

ST. PETERSBURG CITY COUNCIL
Meeting of April 6, 2017

REPORT

TO: The Honorable Darden Rice Chair, and Members of City Council

SUBJECT: Approving an agreement between the City of St. Petersburg, Florida ("City") and Janet Echelman, Inc. ("JEI") in an amount not to exceed \$75,000 for JEI to provide a feasibility study, concept design services, and a budget for the Pier public art ("Artist Agreement"); authorizing the City Attorney to make non-substantive changes to the Artist Agreement; authorizing the Mayor or his designee to execute the Artist Agreement; approving a transfer in the amount of \$37,500 from the Art in Public Places Fund (1901) to the General Capital Improvement Fund (3001), approving a supplemental appropriation in the amount of \$37,500 from the increase in the General Capital Improvement Fund resulting from this transfer to the Pier Visioning Project (Engineering & CID Project No. 09227-019, Oracle No. 11988) to provide the necessary funding for the feasibility study and preliminary concept design services to be provided pursuant to the Artist Agreement; and providing an effective date.

EXPLANATION: On February 7, 2017, the Public Arts Commission approved the allocation of \$37,500 to match an equal amount from the Art in Public Places Fund for a feasibility study and concept design of a hanging net sculpture ("Sculpture") by JEI. The scope of services includes two (2) separate phases. The Phase 1 Services: Feasibility Study and Preliminary Schematic Design will determine the feasibility of designing a Sculpture to be installed at locations to be determined on the Pier and to develop no less than two (2) preliminary Schematic Design concepts. JEI will determine whether the Sculpture can withstand the environmental conditions encountered at the pier including effects (if any) on native wildlife. Information such as preliminary specifications, identification of all engineering and construction documents needed to complete the design, and sufficient preliminary information to develop an estimate of the Sculpture cost will be delivered. JEI will present a report depicting the results of the feasibility study, the initial design of no less than two (2) concepts, and cost estimates for the concepts. The cost for Phase 1 Services is \$37,500 and there is no obligation on the City to proceed beyond Phase 1.

Phase 2 Services: Final Schematic Design will proceed only if authorized following the City's review and approval of Phase 1 Services. For Phase 2 Services, JEI shall further develop and complete the Schematic Design for the no less than two (2) design concepts developed in Phase 1 and perform sufficient initial design services to determine the scope and effort required by both the City's and JEI's engineers to complete the full construction documents and obtain any necessary permits for the Sculpture. At the end of Phase 2 Services, the City will have sufficient information to make a decision on whether to proceed with the final design, engineering, fabrication, delivery and installation of the Sculpture, including any structural support elements and infrastructure improvements that may be necessary for the Pier to accommodate the proposed Sculpture. The cost for Phase 2 Services is an additional \$37,500.

The Artist Agreement includes the following phases and associated lump sum fees and costs:

Feasibility Study and Preliminary Schematic Design	\$ 37,500
Final Schematic Design	<u>\$ 37,500</u>
Total Not to Exceed Fee	\$ 75,000

Phase 1: Feasibility Study and Preliminary Schematic Design is anticipated to take up to 30 days to complete. Phase 2: Final Schematic Design is anticipated to take 90 days to complete.

RECOMMENDATION: Administration recommends City Council approve the attached resolution approving an agreement between the City of St. Petersburg, Florida ("City") and Janet Echelman, Inc. ("JEI") in an amount not to exceed \$75,000 for JEI to provide a feasibility study, concept design services, and a budget for the Pier public art ("Artist Agreement"); authorizing the City Attorney to make non-substantive changes to the Artist Agreement; authorizing the Mayor or his designee to execute the Artist Agreement; approving a transfer in the amount of \$37,500 from the Art in Public Places Fund (1901) to the General Capital Improvement Fund (3001), approving a supplemental appropriation in the amount of \$37,500 from the increase in the General Capital Improvement Fund resulting from this transfer to the Pier Visioning Project (Engineering & CID Project No. 09227-019, Oracle No. 11988) to provide the necessary funding for the feasibility study and preliminary concept design services to be provided pursuant to the Artist Agreement; and providing an effective date.

COST/FUNDING INFORMATION: A portion of the funding has been previously appropriated in the General Capital Improvement Fund (3001), Pier Visioning Project (11988). Additional funding will be available after the transfer of \$37,500 from the Art in Public Places Fund (1901) to the General Capital Improvement Fund (3001) and approval of a supplemental appropriation in the amount of \$37,500 resulting from this transfer to the Pier Visioning Project (11988).

