NORTH MIAMI CRA
COMMUNITY REDEVELOPMENT AGENCY

MURAL ARTIST AGREEMENT

THIS AGREEMENT is made and entered into as of November 03, 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 **Ivan Roque**, a **Muralist** (the "Artist") having an address at **3561 SW 117 Avenue, Apt 207, Miami, Fl. 33175**.

RECITALS

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 **NoMi MURALscape - the design and implementation of the mural project at 687 NE 124th Street, North Miami, Fl 33161** (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 **Nine Thousand Six Hundred and Ninety dollars ($ 9,690)** (the "Fee"). The Artist shall be solely responsible for the satisfactory and complete execution of the Scope Work. Installation of the **NoMi MURALscape 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)

any and all necessary licenses required by the State of Florida, Miami-Dade County and the City of North Miami to perform the Scope of Work.

2.3 The services of Artist shall only be performed upon the prior request of the NMCRA Executive Director. Artist shall report to the NMCRA Executive Director. During the conduct of the performance of its services, Artist shall schedule regular meetings with the NMCRA Executive Director or her designee to discuss the progress of the work.

2.4 Artist hereby represents to the NMCRA, with full knowledge that NMCRA is relying upon these representations when entering into this Agreement with Artist, that Artist has the professional expertise, experience and manpower to perform the services to be provided by Artist pursuant to the terms of this Agreement. Artist shall maintain during the term of this Agreement all necessary licenses and qualifications required by applicable law.

2.5 Artist shall pay when due all sales, consumer, use, and other similar taxes required by law and shall secure all permits, fees and licenses necessary for the execution of the Scope of Work.

3. **Relationship of the Parties.** The Artist accepts the relationship of trust and confidence established by this Agreement and covenants with the NMCRA to cooperate with the NMCRA and exercise the Artist's skill and judgment in furthering the interests of the NMCRA; to furnish efficient business administration and supervision, and to perform the Scope of Work in an expeditious and economical manner consistent with the NMCRA's interests. The NMCRA agrees to furnish or approve, in a timely manner, information required by the Artist and to make payments to the Artist in accordance with the requirements of this Agreement.

4. **Compensation and Method of Payment.**

4.1 The Fee represents and contains all amounts due and payable for the services provided by Artist as set forth in the Scope of Work including any out of pocket and third party costs which may be incurred and/or paid by Artist.

4.2 Artist shall not be paid an initial partial payment of the Fee upon the execution of this Agreement by both parties. The Artist shall submit to the NMCRA a written invoice for the balance of the Fee upon Final Completion. With respect to the procedures for payment, the NMCRA and Artist agrees to comply with and be bound by the provisions of Part VII, Chapter 218, Florida Statutes, entitled the Local Government Prompt Payment Act.

5. **Changes in Scope of Work.** The NMCRA may request changes that would increase, decrease or otherwise modify the scope of services to be provided under this Agreement. Such changes must be contained in a written amendment, executed by the parties hereto, with the

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

Artist's then outstanding and/or unfulfilled duties and/or obligations under the Agreement accruing prior to such termination shall survive the termination of the Agreement. Artist acknowledges and agrees that Artist shall not be entitled to, and hereby waives any claims for, any damages in the event that the NMCRA exercises its termination right hereunder including, but not limited to, any consequential or punitive damages.

7. **Insurance.** The Artist shall purchase and maintain insurance as follows:

7.1 Worker's Compensation Insurance coverage in accordance with Florida statutory requirements.

7.2 Commercial General Liability Insurance coverage with limits of no less than $1,000,000 per occurrence and $2,000,000 in the aggregate, which policy shall include coverage of the contractual liabilities contained in this Agreement.

Certificates of insurance from insurers acceptable to the NMCRA shall be delivered to the NMCRA upon execution of this Agreement. Only with respect to commercial general liability insurance, the certificates shall (a) name the NMCRA as an additional insured and loss payee and (b) contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the NMCRA. Failure of the Artist to obtain and maintain required insurance shall be grounds for termination of the Agreement by the NMCRA. Artist shall require any subconsultants who are preparing plans and specifications to provide professional liability insurance with the same insurance coverage as set forth above.

