

# ST. PETERSBURG CITY COUNCIL

## Consent Agenda

February 7, 2019

**TO:** The Honorable Charlie Gerdes, Chair and Members of City Council

**SUBJECT:**

A resolution approving agreements between the city of St. Petersburg, Florida, and Mabry and Pulitzer Studios, Inc. ("Artist"), for Artist to design, fabricate, and install a piece of art entitled "Myth (Red Pelican)" in the center of the entryway plaza area of the St. Pete Pier,<sup>TM</sup> for a firm fixed price of \$150,000, exempting and waiving the Florida Statute and City Code public construction bond requirement for the agreement for the artist to design, fabricate, and install "Myth (Red Pelican)"; rescinding an unencumbered appropriation in the General Capital Improvement Fund (3001) in the amount of \$140,000 from the Pier Approach Project (15377), approving a transfer in the amount of \$140,000 from the unencumbered balance of the General Capital Improvement Fund (3001), resulting from the rescission, to the Arts in Public Places Fund (1901); approving a supplemental appropriation in the amount of \$150,000 from the increase in the unappropriated balance of the Arts in Public Places Fund (1901) resulting from the transfer above; to the Mayor's Office, Cultural Affairs Division (020-1777); authorizing the mayor or his designee to execute the agreements and all documents necessary to effectuate these transactions, and providing an effective date.

**EXPLANATION:**

The St. Petersburg Pier Art Project Committee was established pursuant to Section 5-58 of the City Code to ensure that proper consideration was given to the design, siting, facility operation, and neighborhood interests for artwork to be commissioned for the project. A contract was entered into with Ann Wykell to act as project manager for the pier art selection process. Over a period of several meetings in early 2017, the project manager presented work by artists with qualifications to complete work of this nature to the Project Committee. At the October 18, 2017 meeting of the Project Committee, after discussion and review of artists' works, the Project Committee voted on six (6) finalists and two (2) alternatives. The Committee met on April 24, 2018 to review the finalists' presentations of their proposals and based on the proposals presented by Nathan Mabry of Mabry and Pulitzer Studios, Inc., the Committee selected Mr. Mabry to fully design, fabricate and install a piece of art entitled "Myth (Red Pelican)" in the center of the entryway plaza area of the St. Pete Pier<sup>TM</sup> with the exact location to be designated by the City at the time of installation. On May 1, 2018, the Public Arts Commission approved the Committee's selection and recommends that City Council approve agreements for Artist to fully design, develop and install the "Myth (Red Pelican)" in the center of the entryway plaza area of the St. Pete Pier<sup>TM</sup>.

The Artist has since come forward to request an additional \$10,000 be added to the original proposed cost of "Myth (Red Pelican)", bringing the total amount of this agreement to \$150,000; the Artist cited newly imposed tariffs on aluminum as the reason for the request. The Public Arts Commission unanimously voted to approve the additional amount at their December 4, 2018 meeting.

Mr. Mabry proposed at the time of his presentation that additional smaller pelicans can be added and installed in various locations at the pier for a cost of \$7,000 each (however, in the event the cost of steel increases or decreases between the Effective Date and the date on which the City places an order for additional cast pelican(s), the Bulk Additional Cast Pelican Price or the Additional Cast Pelican Price, as

applicable, will increase or decrease to reflect the increase or decrease in the material cost of steel for each additional cast pelican ordered . At this time there is a private donation for one and the Public Arts Commission has voted to fund an additional pelican from the Arts in Public Places Fund (1901), these additional works will be submitted to City Council for approval as a separate item.

**RECOMMENDATION:**

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

**COST/FUNDING/ASSESSMENT INFORMATION:**

Funds will be available after approval of a rescission of an unencumbered appropriation in the General Capital Improvement Fund (3001) in the amount of \$140,000 from the Pier Approach Project (15377); a transfer in the amount of \$140,000 from the unencumbered balance of the General Capital Improvement Fund (3001), resulting from the rescission, to the Arts in Public Places Fund (1901); and approval of a supplemental appropriation in the amount of \$150,000 from the increase in the unappropriated balance of the Arts in Public Places Fund (1901) resulting from the above transfer, to the Mayor's Office, Cultural Affairs division (020.1777).

**ATTACHMENTS:**

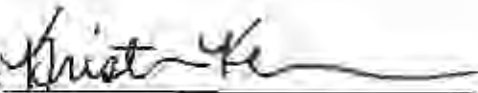
- (1) Sculpture Design Rendering
- (2) Resolution
- (3) Artist Agreement

**APPROVALS:**

Administration:



Budget:



## **“Myth (Red Pelican)”**

Nathan’s design is inspired by the geometry of the new pier design and the symbol of the pelican as the emblem for St. Petersburg. He stated in his presentation to the selection committee that the pelican is a symbol for kindness, generosity, friendship and love.

While working on the proposal, his focus became to create an outdoor public artwork that is conceptually integrated to the site, but also visually distinct. In studying the renderings of the pier and architecture he noticed the utilization of a geometric visual language of triangles within the design which led him to look for a defining aesthetic approach; he found that inspiration in the accessible and universal visual language of Origami, the art of folding paper. The notion of an abstract metal monument rooted in something as intimate, delicate and timeless as folded paper became his focus.

The “Myth (Red Pelican)” structure will be approximately 120” high, fabricated from  $\frac{1}{2}$ ” to  $\frac{3}{4}$ ” thick aluminum plate metal with a satin single color painted finish. Sculpture will be mounted on a 1” baseplate, ready for bolt mounting. Specifics on the bolt mounting will be worked based on the engineering and capabilities of the site. The structure includes the three realistic pelicans atop the origami style pelican.



Resolution No. 2018-\_\_\_\_\_

A RESOLUTION AUTHORIZING THE MAYOR OR HIS DESIGNEE TO EXECUTE AN AGREEMENT BETWEEN THE CITY OF ST. PETERSBURG, FLORIDA, AND MABRY AND PULITZER STUDIOS, INC. ("ARTIST"), FOR ARTIST TO DESIGN, DEVELOP AND INSTALL A PIECE OF EXTERIOR ART ENTITLED "MYTH (RED PELICAN)" IN THE ENTRY PLAZA OF THE CITY'S NEW ST. PETE PIER™ FOR A TOTAL FIRM FIXED PRICE OF \$150,000 ("AGREEMENT") AND ALL OTHER DOCUMENTS NECESSARY TO EFFECTUATE THIS TRANSACTION; EXEMPTING AND WAIVING THE FLORIDA STATUTE AND CITY CODE PUBLIC CONSTRUCTION BOND REQUIREMENT FOR THE AGREEMENT; AUTHORIZING THE CITY ATTORNEY TO MAKE NON-SUBSTANTIVE CHANGES TO THE AGREEMENT; RESCINDING AN UNENCUMBERED APPROPRIATION IN THE GENERAL CAPITAL IMPROVEMENT FUND (3001) IN THE AMOUNT OF \$140,000 FROM THE PIER APPROACH PROJECT (15377); APPROVING A TRANSFER IN THE AMOUNT OF \$140,000 FROM THE UNENCUMBERED BALANCE OF THE GENERAL CAPITAL IMPROVEMENT FUND (3001), RESULTING FROM THE RESCISSION, TO THE ARTS IN PUBLIC PLACES FUND (1901); APPROVING A SUPPLEMENTAL APPROPRIATION IN THE AMOUNT OF \$150,000 FROM THE INCREASE IN THE UNAPPROPRIATED BALANCE OF THE ARTS IN PUBLIC PLACES FUND (1901) RESULTING FROM THE TRANSFER ABOVE, TO THE MAYOR'S OFFICE, CULTURAL AFFAIRS DIVISION (020-1777); PROVIDING AN EFFECTIVE DATE.