ATTACHMENTS: Resolution and Artist Agreement (with Appendix A, Scope of Services and Appendix B, Depiction of the Pier)

APPROVALS:

rq


B Administrative


Budget

Resolution No. 2017-_____

A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF ST. PETERSBURG, FLORIDA ("CITY") AND JANET ECHELMAN, INC. ("JEI") IN AN AMOUNT NOT TO EXCEED \$75,000 FOR JEI TO PROVIDE A FEASIBILITY STUDY, CONCEPT DESIGN SERVICES, AND A BUDGET FOR THE PIER PUBLIC ART ("ARTIST AGREEMENT"); AUTHORIZING THE CITY ATTORNEY TO MAKE NON-SUBSTANTIVE CHANGES TO THE ARTIST AGREEMENT; AUTHORIZING THE MAYOR OR HIS DESIGNEE TO EXECUTE THE ARTIST AGREEMENT; APPROVING A TRANSFER IN THE AMOUNT OF \$37,500 FROM THE ART IN PUBLIC PLACES FUND (1901) TO THE GENERAL CAPITAL IMPROVEMENT FUND (3001); APPROVING A SUPPLEMENTAL APPROPRIATION IN THE AMOUNT OF \$37,500 FROM THE INCREASE IN THE GENERAL CAPITAL IMPROVEMENT FUND RESULTING FROM THIS TRANSFER TO THE PIER VISIONING PROJECT (ENGINEERING & CID PROJECT NO. 09227-019, ORACLE NO. 11988) TO PROVIDE THE NECESSARY FUNDING FOR THE FEASIBILITY STUDY AND PRELIMINARY CONCEPT DESIGN SERVICES TO BE PROVIDED PURSUANT TO THE ARTIST AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Pier Public Art Project Committee ("Committee") was established pursuant to Section 5-80(b) of the City Code to ensure that proper considerations are given to the design, siting, facility operation, and neighborhood interests for the artwork to be commissioned for the Pier; and

WHEREAS, the Committee desires for the City to commission a hanging net sculpture ("Sculpture") from Janet Echelman, an internationally renowned artist and Tampa Bay native; and

WHEREAS, the Committee desires for the City to enter into a two-phase agreement with Janet Echelman, Inc. ("JEI") to determine the feasibility

and cost of commissioning a Sculpture for the Pier based on schematic designs of the Sculpture to be provided by JEI ("Artist Agreement"); and

WHEREAS, in the first phase of the Artist Agreement, JEI would determine the feasibility of designing a Sculpture for the Pier, provide a cost estimate for the Sculpture, and provide at least two design concepts for the Sculpture ("Phase 1 Services") for an amount not to exceed \$37,500; and

WHEREAS, in the event the City authorizes JEI to perform the second phase of the Artist Agreement, JEI would further develop the two design concepts, provide a final budget for the Sculpture, and provide the City with the information necessary for the City to determine the budget for any services or infrastructure modifications required for the Pier to accommodate the Sculpture ("Phase 2 Services") for an amount not to exceed an additional \$37,500; and

WHEREAS, on February 7, 2017, the Public Art Commission approved the Committee's request to allocate \$37,500 of the Art in Public Places Fund to the Phase 1 Services, subject to City Council's approval of the Artist Agreement; and

WHEREAS, the additional \$37,500 for the Phase 2 Services would come from the previously appropriated funds set aside for the acquisition of works of art in accordance with Ordinance No. 2010-F on the Pier Visioning Project (Engineering & CID Project No. 09227-019, Oracle No. 11988).

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of St. Petersburg, Florida that the agreement between the City of St. Petersburg, Florida ("City") and Janet Echelman, Inc. ("JEI") in an amount not to exceed \$75,000 for JEI to provide a feasibility study, concept design services, and a budget for the pier public art ("Artist Agreement") is hereby approved.

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

BE IT FURTHER RESOLVED that there is hereby approved the following transfer from the Art in Public Places Fund (1901):

<u>Art in Public Places Fund (1901)</u>	(\$37,500)
Transfer to: General Capital Improvement Fund (3001)	\$37,500

BE IT FURTHER RESOLVED that there is hereby approved from the increase in the General Capital Improvement Fund (3001) resulting from the above transfer the following supplemental appropriation to provide the

necessary funding for the feasibility study and preliminary concept design services to be provided pursuant to the Artist Agreement:


General Capital Improvement Fund (3001)

Pier Visioning Project (Engineering & CID Project
No. 09227-019, Oracle No. 11988)


\$37,500

This resolution shall become effective immediately upon its adoption.

Approvals:


Administration


City Attorney (Designee)
00315228


Budget

ARTIST AGREEMENT FOR FEASIBILITY STUDY AND SCHEMATIC DESIGN

This Artist Agreement ("Agreement") is made as of _____, 2017 ("Effective Date") between the City of St. Petersburg, Florida ("Client") and Janet Echelman, Inc. ("JEI"), a Massachusetts corporation. Client and JEI are the "Parties" to this Agreement.

