



AGREEMENT

THIS AGREEMENT is made and entered into as of November 16, 2021 by and between the **NORTH MIAMI COMMUNITY REDEVELOPMENT AGENCY**, a public body corporate and politic (the "NMCRA") having an address at 735 NE 125 Street, Suite 100, North Miami, Florida 33161, and Gene Tinnie, an individual (the "Artist") having an address at 80 NW 51st, Miami, FL 33127-2114.

R E C I T A L S

1. The NMCRA desires to engage the Artist for provision of the services as set forth in the Scope of Work (as defined below), subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties do hereby agree as follows:

1. **General Intent.** The intent of this Agreement is to set forth the rights and obligations of the parties with respect to the provision by Artist to the NMCRA of services in connection with Pioneer Blvd Sculpture Garden Project (the "Design") to be installed **within the North Miami CRA** as generally set forth in that certain Call to Artists issued by the NMCRA. The parties acknowledge and agree that the Call to Artists contains certain terms and conditions that are incorporated into this Agreement; provided, however in the event there is any conflict between the terms and conditions of this Agreement and the Call to Artists, the terms and conditions of this Agreement shall control. The parties further acknowledge and agree that the Call to Artists contains a general scope of work which for purpose of this Agreement shall mean and be referred to as the "Scope of Work" for purposes of this Agreement.

2. **Services and Responsibilities.**

2.1 Artist hereby agrees to perform the services described and for a flat fee in the amount of **Twenty five thousand dollars (\$ 25,000)** (the "Fee"). The Artist shall be solely responsible for the satisfactory and complete execution of the Scope Work. Installation of the Pioneer Blvd Sculpture Garden Project will be the responsibility of the NMCRA and installed by a contract vendor. The Scope of Work shall generally be performed at the direction of the NMCRA and completed with time frames as agreed upon by the parties from time to time.

2.2 Artist hereby represents and warrants to the NMCRA that it possesses (a) the skills necessary to perform the Scope of Work as required by this Agreement and (b)

same formality and with equality and dignity prior to any deviation from the terms of this Agreement including the approval of the NMCRA Board.

6. **Termination.**

6.1 **Termination by the Artist.** The Artist may terminate the Agreement if the NMCRA fails to make a payment as required by the Agreement followed by written notice thereof from Artist to the NMCRA and the NMCRA's failure to make payment of the Fee for fifteen (15) days following the receipt of such notice. If the Artist terminates the Agreement as set forth in the previous sentence, the Artist shall be entitled to recover from the NMCRA payment for the Scope Work but shall not be entitled to any other damages including, but not limited to, consequential and/or punitive damages. Any termination or purported termination by the Artist for any reason other than the NMCRA's nonpayment shall be void thereby entitling the NMCRA to its rights and remedies available at law and in equity.

6.2 **Termination by the NMCRA for Cause.** The NMCRA may terminate this Agreement if the Artist:

6.2.1 Persistently or repeatedly refuses or fails to follow the NMCRA's directions relative to the performance of the Scope of Work including, but not limited to, failing to perform the Scope of Work or any portion thereof within agreed upon time frames;

6.2.2 Persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or

6.2.3 Otherwise materially breaches any provision of the Agreement Documents.

When any of the above reasons exist, the NMCRA may without prejudice to any other rights or remedies and after giving the Artist seven (7) days written notice, terminate this Agreement and the employment of the Artist. The Artist shall not be entitled to receive the Fee for the Scope of Work completed until the remainder of the Scope of Work is finished and, in addition to any other rights available to the NMCRA at law or in equity, the Artist shall be liable to the NMCRA for all reasonable excess completion costs and costs to correct as a result of said termination.

6.3 **Termination by the NMCRA for Convenience.** Notwithstanding anything in the Agreement to the contrary, the NMCRA shall have the right, for whatever reason and in its sole discretion, to terminate the Agreement without penalty or liability by providing the Artist with seven (7) days written notice thereof. Upon such termination, this Agreement shall be null and void, except that Artist shall be entitled to the Fee. Any of

exclusive property of the NMCRA and the City of North Miami. Artist acknowledges that the Design is being created by the Artist for use by the NMCRA and the City of North Miami. Upon request of the NMCRA and/or upon the termination or completion of this Agreement, Artist shall promptly deliver to the NMCRA all or any portion of the above referenced documents including the electronic files, tapes, or discs relating thereto. Artist further acknowledges that the NMCRA has a license (including reproduction rights) to use the Design and documents including marketing purposes as necessary including posting any of such Design on the NMCRA's website. Such Design and documents may be posted by the NMCRA without the prior authorization of Artist. No additional fee or compensation will be paid to Artist by NMCRA for such posting.