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

WHEREAS, the Pier Public Art Project Committee ("Committee") was established pursuant to Section 5-58 of the City Code to ensure that proper considerations were given to the design, siting, facility operation, and neighborhood interests for artwork to be commissioned for the new St. Pete Pier™; and

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

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

WHEREAS, after having narrowed down the potential artists to six finalists, the Committee met on April 11, 2018 to hear the six finalists' presentations of their proposals; and

WHEREAS, based on the site-specific proposal for an exterior piece presented by Nathan Mabry of Mabry and Pulitzer Studios, Inc. ("Artist"), one of the finalists, the Committee selected Artist to fully design, develop and install a piece of exterior art entitled "Myth (Red Pelican)" in the entryway plaza of the new St. Pete Pier™; and

WHEREAS, on May 1, 2018, the Public Arts Commission approved the Committee's selection and recommended that City Council approve an agreement for Artist to fully design, develop, and install Myth (Red Pelican) at the new St. Pete Pier™ ("Agreement") for a total price of \$140,000; and

WHEREAS, due to recent tariffs on aluminum, Artist has requested the total price for the Myth (Red Pelican) be increased to \$150,000; and

WHEREAS, on December 4, 2018, the Public Arts Commission voted to recommend that \$10,000 from the Arts in Public Places Fund (1901) be allocated to this project to cover the increase in the total price; and

WHEREAS, under the Agreement, the City has an option to purchase additional smaller cast pelicans at a fixed price of \$7,000 each when at least three are ordered at a time, which Artist would design, develop, and install pursuant to amendment(s) to the Agreement that would require City Council approval; and

WHEREAS, the Agreement involves the prosecution and completion of a public work requiring a public construction bond pursuant to Florida Statute Section 255.05(1) and City Code Section 2-254(a), unless City Council exempts Artist from executing a public construction bond pursuant to Florida Statute

Section 255.05(1)(d) and waives the requirement pursuant to City Code Section 2-259; and

WHEREAS, Administration recommends that City Council grant an exemption and waiver from the public construction bond requirement for this Agreement.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of St. Petersburg, Florida, that the Mayor or his designee is authorized to execute an agreement between the City of St. Petersburg, Florida, and Mabry and Pulitzer Studios, Inc. ("Artist"), for Artist to design, develop and install a piece of exterior art entitled "Myth (Red Pelican)" in the entry plaza of the City's new St. Pete Pier™ for a total firm fixed price of \$150,000 ("Agreement") and all other documents necessary to effectuate this transaction.

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

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

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

BE IT FURTHER RESOLVED that an unencumbered appropriation in the General Capital Improvement Fund (3001) in the amount of \$140,000 from the Pier Approach Project (15377) is hereby rescinded.

BE IT FURTHER RESOLVED that a transfer in the amount of \$140,000 from the unencumbered balance of the General Capital Improvement Fund (3001), resulting from above the rescission, to the Arts in Public Places Fund (1901) is hereby approved;

BE IT FURTHER RESOLVED that a supplemental appropriation in the amount of \$150,000 from the increase in the unappropriated balance of the Arts in Public Places Fund (1901) resulting from the transfer above, to the Mayor's Office, Cultural Affairs Division (020-1777) is hereby approved:

<u>Arts in Public Places Fund (1901)</u>	
Mayor's Office, Cultural Affairs Division (020-1777)	\$150,000

This Resolution shall become effective immediately upon its adoption.

Approvals:

A handwritten signature in black ink, consisting of a series of loops and flourishes, positioned above a horizontal line.

Administration

A handwritten signature in black ink, appearing to read 'Sharon McKinney', positioned above a horizontal line.

City Attorney (Designee)

CPA 18483

A handwritten signature in blue ink, appearing to read 'Olahofe', positioned above a horizontal line.

Budget

**ARTIST AGREEMENT**

**THIS AGREEMENT** (“Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2019 (“Effective Date”), by and between the City of St. Petersburg, Florida, a municipal corporation of the State of Florida, (“City”) and Mabry and Pulitzer Studios, Inc. (“Artist”) (collectively, “Parties”).

**WHEREAS**, it is the desire of City and Artist to establish the terms and conditions under which Artist shall design, fabricate, and install works of art in the place(s) designated herein.

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

**ARTICLE 1. DEFINITIONS**

1.1 Artwork - The work of art entitled “Myth (Red Pelican),” which is to be fully designed, fabricated, and installed by Artist under this Agreement. The Artwork is generally depicted and described in Exhibit A, which is attached hereto and made a part of this Agreement. Except where context indicates otherwise, the term “Artwork” shall also include any additional cast pelicans that may be added to this Agreement and set forth in Exhibit A, as may be amended from time to time pursuant to this Agreement.

1.2 Site – The Site for Myth (Red Pelican) is in the center of the entryway plaza area of the St. Pete Pier™ with the exact location to be designated by the City at the time of installation. Except where context indicates otherwise, the term “Site” also includes the location for any additional cast pelicans that may be added to this Agreement and set forth in an amended Exhibit A, which will include a depiction and identification of the area in which each additional cast pelican is to be installed.

**ARTICLE 2. SCOPE OF SERVICES**

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

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

- A. Beginning on the Effective Date, Artist shall commence the final design, development, fabrication and installation of the Artwork in accordance with this



Agreement. Artist shall provide the City with all specifications necessary for the City to install a foundation for the Artwork.

- B. Final placement of the Artwork must be coordinated with and approved by the City before installation begins to ensure that no damage is caused to the Site.
- C. Artist shall submit monthly progress reports to the City upon written request.
- D. Artist shall present to the City in advance, for further review and approval, a written proposal for any significant changes in the scope, design, color, size, material or texture, or location on the Site of the Artwork which affects installation, scheduling, Site preparation or maintenance for the Artwork or the concept of the Artwork as approved by the City.
- E. Artist agrees that the Artwork will not utilize any protected patent, trademark, or copyright unless Artist has obtained proper permission and all releases and other necessary documents. If Artist uses any protected material, process, or procedure, Artist shall disclose such patent, trademark, or copyright in the construction drawings and technical specifications.
- F. Artist shall provide written instructions for the care, maintenance and preservation requirements for the Artwork. The City acknowledges that the Artwork may suffer some ordinary wear and tear, but such wear and tear shall not be of such a nature to affect the integrity or overall visual quality of the Artwork. The Artwork shall be designed to withstand all conditions that could reasonably be expected to occur at the Site over a twenty-five year period, including the prevailing climate and local conditions, wind events, rain events, and other weather events. Nothing in this paragraph may be construed as limiting the Artist's obligations to ensure that the Artwork complies with all applicable Laws (as hereinafter defined).
- G. Artist shall provide a written warranty of the Artwork, guaranteeing the quality of materials and workmanship for a period of not less than five (5) years after Final Acceptance (as hereinafter defined).
- H. Artist is responsible for acquiring all City, county, state or federal permits or variances necessary for the construction and/or installation of the Artwork.
- I. Artist and the Artwork shall at all times comply with all current and future federal, state, and local statutes, rules, regulations, and ordinances, the federal and state constitutions and the orders and decrees of any lawful authorities having jurisdiction over the matter at issue (collectively, "Laws"). Artist hereby makes all certifications required by Florida Statute section 287.135.