Recitals

WHEREAS, Client desires for JEI to determine the feasibility of designing a hanging net sculpture ("Net-Sculpture") and develop initial concepts ("Schematic Design") for a Net-Sculpture that could be installed on Client's yet-to-be constructed Pier (as the Pier is defined below), and JEI agrees to perform work necessary to determine the feasibility of designing such Net-Sculpture and to develop such preliminary Schematic Design concepts for a Net-Sculpture which, if purchased by Client, would be installed by Client in accordance with the directions provided by JEI at a location on the Pier to be confirmed by Client; and

WHEREAS, depending on the results of the feasibility study and design of initial concepts, Client may desire for JEI to, and JEI desires to, complete the Schematic Design of the selected concepts for such Net-Sculpture that could be installed at the Pier, provide a Net-Sculpture Cost Budget (as hereinafter defined), and provide the information about the Net-Sculpture required to allow the Client to create a final Infrastructure Cost Budget (as hereinafter defined); and

WHEREAS, this Agreement is for the feasibility phase and Schematic Design phase for the Net-Sculpture only, but the Parties may later to enter into another contract for the design development, construction documentation, fabrication, delivery, and installation phases for the Net-Sculpture, which contract would address, among other issues, terms on insurance, maintenance, and repair of the Net-Sculpture if Client later desires to have the Net-Sculpture fabricated and installed on the Pier.

Agreement

In consideration of the foregoing recitals, which are hereby incorporated as an integral part of this Agreement, and the facts, mutual promises and covenants contained herein, and intending to be legally bound, the Parties agree as follows:

1. **Term**. This Agreement will be effective as of the Effective Date and remain in full force and effect until JEI has performed its obligations under this Agreement and Client has accepted all services and Deliverables (as defined herein) ("Term"), unless this Agreement is terminated earlier in accordance with Paragraph 16.
2. **Schedule**. JEI shall perform the services and provide the Deliverables in accordance with the schedule set forth in Exhibit A, which is attached hereto and made a part hereof. Client acknowledges that JEI does not and cannot control the schedule of others whose performance may affect the services and Deliverables required to be provided by JEI pursuant to this Agreement. The Parties may revise the schedule by mutual agreement after consultation.

3. **JEI Obligations.**

- A. **Phase 1 Services & Deliverables: Feasibility Study and Preliminary Schematic Design.** JEI shall perform the services and provide the Deliverables necessary to determine the feasibility of designing a Net-Sculpture to be installed at the location(s) on the Pier identified by Client and to develop no less than two (2) preliminary Schematic Design concepts in accordance with Exhibit A ("Phase 1 Services & Deliverables"). The "Pier" is depicted in Exhibit B, which is attached hereto and made a part hereof. Without limiting the generality of the foregoing, JEI shall collect the data and information necessary to determine, and report to Client on, the feasibility of designing a Net-Sculpture that can be installed at the Pier in accordance with all applicable laws and regulations, withstand the environmental conditions at the Pier for a period of at least twenty-five (25) years, and have limited to no negative environmental or wildlife impacts. Client shall have the opportunity to review and comment on the Phase 1 Services & Deliverables, and JEI shall have an opportunity to make changes in response to such review and comment prior to Client's final acceptance of the Phase 1 Services & Deliverables. After Client's acceptance of all Phase 1 Services & Deliverables, Client shall have the option, in Client's sole and absolute discretion, to either terminate this Agreement pursuant to paragraph 16A or to issue a written notice to proceed ("Notice to Proceed") directing JEI to perform the Phase 2 Services & Deliverables (as defined below). JEI has no obligation to perform any Phase 2 Services & Deliverables unless Client issues a Notice to Proceed in accordance with this Agreement.
- B. **Phase 2 Services & Deliverables: Final Schematic Design.** In the event JEI receives a Notice to Proceed in accordance with paragraph 3A, JEI shall perform the Phase 2 Services and provide the associated Deliverables as set forth in Exhibit A ("Phase 2 Services & Deliverables"). Without limiting the generality of the foregoing, JEI shall provide Client with a final Schematic Design of no less than two (2) concepts for the Net-Sculpture, including preliminary Schematic Design level specifications, identification of the engineering and construction scope required for the Pier to support the Net-Sculpture, a Net-Sculpture Cost Budget (as defined in Exhibit A), and will provide all information and materials necessary for the Client to prepare a Schematic Design estimate for all related infrastructure and services required to prepare the selected site and install the Net-Sculpture on the selected site, including any anticipated modifications to the completed Pier plans ("Infrastructure Cost Budget"). Client shall have the opportunity to review and comment on the Phase 2 Services & Deliverables, and JEI shall have an opportunity to make changes in response to such review and comment prior to Client's final acceptance of the Phase 2 Services & Deliverables. Unless otherwise specifically set forth in this Agreement, Client shall have no obligation to issue final payment to JEI for the Phase 2 Services & Deliverables unless Client has accepted such Phase 2 Services & Deliverables in accordance with this Agreement.

