PROFESSIONAL ARTIST SERVICES AGREEMENT

BETWEEN

CITY OF NORTH MIAMI

AND

George Fishman

FOR

PROPOSAL DEVELOPMENT SERVICES

This Professional Artist Services Agreement for Proposal Development Services, is made and entered into this 21 day of February, 2012, by and between the City of North Miami, Florida municipal corporation with a principal business address of located at 776 N.E. 125 Street, North Miami, FL 33161 hereinafter referred to as "City") and George Fishman hereinafter referred to as the "Artist".

WITNESSETH:

WHEREAS, the City of North Miami implemented the Art in Public Places Program as set forth in Ordinance 1291, passed by a unanimous vote of the Mayor and City Council on January 12, 2010; and

WHEREAS, the program was established to commission and purchase artworks by contemporary artists in all media for public spaces and facilities in North Miami; and

WHEREAS, the artist was selected as a finalist by an Art Selection Committee composed of professionals in the field of art, public art, art education, art history, or architectural history as specified in Ordinance 1291; and

WHEREAS, both parties wish the integrity and clarity of the Artist's ideas in the work of art to be maintained;

NOW THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties agree as follows:

ARTICLE I

SCOPE OF SERVICES

1.1 **GENERAL**: The Artist shall develop and submit to the City, a Proposal for a work of art (the "Work") for the Claude Pepper Park Community Center (the "Project") located at the Claude Pepper Park 13535 NW 17th Avenue (the "Site").

1.2 **PROPOSAL FORMAT**: The Proposal shall be in the following form:

1.2.A) A Proposal Narrative (the "Artist's Proposal Statement") describing the Artist's Design Intent and drawings, graphic or other visual representation of the Work, together with such other data and graphic material as is necessary to portray the Site preparation and permit the City to assess its feasibility and compliance with applicable statutes and ordinances; and

1.2.B) A Preliminary Project Budget (the "Budget") outlining "Probable Construction Costs" for the fabrication, delivery, site preparation and installation of the Work. The Budget will include applicable headings for all work to be performed by the Artist and any work to be subcontracted by the Artist, as well as any specialty items such as mock-up samples and models anticipated by the Artist to be part of the costs to fabricate and install the Work.

1.3 **PROCEDURE**: The Artist shall determine the artistic expression, size, material, texture, color, location and method of fabrication of the Work, all subject to review and acceptance by the City, as provided below.

1.3.A) The Artist shall meet with City Staff in order to receive from them a full review of the planning process involving the design of the Project, a full review and discussion of all plans developed for the Site and complete background information regarding all considerations affecting the plans for the Area

1.3.B) The Artist shall submit the completed Proposal to the City on the date designated for the Proposal Presentation Meeting. The artist will be promptly notified in writing of this date.

1.3.C) On or before the expiration of 30 days after the original submission to the City by the Artist of the Proposal, the City shall notify the Artist whether it has approved the Proposal.

1.3.D) If the City determines that the Proposal is not acceptable, it shall provide the Artist a statement in writing of the reasons for such determination. In such event, the City may at its option either terminate this Agreement or afford the Artist an opportunity to submit a new Proposal for the Work within a reasonable period of time specified by the City, and the City shall notify the Artist within 30 days after any such second submission of its determination as to the acceptability of such Proposal. If the City determines that the Work as so proposed is not acceptable, it shall provide to the Artist

a statement in writing of the reasons for such determination, and this Agreement shall terminate as provided under Article III, Section 3.6 below.

ARTICLE II

COMPENSATION

2.1 **FIRM FIXED PRICE**: The City shall pay the Artist a Fixed Fee (the "Artist's Proposal Fee") for Conceptual/Schematic Design Services in the preparation of a Proposal for the Project of Five Hundred Dollars and No Cents ($500.00). THE FIXED FEE SHALL CONSTITUTE FULL COMPENSATION FOR ALL SERVICES AND MATERIALS TO BE PERFORMED AND FURNISHED BY THE ARTIST UNDER THIS AGREEMENT, INCLUDING THE ARTIST'S FEE, ANY SUBCONTRACTED WORK AND/OR ANY RELATED OVERHEAD EXPENSES.