8. **Indemnification.** In consideration of the entry of this Agreement, the Artist agrees to indemnify, protect, defend, and hold harmless the NMCRA its members, managers, officers, employees, consultants, and agents from liabilities, damages, losses, and costs including, but not limited to reasonable attorney's fees at both the trial and appellate levels to the extent caused by the acts or omissions of the Artist and other persons employed or utilized by the Artist in the performance of the Scope of Work. The foregoing indemnity is limited to $1,000,000 per occurrence, which monetary limitation on the extent of the indemnification both parties acknowledge and agree bears a reasonable commercial relationship to the Agreement; provided, however, that the Artist's indemnity obligations hereunder are not limited by the availability of insurance proceeds. In the event that any claims are brought or actions are filed against the NMCRA with respect to the indemnity contained herein, the Artist agrees to defend against any such claims or actions regardless of whether such claims or actions are rightfully or wrongfully brought or filed.

9. **Miscellaneous.**

9.1 Ownership of Documents. All concepts, ideas, copy, sketches, artwork, electronic files, designs, and any and all documents and other materials prepared and/or provided by the Artist pursuant to or in connection with this Agreement are and shall be considered work for hire under the United States Copyright Act of 1976, and remain the

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 Ian. 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

the prior written consent of the NMCRA, which consent may be withheld by the NMCRA in its sole and absolute discretion. This Agreement shall run to the NMCRA and its successors and assigns.

9.4.2 It is further agreed that no modification, amendment or alteration in the terms or conditions contained here shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith and approved by the NMCRA Board.

9.5 No Contingent Fees. Artist warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Artist to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual or form, other than a bona fide employee working solely for Artist any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, the NMCRA shall have the right to terminate the Agreement without liability at its discretion, to deduct from the contract price, or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

9.6 Notice. Whenever any party desires to give notice unto any other party, it must be given by written notice, sent by certified United States mail, with return receipt requested, or by nationally recognized overnight delivery service, addressed to the party for whom it is intended and the remaining party, at the places last specified, and the places for giving of notice shall remain such until they shall have been changed by written notice in compliance with the provisions of this section. Notice may also be sent by electronic means (facsimile or email) provided such is followed by a hard copy of such notice provided in the manner set forth above. Notice is deemed given when received. For the present, Artist and the NMCRA designate the following as the respective places for giving such notice:

NMCRA: Rasha Cameau, Executive Director
North Miami Community Redevelopment Agency
735 NE 125 Street, Suite 100
North Miami, Florida 33161
Telephone No. (305) 895-9839
Facsimile No. (305) 895-9822

Copy to: Steven W. Zelkowitz
NMCRA Attorney
Spiritus Law LLC
2525 Ponce De Leon Boulevard, Suite 1080
Coral Gables, Florida 33134
Telephone No. (305) 407-1937

Facsimile No. (305) 204-9129

Artist:

Name: Ivan Jorge Roque

Title: Artist

Address: 3561 SW 117 Ave Apt 207, Miami, FL 33175

Tel: (786)419-8443

Fax:

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.

9.15 Prevailing Party's Attorneys' Fees. If any party commences an action against the other party to interpret or enforce any of the terms of this Agreement or as the result of a breach by the other party of any terms hereof, the non-prevailing party shall pay to the prevailing party all reasonable attorneys' fees, costs and expenses incurred in connection with the prosecution or defense of such action, including those incurred in any appellate proceedings, and whether or not the action is prosecuted to a final judgment.

9.16 Counterparts. This Agreement may be executed in two or more counterparts, all of which together shall constitute one and the same instrument. There may be duplicate originals of this Agreement, only one of which need to be produced as evidence of the terms hereof. A copy of this Agreement and any signature thereon shall constitute an original for all purposes.

9.17 Survival. All covenants, agreements, representations and warranties made herein or otherwise made in writing by any party pursuant hereto shall survive the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

9.18 Remedies Cumulative. The rights and remedies given in this Agreement and by law to a non-defaulting party shall be deemed cumulative, and the exercise of one of such remedies shall not operate to bar the exercise of any other rights and remedies reserved to a non- defaulting party under the provisions of this Agreement or given to a non-defaulting party by law.

9.19 No Waiver. One or more waivers of the breach of any provision of this Agreement by any party shall not be construed as a waiver of a subsequent breach of the same or any other provision, nor shall any delay or omission by a non-defaulting party to seek a remedy for any breach of this Agreement or to exercise the rights accruing to a non-defaulting party of its remedies and rights with respect to such breach.

10. **WAIVER OF JURY TRIAL. WAIVER OF JURY TRIAL. THE PARTIES HEREBY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT A PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION OR PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT.**

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[SIGNATURE PAGE TO FOLLOW]

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

ARTIST:

_____,
a Muralist

_____
Name: Ivan Roque
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