- J. If access to the Site is required prior to the completion of the City's St. Pete Pier™, which is currently under construction, Artist must obtain permission from the City's construction manager and comply with all procedures and requirements of the City's construction manager related to site access and safety, including but not limited to any requirement that the City's construction manager be listed as an additional insured on this Agreement or otherwise.
- 2.3. City's Right to Review Progress. The City shall have the right to review the progress of the Artwork at all reasonable times.
- 2.4. Ownership of Documents. Upon completion of the Artwork all studies, drawings, designs and photographs prepared and submitted to the City under this Agreement by Artist shall become the property of the City. The City will not be entitled to any other original drawings in the possession of Artist.

### ARTICLE 3. COMPENSATION

- 3.1. Firm Fixed Price for Myth (Red Pelican). City shall pay Artist a firm fixed price of one hundred fifty thousand dollars (\$150,000) ("Firm Fixed Price") for Myth (Red Pelican), which Firm Fixed Price shall constitute full compensation for all services performed (including any approved services provided prior to the Effective Date) and materials furnished by Artist under this Agreement for Myth (Red Pelican), including Artist's fee.
- 3.2. Additional Cast Pelican Price. In the event the City elects to purchase any additional cast pelicans within the one (1) year period after Final Acceptance, and further provided that Artist desires to design, fabricate and install each such additional cast pelican, the Parties hereby agree that the price for each additional cast pelican will not to exceed seven thousand dollars (\$7,000) if the City orders at least three pelicans at one time ("Bulk Additional Cast Pelican Price"), and will not exceed seven thousand five hundred dollars (\$7,500) for each additional cast pelican if the City orders two or less additional cast pelicans at one time ("Additional Cast Pelican Price"). The Bulk Additional Cast Pelican Price or Additional Cast Pelican Price, as applicable, shall constitute full compensation for all services performed and materials furnished by Artist under this Agreement for each additional cast pelican, including but not limited to Artist's fee, travel or other expenses, and shipping and installation costs. Notwithstanding the foregoing, the Parties agree that in the event the cost of steel increases or decreases between the Effective Date and the date on which the City places an order for additional cast pelican(s), the Bulk Additional Cast Pelican Price or the Additional Cast Pelican Price, as applicable, will increase or decrease to reflect the increase or decrease in the material cost of steel for each additional cast pelican ordered.
- 3.3. Method and Schedule of Payment. Artist shall invoice the City in accordance with the following schedule. Each payment installment represents full and final payment for all services and materials provided prior to payment thereof. Each installment shall be paid

after receipt of the applicable certifications or documentation described below, which shall be in a form acceptable to the City in its reasonable discretion.

A. Myth (Red Pelican)

- i. Artist shall invoice the City for fifty-two thousand dollars (\$52,000) of the Fixed Firm Price within thirty (30) days after the Effective Date, and the City shall pay such invoice within thirty (30) days after receipt (provided Artist is in compliance with the terms and conditions of this Agreement). This amount is intended to cover completion of the final design and engineering.
- ii. Artist shall invoice the City for fifty-six thousand dollars (\$56,000) of the Fixed Firm Price, to cover fabrication, and the City shall pay such invoice within thirty (30) days after receipt, provided the Artist has provided evidence of completion of final design.
- iii. Artist shall invoice the City for twenty-eight thousand dollars (\$28,000) of the Fixed Firm Price, to cover the remaining fabrication work, and the City shall pay such invoice within thirty (30) days after receipt, provided the Artist has provided evidence of fifty percent (50%) fabrication.
- iv. Artist shall invoice the City for the remaining fourteen thousand dollars (\$14,000) of the Fixed Firm Price, and the City shall pay such invoice within thirty (30) days of receipt, provided the Artist is in compliance with the terms and conditions of this Agreement, has completed and installed Myth (Red Pelican), and has presented to or obtained from the City the following:
  - a) Photos and documentation of completed fabrication of Myth (Red Pelican) and evidence that all required permits have been obtained;
  - b) A written bill of sale conveying title of Myth (Red Pelican) to the City;
  - c) Written instructions for the care, maintenance, preservation and handling of Myth (Red Pelican) pursuant to this Agreement;
  - d) A sworn statement of no liens, claims or other encumbrances for Myth (Red Pelican) pursuant to this Agreement;
  - e) A written warranty for Myth (Red Pelican) pursuant to this Agreement;

- f) Written assignment of any and all warranties for materials used or labor performed by subcontractors or other persons for Myth (Red Pelican); and
- a) Obtaining Final Acceptance of Myth (Red Pelican) pursuant to this Agreement which shall not be unreasonably withheld by the City.

B. Additional Cast Pelican(s)

- i. Artist shall invoice the City for half of the Bulk Additional Cast Pelican Price or Additional Cast Pelican Price, as applicable, for each additional cast pelican, within thirty (30) days after the effective date of an amendment to this Agreement adding the additional cast pelican(s) to Exhibit A, as amended, and the City shall pay such invoice within thirty (30) days after receipt (provided Artist is in compliance with the terms and conditions of this Agreement). This amount is intended to cover the cost of materials.
- ii. Artist shall invoice the City for the remaining half of the Bulk Additional Cast Pelican Price or Additional Cast Pelican Price, as applicable, for each additional cast pelican, and the City shall pay such invoice within thirty (30) days of receipt, provided the Artist is in compliance with the terms and conditions of this Agreement, has completed and installed each additional cast pelican set forth in Exhibit A, as amended, and has presented to or obtained from the City the following:
  - b) Photos and documentation of completed fabrication of the additional cast pelican(s) and evidence that all required permits have been obtained;
  - c) A written bill of sale conveying title of the additional cast pelican(s) to the City;
  - d) Written instructions for the care, maintenance, preservation and handling of the additional cast pelican(s) pursuant to this Agreement;
  - e) A sworn statement of no liens, claims or other encumbrances for the additional cast pelican(s) pursuant to this Agreement;
  - f) A written warranty for the additional cast pelican(s) pursuant to this Agreement;

- g) Written assignment of any and all warranties for materials used or labor performed by subcontractors or other persons for the additional cast pelican(s); and
  - h) Obtaining Final Acceptance of the additional cast pelican(s) pursuant to this Agreement which shall not be unreasonably withheld by the City.
- 3.4. Non-Appropriation. The obligations of the City as to any funding required pursuant to this Agreement shall be limited to an obligation in any given year to budget, appropriate and pay from legally available funds, after monies for essential City services have been budgeted and appropriated, sufficient monies for the funding that is required during that year. Notwithstanding the foregoing, the City shall not be prohibited from pledging any legally available non-ad valorem revenues for any obligations heretofore or hereafter incurred, which pledge shall be prior and superior to any obligation of the City pursuant to this Agreement.
- 3.5. Travel and Other Expenses. Travel and other expenses will not be reimbursed. Artist's sole compensation shall be the Firm Fixed Price, and as applicable, the Bulk Additional Cast Pelican Price or Additional Cast Pelican Price for any additional cast pelicans added to this Agreement.