4. Compensation.

A. Pricing.

- (1) *Phase 1 Services & Deliverables.* Client shall pay JEI an amount not to exceed thirty-seven thousand five hundred dollars (\$37,500) for JEI's provision of the Phase 1 Services & Deliverables. Payments for Phase 1 Services & Deliverables shall be made in accordance with paragraph 4B(1).
- (2) *Phase 2 Services & Deliverables.* In the event Client issues a Notice to Proceed and JEI performs all Phase 2 Services & Deliverables, and further provided that Client has accepted all Phase 2 Services & Deliverables in accordance with this Agreement, Client shall pay JEI an additional thirty-seven thousand five hundred dollars (\$37,500) for JEI's provision of the Phase 2 Services & Deliverables. Payment for Phase 2 Services & Deliverables shall be made in accordance with paragraph 4B(2). Client shall not be required to pay JEI for the final payment of eighteen thousand seven hundred fifty dollars (\$18,750) for Phase 2 Services & Deliverables unless they conform to the requirements of this Agreement.
- (3) *Total Contract Price.* The total amount paid to JEI pursuant to this Agreement, which shall be inclusive of any out-of-pocket expenses (including but not limited to transportation, mileage, lodging, and meals) shall not exceed seventy-five thousand dollars (\$75,000). In no event shall JEI invoice Client for any Phase 2 Services & Deliverables if Client did not issue a Notice to Proceed in accordance with this Agreement.

B. Invoices.

- (1) *Phase 1 Services & Deliverables.* Invoices for Phase 1 Services & Deliverables shall be as follows:
 - (a) JEI shall invoice Client for eighteen thousand seven hundred fifty dollars (\$18,750) within thirty (30) days after the Effective Date, and Client shall pay such invoice within thirty (30) days after receipt thereof.
 - (b) JEI shall invoice Client for the remaining eighteen thousand seven hundred fifty dollars (\$18,750) for Phase 1 Services & Deliverables within thirty (30) days after Client's acceptance of all Phase 1 Services & Deliverables, and Client shall pay such invoice within thirty (30) days after receipt thereof.
- (2) *Phase 2 Services & Deliverables.* Invoices for Phase 2 Services & Deliverables shall be as follows:
 - (a) JEI shall invoice Client for eighteen thousand seven hundred fifty dollars (\$18,750) within thirty (30) days after Notice to Proceed with

Phase 2, and Client shall pay such invoice within thirty (30) days after receipt thereof.

- (b) JEI shall invoice Client for the remaining eighteen thousand seven hundred fifty dollars (\$18,750) for Phase 2 Services & Deliverables within thirty (30) days after Client's acceptance of all Phase 2 Services & Deliverables, and Client shall pay such invoice within thirty (30) days after receipt thereof.

5. **Client Obligations.**

- A. **Information and Services.** Client shall timely provide JEI with all Client information and services needed by JEI to complete the Phase 1 Services & Deliverables and Phase 2 Services & Deliverables, as applicable, including Client's information about site conditions and any relevant adjacent areas or buildings. JEI shall be entitled to rely on such information and services.
- B. **Notice to Proceed.** In the event Client desires for JEI to provide Phase 2 Services & Deliverables, Client shall issue a written Notice to Proceed to JEI.
- C. **Payment.** Client shall pay JEI in accordance with this Agreement.
- D. **Acceptance.** Client shall accept all services and Deliverables that have been performed or provided by JEI in accordance with the terms and conditions of this Agreement. In the event Client determines that any of the services or Deliverables fail to conform to the requirements of this Agreement ("Non-Conformance"), Client shall notify JEI of such Non-Conformance, and JEI shall have a reasonable period of time, not to exceed thirty (30) days to correct such Non-Conformance.

- 6. **No Obligation of Future Relationship.** Nothing contained in this Agreement shall be construed as creating an obligation for Client to enter into any future relationship with JEI or to purchase the Net-Sculpture or to later enter into a contract for the final design, fabrication, delivery, and installation phases for the Net-Sculpture.

- 7. **JEI and Aesthetics.** JEI shall have final say over all aesthetic aspects of the design of the Net-Sculpture.