The Artist's Fee includes one (1) working meeting for purposes of conducting site visit and/or meeting with the Project's Design Team and the City as may be deemed appropriate to complete the Services outlined in this agreement, and one (1) meeting to present the design proposal to the Art Selection Committee panel for review (the "Proposal Presentation Meeting").

2.2 **METHOD OF PAYMENT**:

2.2.A) Artist's Proposal Fee - The City shall pay the Artist the Fixed Fee for Conceptual/Schematic Design in the preparation of a Proposal for the Project in one lump sum of $500.00 upon completion of the services, receipt of the artist's invoice, and verification and approval by the City Manager.

ARTICLE III

GENERAL CONDITIONS

3.1 **OWNERSHIP OF INSTRUMENTS OF SERVICE**: Upon completion of the Services, all designs and other data, including the model, developed by the Artist and delivered to the City for the purpose of this Agreement, shall become the property of the City. All data as described herein shall be delivered to the City prior to completion of the Agreement and final payment to the Artist. The City does not intend to own the copyright of the Work.

3.2 **TIME EXTENSIONS**: A reasonable extension of contract time will be granted by the City in the event there is a delay on the part of the City in fulfilling its part of the Agreement or should conditions beyond the Artist's control or Acts of God render performance of his/her duties impossible. Where such conditions arise, the Artist shall so notify the City in writing with an explanation describing the circumstances that do not permit him/her to complete the services as described in this Agreement in the time allotted. In such event, the parties hereto understand and agree that the City shall be the sole judge of what constitutes "beyond the Artist's Control".

3.3 **WARRANTY OF ORIGINALITY**: The Artist warrants that the tangible objects it delivers to the City in the performance of this Agreement shall be the result of the artistic efforts of the Artist and that, unless otherwise stipulated, the Work shall be unique and an edition of one.

3.4 **ASSIGNMENT, TRANSFER OR SUBCONTRACTING**: A material element of this Agreement is the personal skill, judgment and creativity of the Artist. Therefore, the Artist shall not assign, transfer or subcontract the creative and artistic portions of the Work to another party without the prior written approval of the City.

3.5 **INDEPENDENT CONTRACTOR**: The Artist is an independent contractor and nothing in this Agreement shall be construed as constituting the Artist an employee, agent or representative of the City. The Artist shall not be supervised by any employee of the City, nor shall the Artist exercise supervision over any employee or officials of the City.

3.6 **TERMINATION FOR CONVENIENCE**: Performance by either party under this Agreement may be terminated for the convenience of either party at any time upon furnishing sixty (60) days written notice to the other party. In the event of termination for convenience of either party, the Artist shall at his/her discretion have the right to either:

3.6.A) an equitable adjustment in the fee (without allowance for an anticipated profit on unperformed services) in which event the City shall have the right at its discretion to possession and transfer of title to the sketches, design, and models already produced and submitted or produced for submission by the Artist under this Agreement prior to the date of termination, provided that no right to fabricate or execute the Work shall pass to the City; or

3.6.B) the possession of all sketches, designs, models or other documents or materials produced and submitted or produced for submission to the City in the course of the Artist's performance under this Agreement prior to termination, in which case the Artist shall remit to the City a sum equal to all payments (if any) made to the Artist pursuant to this Agreement prior to termination.

3.7 **CONFLICT OF INTEREST**: The Artist covenants that he/she presently has not interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of Services under this Agreement. The Artist further covenants that in the performance of this Agreement, no person having such interest shall be employed by the Artist.

3.8 **PUBLICITY AND NEWS RELEASES**: The Artist shall not during the performance of this Agreement disseminate publicity or news releases regarding this project or the Services without prior written approval of the City.

3.9 **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 the Agreement shall be valid unless made in writing and signed by both parties hereto and approved by appropriate action of the City. This Agreement, regardless of where executed, shall be governed by and consulted according to the laws of the State of Florida and venue shall lie in Miami-Dade County, Florida.

IN WITNESS WHEREOF, the Parties have executed this Agreement by their respective proper officers duly authorized the day and year first written above.

"Artist"

ATTEST

By: George Fishman
Print Name:
Title:

By: _____
Print Name:
Title:

City of North Miami, a Florida municipal Corporation:
"City"

By: _____
Stephen E. Johnson
City Manager

ATTEST

By: _____
Michael A. Etienne, Esq
City Clerk.

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

By: _____
Roland C. Galdos
Interim City Attorney