#### **ARTICLE 4. TIME OF PERFORMANCE**

- 4.1. Time of Performance Described. All services by Artist shall be completed pursuant to this Agreement. Artist agrees to be available to begin this project immediately on the Effective Date. Artist shall complete and install Myth (Red Pelican) and submit all required documentation to the City no later than August 29, 2019. Artist shall complete and install any additional cast pelicans set forth in an amended Exhibit A in accordance with the installation date for each additional cast pelican set forth in an amended Exhibit A; provided, however, that no additional cast pelicans may be added to this Agreement more than one year after Final Acceptance.
- 4.2. Extensions by City. The City may grant Artist a reasonable extension of time in the event there is a delay on the City's part in performing obligations under this Agreement or if conditions beyond Artist's control or acts of God render timely performance of Artist's services impossible or unreasonably burdensome. Artist agrees and understands that the City shall be the sole judge of what constitutes "beyond Artist's control." Further, Artist agrees that there will be no extension of time for any reason if such extension of time would result in an increase in the Fixed Firm Price or the Bulk Additional Cast Pelican Price or, as applicable, Additional Cast Pelican Price.
- 4.3. Special Extensions. The City's Mayor or his designee shall have the authority to grant one extension for up to ninety (90) days for good cause, as determined by the City in its

sole and absolute discretion.

- 4.4. Failure to Fulfill Obligations. Except as otherwise provided herein, failure to fulfill obligations due to conditions beyond either party's reasonable control will not be considered a breach of this Agreement, provided that such obligations shall be suspended only for the duration of such conditions.
- 4.5. Presentations of Artwork While in Progress. During the performance of this Agreement, Artist specifically grants to the City the right, at the City's discretion, to make presentations, photographs or otherwise reproduce faithful images of the Artwork while in progress for presentation purposes.
- 4.6. Acceptance of Artwork upon Completion. Artist shall provide the City with written notice of completion after the Artist completes and installs the Artwork and provides to the City all documentation required pursuant to this Agreement. The City shall, in writing, accept or reject the Artwork within ten (10) business days of the City's receipt of Artist's written notice of completion. The City may only reject the Artwork if it does not meet the design plans, drawings or specifications described herein or if Artist has not provided documentation as required pursuant to this Agreement. If the City fails to accept any portion of the Artwork due to noncompliance with the design plans, drawings or specifications or failure to provide documentation required pursuant to this Agreement ("Noncompliance"), the City shall give Artist written notice of such failure to accept, the reasons therefor and a reasonable opportunity to correct such Noncompliance, provided, however, that in no event shall the period to correct the Noncompliance exceed thirty (30) calendar days from the date the City provides notice of Noncompliance to Artist. For purposes of this Agreement, "Final Acceptance" means that Artist has cured all Noncompliance (if any), and the City has issued written approval of the Artwork and associated documentation.

## **ARTICLE 5. GENERAL CONDITIONS**

- 5.1. Assignment, Transfer or Subcontracting. A material element of this Agreement is the personal skill, judgment and creativity of Nathan Mabry of Mabry and Pulitzer Studios, Inc.. Therefore, Artist shall not assign, transfer or subcontract the creative or artistic portions of the Artwork to another party without the prior written approval of the City, which approval may be withheld in the City's sole and absolute discretion.
- 5.2. Nameplate. The City may include nameplates for the Artwork, which nameplates may include any information desired by the City.
- 5.3. Public Records.
  - A. Artist shall (i) keep and maintain public records (as defined in Florida's Public Records law) required by the City to perform the services pursuant to this

Agreement; (ii) upon request from the City Clerk's Office, provide the City (at no cost to the City) with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided under Florida's Public Records law or other applicable Laws; (iii) ensure that public records in Artist's possession that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by applicable Laws from the Effective Date until the City issues its Final Acceptance of all Artwork under this Agreement ("Services Term") or until earlier termination of this Agreement; and (iv) during the Services Term or earlier termination of this Agreement, at the City's request, either transfer, at no cost, to the City all public records in Artist's possession within ten (10) days following the City's request and/or keep and maintain any public records required by the City to perform the services pursuant to this Agreement. If Artist transfers all public records to the City upon expiration of the Services Term or earlier termination of this Agreement, Artist shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Artist keeps and maintains public records after the expiration of the Services Term or earlier termination of this Agreement, Artist shall meet all applicable requirements for retaining public records in accordance with this Agreement and all applicable Laws. At the City's request, all public records stored electronically by Artist shall be provided to the City in a format approved by the City.

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

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

## ARTICLE 6. WARRANTIES

6.1. Warranty of Title. Artist warrants that the Artwork shall be the result of the artistic efforts of Artist and that, unless otherwise stipulated herein, the Artwork shall be unique, an edition of one, and not infringe on any copyright. Artist shall deliver the Artwork free and clear of any liens, claims or other encumbrances of any type arising from the acts of

Artist.

- 6.2. Warranty of Quality. Artist warrants that the Artwork shall be free of defects in material and workmanship and that Artist shall correct any such defects which appear for a five of five (5) years from Final Acceptance at Artist's expense. This warranty of quality shall not require Artist to correct any damage caused by vandalism or any act of the City so long as such damage is not the result of a defect in material or workmanship of Artist. It is understood by the City that the Artwork has been designed and built by Artist as a work of art. Any use by the City of the Artwork for purposes other than for adornment of the Site as a work of art hereby voids this warranty of quality.
- 6.3. Warranty Regarding Useful Life. Artist warrants that the Artwork will be designed, fabricated, and installed to have a useful life of at least twenty-five (25) years after Final Acceptance.

#### **ARTICLE 7. TITLE AND COPYRIGHT**

- 7.1. Artist Responsibility. Artist shall execute any and all lawful documents, including assignments, which the City deems necessary or desirable to fully acknowledge the City's ownership interest in the Artwork and to effectuate any assignment and this Agreement.
- 7.2. Title. Title to the Artwork shall vest in the City upon delivery of the Bill of Sale by Artist. As owner of the Artwork, the City may exercise any and all rights of ownership including but not limited to sale, removal or destruction of the Artwork, subject to the requirements set forth in this Agreement.
- 7.3. Copyright. Except ownership and possession, Artist retains all rights in and to the Artwork, including all applicable rights under the Copyright Act of 1976, 17 U.S.C. §§ 101 et. seq., except as such rights are limited by this Agreement or waived by Nathan Mabry in Exhibit D, which is attached hereto and made a part hereof. In the event Artist records Artist's identity and address with the Copyright Office, Artist shall notify the City of such recordation.
- 7.4. Limitations on Artist Copyright. The Artwork in its final dimension shall be unique. Artist shall not make any exact duplicates of the final Artwork or grant permission to others to do so except with the written permission of the City.
- 7.5. License to City. Artist grants to the City and its assigns an irrevocable license to make reproductions of the Artwork for noncommercial purposes, including but not limited to reproductions used in marketing, advertising, brochures, media publicity, web sites, and catalogues or other similar publications, provided that such reproductions of the Artwork must be made in a professional and tasteful manner.