8. **No Authority; No Employment Relationship.**

- A. JEI has no authority to bind, obligate, or contract on behalf of Client. Client has no authority to bind, obligate, or contract on behalf of JEI.
- B. All services performed by JEI shall be as a consultant and independent contractor and not as a Client employee. Nothing herein shall be deemed to create an employer-employee relationship between Client and JEI, including for purposes of any employment-related taxes or any Client-paid benefits.

9. **JEI Manner of Services.**

- A. Janet Echelman shall not be required to individually perform all the services required by this Agreement. In her sole discretion, she may assign or JEI may hire others to assist in performing any such services. If JEI hires such assistants, such individuals shall be employees or contractors solely of JEI and shall not be employees of Client.
- B. JEI's place of work shall be its own office, not Client's workplace. However, if and to the extent Exhibit A requires JEI to perform any services at a particular site of Client, Client shall provide JEI with reasonable access to the site and shall cooperate with JEI regarding timing and other terms for access.
- C. Client shall not establish specific hours or days of work for JEI.
- D. Client shall not control the manner and method by which JEI renders the services required by this Agreement. In particular, and by way of example only, JEI shall control the sequence in which various aspects of the services are performed, provided that JEI complies with the schedule set forth in Exhibit A.
- E. JEI shall periodically and reasonably inform Client of the status of the services being rendered under this Agreement. JEI shall not be required to submit monthly written reports to Client or to attend Client's general employee meetings.
- F. JEI warrants that the services required by this Agreement shall be performed by JEI in a diligent, professional and competent manner.

10. **Confidentiality; Other Services.** JEI shall not use or disclose confidential or proprietary information about Client or its products, services, customers, methods or business that JEI learns or is exposed to while performing services for Client. Nothing in this Agreement shall be construed to prohibit or restrict JEI or Janet Echelman from providing services to any other organization or individual during the Term.

11. **Deliverables; Title and Copyright.**

- A. For the purpose of this Agreement, "Deliverables" shall mean all data, reports, design calculations, studies, permit documents, correspondence, design documents and all other materials produced, prepared, and developed by JEI pursuant to this Agreement.
- B. JEI shall execute any and all lawful documents, including assignments, which Client deems necessary or desirable to fully acknowledge Client's ownership interest in such Deliverables, subject to the limitations set forth in paragraph 11D of this Agreement.
- C. As owner of the Deliverables, Client and its assigns shall have an irrevocable license to make reproductions of the Deliverables for noncommercial purposes, including, but not limited to reproductions used in marketing, advertising, brochures, media publicity, web sites, and catalogues or other similar media and for any other governmental purposes.

- D. JEI shall retain all rights under the Copyright Act of 1976, 17 U.S.C. §§ 101, et seq., as amended by the Visual Artists Rights Act of 1990 ("VARA"), and any successor act, and all other rights in and to the Deliverables except ownership and possession, except as such rights are limited by paragraph 11E of this Agreement. Such JEI rights shall survive any termination of this Agreement.
- E. All Deliverables shall be unique in their final version. JEI shall not make any exact duplicates of the final Deliverables, nor shall JEI grant permission to others to do so except with the written permission of Client, provided, however, JEI may make reproductions of the Deliverables for the purposes of marketing and advertising (e.g., media publicity, web sites, catalogues or other similar media) JEI's business and services.
- F. Client acknowledges that the Deliverables are not intended or represented to be suitable for revision by Client, or others, for purposes other than that which said Deliverables were prepared. Any reuse or modification of the Deliverables without written verification or adaptation by JEI is prohibited.

12. **Credits and Media.**

- A. Client shall use best efforts, in all reproductions, to give credit to JEI.
- B. Client shall use its best efforts to notify JEI when Client plans to issue press releases, launch video or other materials about the Net-Sculpture on its website, prepare brochures, or otherwise create publicity about the Net-Sculpture.

13. **Contract Adjustments.**

- A. Either party may propose additions, deletions or modifications to the scope of services set forth in Exhibit A ("Contract Adjustments") in whatever manner such party determines to be reasonably necessary for proper compliance with this Agreement. Proposals for Contract Adjustments shall be submitted to the non-requesting party in the form agreed to by the Parties. Contract Adjustments shall be effected through amendments to this Agreement made in accordance with this Agreement.
- B. There shall be no increase in the payment on account of any Contract Adjustment made necessary or appropriate as a result of the mismanagement, improper act, or other failure of JEI or its employees, agents or subcontractors to properly perform their obligations and functions under this Agreement.
- C. In the event JEI proposes a Contract Adjustment and Client does not approve such Contract Adjustment, JEI will continue to perform the original scope of services in accordance with the terms and conditions of this Agreement; likewise, in the event Client proposes a Contract Adjustment and JEI does not approve such Contract Adjustment, JEI will continue to perform the original scope of services in accordance with the terms and conditions of this Agreement.
- D. Notwithstanding anything to the contrary contained in this Agreement, there shall be

no increase in the payment except pursuant to an amendment to this Agreement made in accordance with this Agreement.