9.2 Records. Artist shall keep books and records and require any and all subcontractors to keep books and records as may be necessary in order to record complete and correct accurate records with respect to this engagement. Such books and records will be available at all reasonable times for examination and audit by the NMCRA and shall be kept for a period of six (6) years after the completion of all work to be performed pursuant to this Agreement, unless contacted by the NMCRA and advised such records must be kept for a longer period. Artist shall further be required to respond to the reasonable inquiries of successor Artist and allow successor Artist to review Artist's working papers related to matters of continuing accounting, reporting or auditing significance. Incomplete or incorrect entries in such books and records will be grounds for disallowance by the NMCRA of any fees or expenses based upon such entries.

9.3 Independent Contractor. This Agreement does not create an employee/employer relationship between the parties. It is the intent of the parties that Artist is an independent contractor under this Agreement and not the NMCRA's employee for all purposes, including but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution act, the Social Security Act, the Federal Unemployment Tax Act, the provision of the Internal Revenue Code, the State Workers Compensation Act, and the State unemployment insurance law. Artist shall retain sole and absolute discretion in the judgment of the manner and means of carrying out Artist's activities and responsibilities hereunder. Artist agrees that it is a separate and independent enterprise from the NMCRA, that it has full opportunity to find other business, that it has to make its own investment in its business, and that it will utilize a high level of skill necessary to perform the services. This Agreement shall not be construed as creating any joint employment relationship between Artist and the NMCRA and the NMCRA will not be liable for any obligation incurred by Artist, including by not limited to unpaid minimum wages and/or overtime premiums.

9.4 Assignments; Amendments.

9.4.1 This Agreement, or any interest herein, shall not be assigned, transferred or otherwise encumbered, under any circumstances, by Artist without

Artist:

Gene S. Tinnie
80 NW 51st Street
Miami, FL
33127-2114

9.7 Binding Authority. Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

9.8 Headings. Headings herein are for convenience of reference only and shall not be considered on any interpretation of this Agreement.

9.9 Exhibits. Each Exhibit referred to in this Agreement should be treated as part of this Agreement and is incorporated herein by reference.

9.10 Severability. If any provision of this Agreement or application thereof to any person or situation shall to any extent, be held invalid or unenforceable in a judicial proceeding, such provision shall be severed and shall be inoperative, and provided that the Agreement's fundamental terms and conditions remain legal and enforceable, the remainder of the Agreement shall continue in full force and effect, remain operative and binding, and shall and be enforced to the fullest extent permitted by law.

9.11 Governing Law; Venue. This Agreement will be governed by the laws of the State of Florida. Any claim, objection, or dispute arising out of the terms of this Agreement shall be brought in Miami-Dade County, Florida.

9.12 Extent of Agreement. This Agreement represents the entire and integrated agreement between the NMCRA and Artist and supersedes all prior negotiations, representations or agreements, either written or oral.

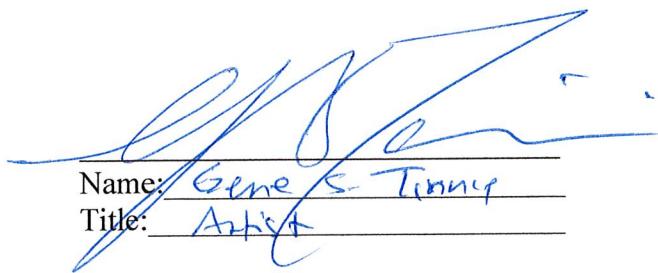
9.13 No Third Party Rights. Nothing contained in this Agreement shall create a contractual relationship with or duties, obligations or causes of action in favor of any third party against either the NMCRA or Artist.

9.14 Ethics Requirements. Artist is responsible for educating itself on the various ethics and conflict of interest provisions of Florida law, Miami-Dade County and City Code. Artist shall not employ, directly or indirectly, any member of the NMCRA, the NMCRA Advisory Committee, City Council, or any director or department head of the City.

IN WITNESS WHEREOF, the parties have set their hands and seals the day and year first written above.

ARTIST:

Gene S. Timmy,
an individual



Name: Gene S. Timmy
Title: Artist

NMCRA:

NORTH MIAMI COMMUNITY
REDEVELOPMENT AGENCY,
a public body corporate and politic

By: _____

Rasha Cameau
Executive Director

Attest:

By: _____

Vanessa Joseph, Esq.
CRA Secretary

Approved as to form and legal sufficiency:

By: _____

Spiritus Law LLC
CRA Attorney