- 7.6. Credit to Artist. The City shall use reasonable efforts, in all reproductions based on the Artwork, to give credit to Artist. This section 7.6 shall not apply if Nathan Mabry exercises Nathan Mabry's right to prevent the use of Nathan Mabry's name as the author of the Artwork in accordance with applicable Laws or if Artist exercises its right to prevent the use of its name in association with the Artwork in accordance with this Agreement.
- 7.7. Credit to City. Artist shall use best efforts to give a credit reading substantially, "all original work owned by the City of St. Petersburg, Florida" in any public showing or distribution to the public of any reproductions of the Artwork which have been authorized by the City and which are under Artist's control.

## **ARTICLE 8. RISK OF LOSS AND INSURANCE**

- 8.1. Damage. Should any repairs to any structure or the Site become necessary or if the Artwork is damaged in any way prior to the City issuing its Final Acceptance, the City shall not have any liability or responsibility for replacement or repair of the Artwork.
- 8.2. Damage to Materials. If, before the City issues its Final Acceptance, the Artwork, art materials or any portion of the art materials are substantially damaged by fire, explosion, or other casualty or occurrence, the City may elect to repair or replace the art materials or immediately terminate this Agreement. In the event of termination pursuant to this Section 8.2, the City shall not be obligated to pay Artist any remaining monies in connection with this Agreement. The City shall not have any liability to Artist in the event of termination of this Agreement pursuant this Section 8.2 and Artist shall not be required to repay any money paid to Artist from the City pursuant to this Agreement, unless such damage to the art materials was caused or contributed to by the negligence of Artist or Artist's employees, subcontractors, representatives or agents. Nothing contained herein shall limit the City's rights and remedies against Artist if Artist, any other occupant of the Site, or their respective agents, employees, representatives, guests, invitees, customers, contractors or subcontractors, caused or contributed to the damage to the art materials. Notwithstanding the above, , any damage by any such causes after Final Acceptance shall not be the responsibility of the Artist unless otherwise warranted by Artist pursuant to this Agreement.
- 8.3. Insurance. Artist shall arrange for, and/or ensure that Artist and all subcontractors have, or are covered by, public liability and property damage insurance to protect Artist, the Indemnified Parties (as defined hereinafter), and any subcontractor performing work covered by or related to this Agreement, from claims for damage for personal and bodily injury, including accidental death, as well as from claims of property damage, which may arise from operations under this Agreement whether such operations are by Artist and by any subcontractor or anyone directly employed by either of them in the amounts as follows, which shall remain in effect until Final Acceptance of all Artwork under this

Agreement by the City:

- A. General Liability Insurance including contractual liability and products and completed operations with coverage limits of at least \$300,000 per occurrence protecting the City against all claims or demands that may arise.
- B. Automobile Liability Insurance with minimum limits as set forth by Florida Statute.
- C. Workers' Compensation Insurance in compliance with the laws of the State of Florida. Employers Liability coverage with minimum limits of \$100,000 for each accident, \$100,000 for each employee for disease, and \$500,000 total for all disease.
- D. The Indemnified Parties must be shown as an additional named insured with respect to this coverage.
- E. The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operations of Artist.
- F. The insurance policy required above shall be issued by a company authorized to do business in the State of Florida, with the following qualifications as to management and financial strength: the company must be rated not less than "A" as to management, and not less than Class "X" as to strength, by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent.
- G. Artist shall furnish a certificate of insurance on a standard ACORD form to the City prior to commencement of operations on the Site, which certificate shall clearly indicate that Artist and/or its subcontractors have obtained insurance in the type, amount and classification as required for strict compliance with this article and that no material changes or cancellation of insurance will be effective without thirty (30) days prior written notice to the City, despite changes to or cancellation of insurance.
- H. Compliance with the foregoing requirements shall not relieve Artist of its liability and obligations under this Agreement.
- I. The insurance obligations in this paragraph shall expire upon Final Acceptance by the City.

## ARTICLE 9. INDEMNIFICATION AND RELEASE

### 9.1. Indemnification.

- A. Artist shall defend at its expense, pay on behalf of, hold harmless and indemnify the City, its officers, employees, agents, elected and appointed officials and volunteers (collectively, “Indemnified Parties”) from and against any and all claims, demands, liens, liabilities, penalties, fines, fees, judgments, losses and damages (collectively, “Claims”), whether or not a lawsuit is filed, including, but not limited to Claims for damage to property or bodily or personal injuries, including death at any time resulting therefrom, sustained by any persons or entities; and costs, expenses and attorneys’ and experts’ fees at trial and on appeal, which Claims are alleged or claimed to have arisen out of or in connection with, in whole or in part, directly or indirectly:
- (i) The performance of this Agreement (including any amendments thereto) by Artist, its employees, agents, representatives or subcontractors; or
  - (ii) The failure of Artist, its employees, agents, representatives or subcontractors to comply and conform with applicable Laws; or
  - (iii) Any negligent act or omission of Artist, its employees, agents, representatives, or subcontractors, whether or not such negligence is claimed to be either solely that of Artist, its employees, agents, representatives or subcontractors, or to be in conjunction with the claimed negligence of others, including that of any of the Indemnified Parties; or
  - (iv) Any reckless or intentional wrongful act or omission of Artist, its employees, agents, representatives, or subcontractors; or
  - (v) Infringement or alleged infringement of the Artwork or any materials or parts contained in the Artwork upon any copyright, trademark, patent, or trade secret right of any party; or
  - (vi) Artist’s failure to maintain, preserve, retain, produce, or protect records in accordance with this Agreement and applicable Laws (including but not limited to Florida laws regarding public records).
- B. The provisions of this Section 9.1 are independent of, and will not be limited by, any insurance required to be obtained by Artist pursuant to this Agreement or otherwise obtained by Artist, and shall survive the expiration or earlier termination of this Agreement with respect to any claims or liability arising in connection with any event occurring prior to such expiration or termination.

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

#### **ARTICLE 10. MAINTENANCE, RESTORATION, MODIFICATION, AND REMOVAL**

- 10.1. Maintenance. The City recognizes that the maintenance of the Artwork on a regular basis will be necessary and shall clean and maintain the Artwork in conjunction with the normal maintenance and cleaning procedures based on Artist's written instructions therefor provided pursuant to this Agreement for as long as the Artwork remains at the Site.
- 10.2. Failure to Maintain Artwork. In the event the City fails to maintain the Artwork in good condition, Artist shall have the right to prevent the use of Artist's name as author of the Artwork. In such event, Artist may require, by providing written notice to the City of such requirement, that the City remove any references to Artist on the nameplate accompanying the Artwork (if applicable) unless and until the Artwork is satisfactorily repaired.
- 10.3. Restoration. After Final Acceptance, the City shall have the right to determine when and if repairs and restorations to the Artwork will be made. During Nathan Mabry's lifetime, to the extent practical, the City shall give Artist (i.e., Mabry and Pulitzer Studios, Inc.) notice of any intended repairs or restorations and the opportunity to make or approve all repairs and restorations; provided, however, that Artist shall not unreasonably withhold approval for any repair or restoration of the Artwork. If, within ninety (90) days, Artist does not respond to the City's reasonable attempts to give Artist the opportunity to make or approve any repair or restoration, or if Artist unreasonably fails to approve any repair or restoration, the City shall have the right to make such repair or restoration. To the extent practical, Artist shall be given the opportunity to make or personally supervise significant (as determined by the City) repairs or restoration and shall be paid a reasonable fee for any such services, provided that the City and Artist agree in writing, prior to commencement of any significant repairs or restoration, upon Artist's fee for such services. If no agreement is reached as to Artist's fee for such repairs or restoration,

then the City may make repairs, restoration or other arrangements the City deems appropriate for the Artwork.