14. **Entire Agreement, Amendments.** This Agreement constitutes the entire agreement between the Parties, supersedes all prior and contemporaneous agreements or understandings, oral or written, between the Parties, and may be modified only by a written amendment signed by both Parties.
15. **Governing Law.** This Agreement shall be governed by the laws of the State of Florida.
16. **Termination.**
 - A. **After Completion of Phase 1 Services & Deliverables.** In the event Client determines, in its sole and absolute discretion, as a result of Client's review of JEI's completed Phase 1 Services & Deliverables, that it is not desirable for Client to issue a Notice to Proceed for JEI to continue with Phase 2 Services & Deliverables, Client shall provide written notice of termination to JEI, and this Agreement shall be deemed terminated effective as of the date of the written notice of termination. In such event, JEI shall not be obligated to perform any Phase 2 Services, and Client shall not be liable to JEI for any payment beyond the Client's payment of thirty-seven thousand five hundred dollars (\$37,500) for the Phase 1 Services & Deliverables.
 - B. **For Cause.** Either party may terminate this Agreement upon written notice to the other party in the event the other party materially defaults on any of the terms and conditions of this Agreement and such failure continues for a period of thirty (30) days following notice from the other party specifying the default. In the event Client terminates for cause pursuant to this paragraph, Client shall pay JEI only for work that has been fully completed and accepted by Client as of the effective date of termination. In the event JEI terminates for cause pursuant to this paragraph 16B, Client shall pay JEI for all services performed through the effective date of termination.
 - C. **For Convenience.** This Agreement may be terminated at any time by either party for convenience upon twenty one (21) days written notice to the other party. In the event Client terminates this Agreement for convenience, Client shall pay JEI for all services performed through the effective date of termination. In the event JEI terminates this Agreement for convenience, Client shall pay JEI only for work that has been fully completed and accepted by Client as of the effective date of termination.
17. **Disputes.** Client and JEI shall meet within twenty one (21) calendar days of a written request by the other party for a meeting to try to negotiate a resolution of any dispute under this Agreement.
18. **Notices.** Any notice under this Agreement shall be in writing and sent by Federal Express or other confirmed delivery service to the address below and to the attention of the individual named below. Email or fax shall not be a sufficient form of notice.

Address for Notice to JEI:
Janet Echelman, Inc.

Address for Notice to Client:
City of St. Petersburg, Florida

Attn: Janet Echelman
 64 Coolidge St., Brookline, MA 02446
 (617) 566-0770; artstudio@echelman.com

Attn: India Williams
 Mayor's Office of Cultural Affairs
 P.O. Box 2842, St. Petersburg, FL 33731
 (727) 892-5370; india.williams@stpete.org

19. **Compliance with Laws.** JEI shall comply with all applicable federal, state, and local laws, ordinances, rules and regulations, the federal and state constitutions, and orders and decrees of any lawful authorities having jurisdiction over the matter at issue.
20. **Public Records.**
 - A. JEI shall (i) keep and maintain public records (as defined in Florida's Public Records law) required by Client to perform the services pursuant to this Agreement; (ii) upon request from the City of St. Petersburg Clerk's Office, provide Client (at no cost to Client) 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 JEI's possession that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by applicable laws for the Term and after the expiration or earlier termination of this Agreement; and (iv) after the expiration or earlier termination of this Agreement, at Client's request, either transfer, at no cost, to Client all public records in Client's possession within ten (10) days following Client's request and/or keep and maintain any public records required by Client to perform the services pursuant to this Agreement. If JEI transfers all public records to Client upon the expiration or earlier termination of this Agreement, JEI shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If JEI keeps and maintains public records upon the expiration or earlier termination of this Agreement, JEI shall meet all applicable requirements for retaining public records in accordance with this Agreement and all applicable laws. At Client's request, all public records stored electronically by JEI shall be provided to Client in a format approved by Client.
 - B. **IF JEI HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, AS TO JEI'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CITY OF ST. PETERSBURG CLERK'S OFFICE (THE CUSTODIAN OF PUBLIC RECORDS) AT (727) 893-7448, CITY.CLERK@STPETE.ORG, OR 175 FIFTH ST. N., ST. PETERSBURG FL 33701.**
 - C. Nothing contained herein shall be construed to affect or limit JEI's obligations including but not limited to JEI's obligations to comply with all other applicable laws and to maintain books and records pursuant to this Agreement.
21. **Books and Records.** JEI shall prepare in accordance with generally accepted accounting practice and shall keep, at the address for delivery of notices set forth in this Agreement,

accurate books of account. All books and records with respect to this Agreement shall be kept by JEI and shall be open to examination or audit by Client for the Term and for the retention periods set forth in the most recent General Records Schedule GS1-SL for State and Local Government Agencies. Nothing herein shall be construed to allow destruction of records that may be required to be retained longer by the statutes of the State of Florida.

