  
with your insurance  
documents.



### **CONTACT US**

For questions, please  
call us at  
1-985-327-6347.



PROUD PARTNER





## CERTIFICATE OF AUTOMOBILE INSURANCE

THIS IS TO CERTIFY THAT the named insured is, at the date of this certificate, insured by the company with respect to the automobiles hereinafter described for the types of insurance and respective coverages hereinafter designated by entry of the limits of liability or a statement that the coverage is in effect and in accordance with the provisions of the Automobile Policy in use by said company.

This Certificate of Insurance neither affirmatively nor negatively amends, extends or alters the coverage afforded by the policy.

### INSURED'S NAME AND ADDRESS

Guy G Kemper  
Heather R Kemper  
1425 Elliston Ln  
Versailles, KY 40383-8902

### FOR LIEN HOLDER INQUIRIES, CALL OR WRITE

1-800-409-0733  
P O BOX 29017  
PHOENIX, AZ 85038

### DESCRIPTION OF THE INSURANCE FOR WHICH THIS CERTIFICATE IS ISSUED

Policy Number: AOS-288-313106-40 Effective Date: 03/01/2019 Expiration Date: 03/01/2020

	PART A	PART B	PART D — DAMAGE TO YOUR AUTO COVERAGE		
COVERAGES:	BODILY INJURY PROPERTY DAMAGE	MEDICAL PAYMENTS COVERAGE	COVERAGE FOR LOSS CAUSED BY COLLISION INCLUDED	DEDUCTIBLE AMOUNT APPLICABLE TO EACH LOSS IN DOLLARS	
				Loss Caused by Collision	Loss Other Than Loss Caused by Collision
Limits of Liability	100/300 100	NO COV	No	"ACV" indicates Actual Cash Value Less Deductible	"ACV" indicates Actual Cash Value Less Deductible
* Includes Medical Expense	Accidental Death Benefit: \$		Protection Against Uninsured Motorists Coverage — Limit Selected: \$50/100		
POLICY INCLUDES: <input type="checkbox"/> BASIC NO FAULT COVERAGE <input type="checkbox"/> OPTIONAL NO FAULT COVERAGE					

### DESCRIPTION OF AUTOMOBILES

Year of Model	Trade Name	Body Type	Identification or Serial Number
2015	RAM	WAG4X24D	ZFBERFAT7F6A30017

### ADDITIONAL INTEREST

Such insurance as is afforded under the Liability Coverage of the policy shall also apply, with respect to covered autos, to each interest hereinafter named, as an insured; but such inclusion of additional interest or interests shall not operate to increase the limit of the company's liability.

### NAME AND ADDRESS:

The insurance described herein is in effect on the date of this certificate and shall remain in force until canceled in accordance with the terms of the policy.

Loss PAYEE and ADDRESS

Secretary

President

Dated: 07/22/2019 at: 02:17 PM



Countersigned  
AUTHORIZED REPRESENTATIVE



### **LOSS PAYEE**

Such insurance as is afforded by the policy for loss of or damage to the automobile is payable, as interest may appear, to the named insured and the Loss Payee indicated on the previous page in accordance with the terms of the Loss Payable Clause.

Term of Loan:                      From: \_\_\_\_\_ To: \_\_\_\_\_

### **LOSS PAYABLE CLAUSE**

---

Loss or damage, under this policy, shall be paid as interest may appear to you and the loss payee shown on the front of this certificate. This insurance covering the interest of the loss payee shall not become invalid because of your fraudulent acts or omissions, unless the loss results from your conversion, secretion or embezzlement of **your covered auto**. However, we reserve the right to cancel the policy as permitted by policy terms, and the cancellation shall terminate this agreement as to the loss payee's interest. We will give the same advance notice of cancellation to the loss payee as we give to the named insured shown in the declarations.

When we pay the loss payee, we shall, to the extent of payment, be subrogated to the loss payee's rights of recovery.

### **NOTICE TO OTHERS IF CANCELLATION OCCURS**

---

"We" will not cancel "Your" Policy or reduce the insurance under any of its coverages until at least 10 days after we have mailed a written notice of such cancellation or reduction to the person(s) named as additional interest on reverse side.

AS1019 (ed 12-89)

## **EXHIBIT E**

### **MAINTENANCE MANUAL**

\*\*\*To be provided by the ARTIST following the installation of the ARTWORK\*\*\*

**EXHIBIT F**

**TRANSFER OF TITLE**

**CERTIFICATE OF APPROVAL AND ACCEPTANCE**

Clearwater Public Art and Design Program

PROJECT: Morningside Recreation Complex

ARTWORK: 'Untitled'

ARTIST: Guy Kemper

This certifies that the ARTWORK entitled 'Untitled' has been completed, in significant form to the DESIGN presented by ARTIST Guy Kemper of 1425 Elliston Lane, Versailles, KY 40383.

The CITY hereby accepts the ARTWORK into its Public Art and Design Program collection through the purchase and transfer of title to the ARTWORK.

\_\_\_\_\_  
Guy Kemper, ARTIST

\_\_\_\_\_  
Date

\_\_\_\_\_  
CITY representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Date



**EXHIBIT G**

**AFFADAVIT OF NO LIENS**

This certifies that there are no liens against the ARTWORK entitled "Untitled" designed and fabricated by ARTIST Guy Kemper of 1425 Elliston Lane, Versailles, KY 40383.

\_\_\_\_\_  
Guy Kemper, ARTIST

\_\_\_\_\_  
Date

\_\_\_\_\_  
CITY representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Date

## EXHIBIT H

### CERTIFICATE OF WARRANTY

\*\*\*To be completed at the time of Transfer of Title\*\*\*

By signing below, Guy Kemper certifies that as the ARTIST associated with the ARTWORK entitled “Untitled” that the ARTWORK is hereby under warranty and is guaranteed against defective or inferior materials and technique including any defects consisting of “inherent vice” or qualities that cause or accelerate deterioration as defined in Article 5, Section 5.2 of this AGREEMENT, for the period of one (1) year commencing on the date signed below.

---

Date of initiation of warranty

---

Guy Kemper, ARTIST

---

Date

---

CITY representative

---

Date

---

Witness

---

Date