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

mutilation, or other modification of the Artwork that may occur as a result of such disposition, destruction, sale, or donation of the Artwork.

#### **ARTICLE 11. DEFAULT AND TERMINATION**

- 11.1. Default Defined. Failure of either party to comply with any provisions of this Agreement shall place that party in default. Except as otherwise provided in Section 5.3 and Section 8.2, concerning public records and damage to materials, respectively, the defaulting party shall be entitled to thirty (30) days to cure the default upon receipt of written notice specifying the default.
- 11.2. Termination for default. In the event the default is not timely cured in the thirty (30) day period referenced in Section 11.1, this Agreement may be terminated immediately by written notice. Prior to terminating this Agreement and except as otherwise provided herein, the non-defaulting party shall notify the defaulting party in writing stating specifically the provisions which are alleged to give rise to the default. If the City terminates this Agreement pursuant to this Section 11.2 before Final Acceptance by the City, Artist shall immediately repay all payments paid to Artist under this Agreement. If Artist terminates this Agreement pursuant to this Article, the City shall forfeit any right to repayment of any payments made through the date Artist notifies the City that the Agreement is terminated. In addition to the termination provisions set forth in this Section 11.2, the City may terminate this Agreement as provided in Florida Statute section 287.135.
- 11.3. Termination for Convenience. This Agreement may be terminated at any time by the City for convenience upon thirty (30) days written notice. In the event of termination for convenience, the City shall only be liable to Artist for payment milestones reached prior to the effective date of termination.

#### **ARTICLE 12. NOTICE TO PARTIES**

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

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

TO ARTIST:  
Mabry and Pulitzer Studios, Inc.  
11329 Hannum Avenue  
Culver City, CA 90230  
Attn: Nathan Mabry

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

### ARTICLE 13. MISCELLANEOUS

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

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

- 13.8. No Third Party Beneficiaries. Neither Artist nor the City intends to directly or indirectly benefit a third party by this Agreement. Therefore, the Parties agree that no third party shall be entitled to assert a claim against either of them based upon this Agreement. The Parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement.
- 13.9. Incorporation by Reference. Composite Exhibit C, the Bill of Sale, Warranty, Contractor's Affidavit, Affidavit of No Liens, Approval and Acceptance of Artwork, Certification of Completion and Installation, and Copyright Agreement and Assignment are upon their execution by a party to this Agreement incorporated into and made a part of this Agreement.
- 13.10. Further Assurances. The Parties shall promptly execute all documents reasonably required and take such other steps in addition to the execution of this Agreement to effectuate the intent and purpose of this Agreement.
- 13.11. Exhibits. Each exhibit to this Agreement (i.e., **Exhibit A** – Final Design and Description of Artwork; **Exhibit B** – Release of any person working on the Site or the Artwork; **Composite Exhibit C** - Bill of Sale, Warranty, Contractor's Affidavit, Affidavit of No Liens, Approval and Acceptance of Artwork, Certification of Completion and Installation and Copyright Agreement and Assignment; and **Exhibit D** – Release and Waiver of Rights under 17 U.S.C. § 106A) is an essential part hereof and is incorporated herein by reference.

**(THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK)**



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

**CITY OF ST. PETERSBURG, FLORIDA**

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

Print: \_\_\_\_\_

Title: \_\_\_\_\_

Address: P. O. Box 2842

St. Petersburg, FL 33731

**ATTEST:**

\_\_\_\_\_  
City Clerk (SEAL)

**MABRY AND PULITZER STUDIOS, INC.:**

Sign: \_\_\_\_\_

Print: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

**WITNESSES  
AS TO ARTIST:**

Sign: \_\_\_\_\_

Print: \_\_\_\_\_

Sign: \_\_\_\_\_

Print: \_\_\_\_\_

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019, by \_\_\_\_\_, personally known to me or who has produced \_\_\_\_\_ as identification and who did take an oath.

**NOTARY PUBLIC:**

Sign \_\_\_\_\_

Print \_\_\_\_\_

State of \_\_\_\_\_

My Commission No.:

**APPROVED AS TO FORM AND CONTENT:**

\_\_\_\_\_  
City Attorney (designee)

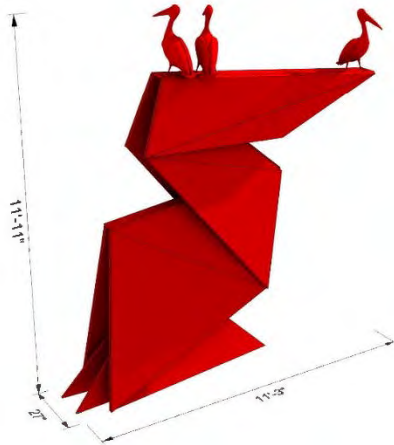
**Exhibit A**  
**Final Design and Description of Artwork**

**I. Myth (Red Pelican)**

Nathan’s design is inspired by the geometry of the new pier design and the symbol of the pelican as the emblem for St. Petersburg. He stated in his presentation to the selection committee that the pelican is a symbol for kindness, generosity, friendship and love.

While working on the proposal, his focus became to create an outdoor public artwork that is conceptually integrated to the site, but also visually distinct. In studying the renderings of the pier and architecture he noticed the utilization of a geometric visual language of triangles within the design which led him to look for a defining aesthetic approach; he found that inspiration in the accessible and universal visual language of Origami, the art of folding paper. The notion of an abstract metal monument rooted in something as intimate, delicate and timeless as folded paper became his focus.

The “Myth (Red Pelican)” structure will be approximately 120” high, fabricated from ½” to ¾” thick aluminum plate metal with a satin single color painted finish. Sculpture will be mounted on a 1” baseplate, ready for bolt mounting. Specifics on the bolt mounting will be worked based on the engineering and capabilities of the site. The structure includes the three realistic pelicans atop the origami style pelican.



The Myth (Red Pelican) will be installed in the center of the entryway plaza area of the St. Pete Pier™ in the area designated by the City at the time of installation.

**II. Additional Cast Pelican(s)**

Additionally, Nathan Mabry has offered the possibility of future smaller birds that could be placed in other locations throughout the pier. These smaller birds will be designed to be naturalistic and will be created through processes of scanning, 3D printing, clay modeling and lost wax casting. The additional smaller versions will be made of stainless steel and painted in matching monochromatic color. These smaller pelicans will each be approximately 2 feet tall and will be mounted directly into the concrete with a threaded rod and secured with an industrial epoxy.