22. **Non-Appropriation.** The obligations of Client 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, Client 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 Client pursuant to this Agreement.
23. **No Client Liability.** JEI acknowledges and agrees that Client shall have no liability or responsibility for any claims or damages arising out of or in connection with this Agreement.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

IN WITNESS HEREOF, the Parties have executed this Agreement as of the day and year first above written, intending to be legally bound.

JANET ECHELMAN, INC.:

WITNESSES

By: _____

By: _____

Print: Janet Echelman

Print: _____

Title: President

By: _____

Print: _____

CITY OF ST. PETERSBURG, FLORIDA: ATTEST

(SEAL)

By: _____

Print: _____

City Clerk (Designee)

Approved as to Form and Content:

City Attorney (Designee)

00315218

Exhibit A (Scope of Services)

During the Term, JEI will provide the following services and Deliverables in accordance with the Agreement and the schedule set forth below. JEI shall cooperatively work with and communicate with Client and Client's engineers, contractors, and consultants as necessary to perform the services and prepare and provide the Deliverables set forth below.

A. PHASE 1 SERVICES & DELIVERABLES: FEASIBILITY STUDY AND PRELIMINARY SCHEMATIC DESIGN. JEI shall provide Client with the following:

1. **Feasibility Report.** JEI shall provide Client with electronic copies of a written report on the feasibility of designing a Net-Sculpture that complies with the Florida Building Code and other applicable laws and regulations (including but not limited to applicable laws and regulations regarding navigation in the water as well as aircraft navigation, considering the Pier's proximity to navigable water and navigable airspace) and is capable of withstanding the environmental conditions of the Pier for a period of at least twenty-five (25) years, which environmental conditions include but are not limited to the prevailing climate and local conditions, rain events, and other weather events. The report shall include information regarding anticipated effects that such environmental conditions may have on the Net-Sculpture as well as information regarding maintenance or repairs that may be necessary to the Net-Sculpture over a twenty-five (25) year period. The written report shall also provide Client with information from past JEI projects regarding similar anticipated environmental or wildlife impacts that could be created by the Net-Sculpture's installation on the Pier, including but not limited to any anticipated potential impacts on birds or aquatic wildlife. The report shall also include documentation on the effect past JEI projects have had on birds only; Client acknowledges that this does not include a professional environmental study of Client's site. If Client later desires such environmental and wildlife study, JEI agrees to provide information and collaborate with Client's selected professional to implement such a study. In determining and reporting to Client regarding feasibility, JEI shall consider Client's intended programmatic uses of the Pier and surrounding areas as communicated to JEI by Client.
2. **Preliminary Schematic Design Concepts.** JEI shall develop no less than two (2) preliminary Schematic Design concepts of the Net-Sculpture to provide the Client options for consideration. The concepts shall vary in scale and location based on the areas identified in Exhibit B. Each concept shall include an estimate of the level of effort and cost for JEI to complete each concept of the Net-Sculpture, along with sufficient preliminary information for the Client to use in developing an estimate of the level of effort and cost for the structural support elements and any infrastructure improvements necessary for the Pier to accommodate the Net-Sculpture. The preliminary Schematic Design concepts shall illustrate the Net-Sculpture's key elements with sketches and renderings. The preliminary Schematic Design set shall include:
 - 2D scaled renderings that show multiple views of the Net-Sculpture, to include:
 - plans
 - elevations
 - perspectives

- scaled images with people showing interactive relationships

B. PHASE 2 SERVICES & DELIVERABLES: FINAL SCHEMATIC DESIGN. In the event Client issues a Notice to Proceed for JEI to continue with the Phase 2 Services & Deliverables set forth below, JEI shall complete the following services and prepare the following Deliverables. The purposes of the Phase 2 Services & Deliverables are to (i) further develop the no less than two (2) Schematic Design concepts for the Net-Sculpture, (ii) perform sufficient initial design services to determine the future scope and effort required by Client and JEI's engineers to receive all necessary permits for the Net-Sculpture to be installed on the Pier and for JEI's engineers to deliver full construction documents for the Net-Sculpture, and (iii) provide a Schematic Design estimate that fully covers all costs that would be incurred by Client for the completion of the design, engineering, construction, fabrication, and delivery of the Net-Sculpture ("Net-Sculpture Cost Budget"). JEI will provide sufficient information and materials to Client for the Client to prepare a Schematic Design estimate for all related infrastructure and services required to prepare the selected site and install the Net-Sculpture on the selected site, including any anticipated modifications to the completed Pier plans as determined by Client or Client's Construction Manager based on information provided by JEI.

1. JEI or its agents shall provide artistic concept for lighting design for the programming of the controller for the lighting fixtures of the Net-Sculpture.
2. JEI shall provide final Schematic Design, presentations, which can be presented in person or by video conference at no additional cost to Client. The final Schematic Design set shall include:
 - 2D scaled renderings that show multiple views of Net-Sculpture, to include:
 - dimensions
 - sections
 - plans
 - elevations
 - perspectives
 - scaled images with people showing interactive relationships
 - 3D digital model of artwork element(s) in digital format for Client's design team review, especially with regard to architecturally embedded lighting and electrical, and architecturally embedded attachment points.
 - 3D Aesthetic design for lighting design
3. JEI shall have final say over all aesthetic aspects of the final design of the Net-Sculpture.
4. JEI shall provide Client with Schematic Design level specifications and suggested location(s) of all architecturally embedded attachment points that could possibly be required for the Net-Sculpture to be installed on the Pier, with sufficient detail to allow Client to determine whether Client would need to obtain any permits or other permissions or to redesign or otherwise modify any aspects of the Pier to accommodate the Net-Sculpture.

5. JEI shall provide Client with Schematic Design level specifications and concept design for the implementation of lighting. JEI will support Client or Client's Construction Manager regarding estimated electrical components, lighting fixtures, and lighting control systems based on prior experience to allow Client to determine whether Client would need to obtain any permits or other permissions or whether any modifications would be necessary to the Pier design or structure in order to accommodate the Net-Sculpture, and JEI will provide support and collaboration with any lighting contractors managed by Client's Construction Manager in order to obtain more detailed specifications.
6. JEI shall identify all Client engineering and construction documents that would be necessary for the Net-Sculpture to be installed on the Pier, and will provide support and collaboration with Client's Construction Manager regarding engineering and construction documents that would be necessary for the infrastructure components.
7. JEI shall provide Client with any other information necessary to allow Client to determine (i) whether any structural or design changes to the Pier would be necessary to ensure that the Pier could accommodate the Net-Sculpture, (ii) whether Client would be able to obtain any permits that may be necessary for the Net-Sculpture to be installed at the Pier, and (iii) whether the Pier would need to be redesigned or modified to support or otherwise accommodate the Net-Sculpture.
8. JEI shall provide Client with the Net-Sculpture Cost Budget for Client to purchase a fabricated Net-Sculpture, which Net-Sculpture Cost Budget shall fully cover all costs that would be incurred by Client for the completion of the design, engineering, construction, fabrication, and delivery of the Net-Sculpture including all costs for materials, fabrication, coordination of installation services, delivery, out-of-pocket costs (including but limited to transportation, mileage, lodging, and meals), and any other costs JEI may charge to Client for the purchase of a fabricated Net-Sculpture to be installed by Client at the Pier. The Net-Sculpture Cost Budget shall not include the cost of Client's consulting engineers and architects' services as well as any modifications to the completed Pier plans necessary to install the Net-Sculpture, which will be part of the Infrastructure Cost Budget JEI shall provide Client or Client's Construction Manager with all information necessary to determine the final Infrastructure Cost Budget. Based on the level of information to be provided by JEI to the Client or Client's Construction Manager for purposes of developing the Infrastructure Cost Budget, which Infrastructure Cost Budget will include such contingencies that the Client deems necessary given the early phase of design.

C. SCHEDULE

1. Schedule for Phase 1 Services & Deliverables: Feasibility Study and preliminary Schematic Design
 - a. Execution of this Agreement April 15, 2017
 - b. Delivery of all Deliverables regarding feasibility and preliminary Schematic Design May 15, 2017

2. Schedule for Phase 2 Services & Deliverables: Final Schematic Design and Net-Sculpture Cost Budget

a. Delivery of final Schematic Design concepts

Up to 90 days
after the
Notice to Proceed

b. Provision of Net-Sculpture Cost Budget and all information necessary for Client's Construction Manager to determine the final Infrastructure Cost Budget

Up to 90 days
after the
Notice to Proceed

Exhibit B (Depiction of the Pier)

APPENDIX B