Location	Installation Deadline:	Photo/Depiction/Description

**Exhibit B**  
**Release and Hold Harmless Agreement**

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

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

WHEREAS, pursuant to the artist agreement between the Artist and the City dated \_\_\_\_\_, 20\_\_ ("Artist Agreement"), Worker must execute this Agreement in favor of the City prior to working on the Artwork or Site (as defined in the Artist Agreement) in order to protect the Releasees (as defined herein) from certain liabilities.

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

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

WORKER

Sign: \_\_\_\_\_

Print: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ )

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

NOTARY PUBLIC

Sign \_\_\_\_\_

Print \_\_\_\_\_

My Commission No.:

**COMPOSITE EXHIBIT C**

**BILL OF SALE: Myth (Red Pelican)**

KNOW ALL MEN BY THESE PRESENTS that Mabry and Pulitzer Studios, Inc., for and in consideration of the sum of one hundred fifty thousand dollars (\$150,000), lawful money of the United States, and other good and valuable consideration, the receipt whereof is hereby acknowledged, has granted, bargained, sold, transferred and delivered, and by these presents does grant, bargain, sell, transfer and deliver to the City of St. Petersburg, Florida, its successors and assigns, the Myth (Red Pelican), the work of art consisting of aluminum plate metal with satin single color painted finish, installed at the center of the entryway plaza area of the St. Pete Pier™.

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

IN WITNESS WHEREOF, Nathan Mabry, has hereunto set his hand and seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
\_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ )

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

NOTARY PUBLIC:

Sign \_\_\_\_\_  
Print \_\_\_\_\_  
State of \_\_\_\_\_  
My Commission No.: \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

**BILL OF SALE: Additional Cast Pelican No. \_\_\_\_\_**

KNOW ALL MEN BY THESE PRESENTS that Mabry and Pulitzer Studios, Inc., for and in consideration of the sum of \_\_\_\_\_ dollars (\$\_\_\_\_\_), lawful money of the United States, and other good and valuable consideration, the receipt whereof is hereby acknowledged, has granted, bargained, sold, transferred and delivered, and by these presents does grant, bargain, sell, transfer and deliver to the City of St. Petersburg, Florida, its successors and assigns, the work of art consisting of \_\_\_\_\_ installed at \_\_\_\_\_.

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

IN WITNESS WHEREOF, Nathan Mabry, has hereunto set his hand and seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
\_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

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

NOTARY PUBLIC:

Sign \_\_\_\_\_  
Print \_\_\_\_\_  
State of \_\_\_\_\_  
My Commission No.: \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

**WARRANTY: Myth (Red Pelican)**

Mabry and Pulitzer Studios, Inc. ("Artist"), hereby warrants the Myth (Red Pelican), a work of art consisting of aluminum plate metal with satin single color painted finish installed at the center of the entryway plaza area of the St. Pete Pier™, to be free from defects in materials or workmanship for five (5) years from the date of the written Final Acceptance (as defined in the Artist Agreement) thereof by the City. Artist shall immediately correct any such defects which appear during that period at Artist's own cost and expense.

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

IN WITNESS WHEREOF, Nathan Mabry has hereunto set his hand and seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
\_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ )

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

NOTARY PUBLIC:

Sign \_\_\_\_\_  
Print \_\_\_\_\_  
State of \_\_\_\_\_  
My Commission No.: \_\_\_\_\_  
My Commission expires: \_\_\_\_\_



**WARRANTY: Additional Cast Pelican No. \_\_\_\_\_**

Mabry and Pultizer Studios, Inc. (“Artist”), hereby warrants the work of art consisting of \_\_\_\_\_ installed at the \_\_\_\_\_, to be free from defects in materials or workmanship for five (5) years from the date of the written Final Acceptance (as defined in the Artist Agreement) thereof by the City. Artist shall immediately correct any such defects which appear during that period at Artist’s own cost and expense.

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

IN WITNESS WHEREOF, Nathan Mabry has hereunto set his hand and seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
\_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ )

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

NOTARY PUBLIC:

Sign \_\_\_\_\_  
Print \_\_\_\_\_  
State of \_\_\_\_\_  
My Commission No.: \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

**CONTRACTOR'S AFFIDAVIT: Myth (Red Pelican)**

STATE OF FLORIDA     )  
COUNTY OF PINELLAS )

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

That I am a general contractor under an agreement executed on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, between Mabry and Pulitzer Studios, Inc. and the City of St. Petersburg, Florida, that I installed and completed Myth (Red Pelican), a work of art consisting of aluminum plate metal with satin single color painted finish installed at the center of the entryway plaza area of the St. Pete Pier™, for a total price of one hundred fifty thousand dollars (\$150,000) to be paid to Mabry and Pulitzer Studios, Inc. and that said installation is now completed and finished.

That Mabry and Pulitzer Studios, Inc. has paid and discharged all subcontractors, laborers and materialmen and that there are no liens outstanding of any nature nor any debts or obligations out of which could arise a lien or encumbrance.

That I am making this affidavit upon consideration of the payment of one hundred fifty thousand dollars (\$150,000) to Mabry and Pulitzer Studios, Inc. in full satisfaction and discharge of said agreement.

\_\_\_\_\_  
Sign: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

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

NOTARY PUBLIC:

Sign \_\_\_\_\_  
Print \_\_\_\_\_  
State of \_\_\_\_\_  
My Commission No.: \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

**CONTRACTOR'S AFFIDAVIT: Additional Cast Pelican No. \_\_\_\_\_**

STATE OF FLORIDA     )  
COUNTY OF PINELLAS )

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

That I am a general contractor under an agreement executed on the \_\_\_\_\_ day of \_\_\_\_\_, 2019, between Mabry and Pulitzer Studios, Inc. and the City of St. Petersburg, Florida, that I installed and completed the work of art consisting of \_\_\_\_\_ installed at \_\_\_\_\_, for a total price of \_\_\_\_\_ dollars (\$\_\_\_\_\_) to be paid to Mabry and Pulitzer Studios, Inc. and that said installation is now completed and finished.

That Mabry and Pulitzer Studios, Inc. has paid and discharged all subcontractors, laborers and materialmen and that there are no liens outstanding of any nature nor any debts or obligations out of which could arise a lien or encumbrance.

That I am making this affidavit upon consideration of the payment of \_\_\_\_\_ dollars (\$\_\_\_\_\_) to Mabry and Pulitzer Studios, Inc. in full satisfaction and discharge of said agreement.

\_\_\_\_\_  
Sign: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

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

**NOTARY PUBLIC:**

Sign \_\_\_\_\_  
Print \_\_\_\_\_  
State of \_\_\_\_\_  
My Commission No.: \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

**AFFIDAVIT OF NO LIENS: Myth (Red Pelican)**

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

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

1. \_\_\_\_\_ is the owner of Myth (Red Pelican), a work of art consisting of aluminum plate metal with satin single color painted finish installed at the center of the entryway plaza area of the St. Pete Pier™.
2. There are no liens, claims or other encumbrances on the work of art and Mabry and Pulitzer Studios, Inc. is the sole owner and creator of said work of art.
3. Mabry and Pulitzer Studios, Inc. has paid and discharged all subcontractors or materialmen, if any, and there are no liens outstanding of any nature nor any debts or obligations out of which could arise a lien or encumbrances on the work of art.
4. I am making this Affidavit upon consideration of the payment of one hundred fifty thousand dollars (\$150,000).

\_\_\_\_\_  
\_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

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

NOTARY PUBLIC:

Sign \_\_\_\_\_  
Print \_\_\_\_\_  
State of \_\_\_\_\_  
My Commission No.: \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

**AFFIDAVIT OF NO LIENS: Additional Cast Pelican No. \_\_\_\_\_**

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

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

1. \_\_\_\_\_ is the owner of a work of art consisting of \_\_\_\_\_ installed at \_\_\_\_\_.
2. There are no liens, claims or other encumbrances on the work of art and Mabry and Pulitzer Studios, Inc. is the sole owner and creator of said work of art.
3. Mabry and Pulitzer Studios, Inc. has paid and discharged all subcontractors or materialmen, if any, and there are no liens outstanding of any nature nor any debts or obligations out of which could arise a lien or encumbrances on the work of art.
4. I am making this Affidavit upon consideration of the payment of \_\_\_\_\_ dollars (\$\_\_\_\_\_).

\_\_\_\_\_  
\_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

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

NOTARY PUBLIC:

Sign \_\_\_\_\_  
Print \_\_\_\_\_  
State of \_\_\_\_\_  
My Commission No.: \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

**APPROVAL AND ACCEPTANCE OF ARTWORK**  
**“Myth (Red Pelican)”**

Mabry and Pulitzer Studios, Inc. ("Artist") has completed the work of art consisting of aluminum plate metal with satin single color paint finish (“Artwork”) installed at the center of the entryway plaza area of the St. Pete Pier™, in a manner that meets all the requirements of the Artist Agreement dated \_\_\_\_\_, 2019, by and between Artist and the City of St. Petersburg, Florida ("Owner"). Owner hereby approves and accepts ownership of the Artwork.

DATE: \_\_\_\_\_

CITY OF ST. PETERSBURG, FLORIDA

BY: \_\_\_\_\_

Print: \_\_\_\_\_

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

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**CERTIFICATION OF COMPLETION**  
**AND INSTALLATION**  
**“Myth (Red Pelican)”**

Artist: Mabry and Pulitzer Studios, Inc.  
Artwork: Myth (Red Pelican)  
Location: Center of the entryway plaza area of the St. Pete Pier™

The above named artwork is installed and 100% completed as required by the Artist Agreement entered into on \_\_\_\_\_, 20\_\_, by and between Mabry and Pulitzer Studios, Inc. and the City of St. Petersburg, Florida.

Date: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

# APPROVAL AND ACCEPTANCE OF ARTWORK

**“Additional Cast Pelican No. \_\_\_\_\_”**

Mabry and Pulitzer Studios, Inc. ("Artist") has completed the work of art consisting of \_\_\_\_\_ (“Artwork”) installed at \_\_\_\_\_, in a manner that meets all the requirements of the Artist Agreement dated \_\_\_\_\_, 2019, by and between Artist and the City of St. Petersburg, Florida ("Owner"). Owner hereby approves and accepts ownership of the Artwork.

DATE: \_\_\_\_\_

CITY OF ST. PETERSBURG, FLORIDA

BY: \_\_\_\_\_

Print: \_\_\_\_\_

Address: P. O. Box 2842

St. Petersburg, FL 33731

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## CERTIFICATION OF COMPLETION AND INSTALLATION

**“Additional Cast Pelican No. \_\_\_\_\_”**

Artist: Mabry and Pulitzer Studios, Inc.

Artwork: \_\_\_\_\_

Location: \_\_\_\_\_

The above named artwork is installed and 100% completed as required by the Artist Agreement entered into on \_\_\_\_\_, 2019, by and between Mabry and Pulitzer Studios, Inc. and the City of St. Petersburg, Florida.

Date: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**COPYRIGHT AGREEMENT AND ASSIGNMENT: Myth (Red Pelican)**

Mabry and Pulitzer Studios, Inc., for and in consideration of the purchase by the City of St. Petersburg of Myth (Red Pelican), a work of art consisting of aluminum plate metal with satin single color paint finish installed in the center of the entryway plaza area of the St. Pete Pier™, which work of art (“Artwork”) is owned by Mabry and Pulitzer Studios, Inc., hereby assigns to the City of St. Petersburg, Florida, title and full rights of ownership as well as the irrevocable license to make reproductions of the Artwork for noncommercial purposes, including but not limited to reproductions used in marketing, advertising, brochures, media publicity, web sites, and catalogues or other similar publications, provided that such reproductions of the Artwork must be made in a professional and tasteful manner.

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

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

\_\_\_\_\_  
\_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ )

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

NOTARY PUBLIC:

Sign \_\_\_\_\_  
Print \_\_\_\_\_  
State of \_\_\_\_\_  
My Commission No.: \_\_\_\_\_  
My Commission expires: \_\_\_\_\_



**COPYRIGHT AGREEMENT AND ASSIGNMENT: Additional Cast Pelican**  
**No. \_\_\_\_\_**

Mabry and Pulitzer Studios, Inc., for and in consideration of the purchase by the City of St. Petersburg of the work of art consisting of \_\_\_\_\_ installed in \_\_\_\_\_, which work of art (“Artwork”) is owned by Mabry and Pulitzer Studios, Inc., hereby assigns to the City of St. Petersburg, Florida, title and full rights of ownership as well as the irrevocable license to make reproductions of the Artwork for noncommercial purposes, including but not limited to reproductions used in marketing, advertising, brochures, media publicity, web sites, and catalogues or other similar publications, provided that such reproductions of the Artwork must be made in a professional and tasteful manner.

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

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

\_\_\_\_\_  
\_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ )

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

NOTARY PUBLIC:

Sign \_\_\_\_\_  
Print \_\_\_\_\_  
State of \_\_\_\_\_  
My Commission No.: \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

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

In consideration of payment received by Mabry and Pulitzer Studios, Inc. (“Artist”) from the City of St. Petersburg, Florida (“City”) for Artist to design, fabricate, and install a work of art entitled Myth (Red Pelican) to be installed in the center of the entryway plaza area of the St. Pete Pier™, and additional cast pelicans to be designed, fabricated, and installed at various locations around the St. Pete Pier™ (collectively, “Artwork”), pursuant to the agreement between the City and Artist dated the \_\_\_\_ day of \_\_\_\_\_, 2019 (“Agreement”), and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, I, Nathan Mabry, hereby waive, disclaim and terminate my rights to prevent any intentional or accidental distortion, damage, destruction, or mutilation of the Artwork, which would be prejudicial to my honor or reputation and the right to prevent any intentional or grossly negligent destruction of the Artwork if it is of a recognized stature as provided under 17 U.S.C. § 106A (Visual Artist Rights Act of 1990), in the following circumstances:

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

This waiver applies to the use of the Artwork to enhance the site at which it is installed or to enhance any other site chosen by the City in the event the City relocates the Artwork to another site.

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

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

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

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

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

IN WITNESS WHEREOF, the undersigned has caused this Release and Waiver to be executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

BY:

Sign: \_\_\_\_\_ Telephone: \_\_\_\_\_

Nathan Mabry

Address: \_\_\_\_\_