

Meeting Date: 1/26/16

Agenda Item 1

REQUESTED COMMISSION ACTION:

Consent Ordinance Resolution Consideration/Discussion Presentation

SHORT TITLE REQUEST FOR RESOLUTION AND APPROVAL OF LICENSING AGREEMENT FOR
ARTIST COLIN FOORD FOR THE UTILITY BOX WRAPPING PROJECT
(Cost: No additional costs associated with this agenda item.)

Summary of Purpose and Why:

On July 28, 2015, City Commission approved selections for the Utility Wrap Call to Artists and authorized staff to award contracts to eight selected artists at a rate of \$200 per box. One of the selected artists, Mr. Colin Foord, requested a licensing agreement in lieu of the City's standard *Copyright Assignment of Artwork* in order to retain certain ownership and copyright control over his pre-existing artwork that will be displayed on the utility boxes.

The Assistant City Attorney has prepared a License Agreement between the City of Pompano Beach and Colin Foord / Coral Morphologic, LLC for the utility box wrapping project which will allow the artist to retain ownership over five of his works of art while simultaneously allowing the City to display said images on five utility boxes. The contract is only for \$1,000.00, which would not typically need City Commission approval. However, since this artistic contract is in a form other than the City's standard service contract, City Commission approval is requested.

The Licensing Agreement, attached, has already been signed by the artist, Mr. Colin Foord. The Public Art Committee recommends approval.



Accomplishing this item supports achieving Initiative 2.8 Further develop and promote cultural / heritage tourism opportunities.

- (1) Origin of request for this action: Public Art Committee / Development Services
- (2) Primary staff contact: Laura Atria / Jennifer Gomez / Robin Bird Ext. 4310
- (3) Expiration of contract, if applicable: _____
- (4) Fiscal impact and source of funding: Cost: No additional cost associated with this agenda item.

DEPARTMENTAL COORDINATION	DATE	DEPARTMENTAL RECOMMENDATION	DEPARTMENTAL HEAD SIGNATURE
Dev. Services	<u>1/12/16</u>	<u>Approval</u>	<u>[Signature]</u>
City Attorney	<u>1/15/16</u>	<u>[Signature]</u>	<u>[Signature]</u>
<input checked="" type="checkbox"/> City Manager	<u>[Signature]</u>	<u>[Signature]</u>	<u>#2016-191 [Signature]</u>

ACTION TAKEN BY COMMISSION:

<u>Ordinance</u>	<u>Resolution</u>	<u>Consideration</u>	<u>Workshop</u>
<u>1st Reading</u> _____	<u>1st Reading</u> _____	<u>Results:</u> _____	<u>Results:</u> _____
<u>2nd Reading</u> _____	_____	_____	_____
_____	_____	_____	_____



City Attorney's Communication #2016-191

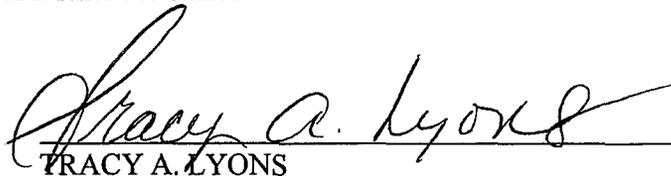
November 16, 2015

TO: Scott Reale, AICP, Planner
FROM: Tracy A. Lyons, Assistant City Attorney
RE: Revocable License Agreement for the Utility Wrap call to Artist Project

As requested in your memorandum of November 16, 2015, Department of Development Services Memorandum #15-612, the above-referenced Agreement has been prepared and is attached at this time along with the appropriate Resolution captioned as follows:

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A REVOCABLE LICENSE AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND CORAL MORPHOLOGIC, LLC, FOR PARTICIPATION IN THE UTILITY WRAP CALL TO ARTIST PROJECT; PROVIDING AN EFFECTIVE DATE.

Please feel free to contact me if I may be of further assistance.


TRACY A. LYONS

/tal
l:cor/dev-srv/2016-191

Attachments

RESOLUTION NO. 2016-_____

CITY OF POMPANO BEACH
Broward County, Florida

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A REVOCABLE LICENSE AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND CORAL MORPHOLOGIC, LLC. FOR PARTICIPATION IN THE UTILITY WRAP CALL TO ARTIST PROJECT; PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. That a Revocable License Agreement between the City of Pompano Beach and Coral Morphologic, LLC., for participation in the Utility Wrap Call to Artist Project, a copy of which Agreement is attached hereto and incorporated by reference as if set forth in full, is hereby approved.

SECTION 2. That the proper City officials are hereby authorized to execute said Revocable License Agreement between the City of Pompano Beach and Coral Morphologic, LLC.

SECTION 3. This Resolution shall become effective upon passage.

PASSED AND ADOPTED this _____ day of _____, 2016.

LAMAR FISHER, MAYOR

ATTEST:

ASCELETA HAMMOND, CITY CLERK

**LICENSE AGREEMENT BETWEEN
CITY OF POMPANO BEACH AND CORAL MORPHOLOGIC, LLC
FOR THE UTILITY BOX WRAPPING PROJECT**

THIS LICENSE AGREEMENT is entered into by and between the City of Pompano Beach, a municipal corporation (“City”) and Coral Morphologic, LLC, a Florida Limited Liability Company, (“Coral”), and is made as of _____, 2016. In consideration of the mutual agreements contained herein, the parties hereto agree as follows:

1. Recitals. This License Agreement is made with respect to the following facts and for the following purposes, which each of the parties hereto acknowledge as true and correct:

A. Coral is the owner of certain artistic images known as “Flower Animal” (hereinafter “Images”); and

B. The City would like to use a five (5) full colored photographs of Zoanthus species zoanths from the Coral Morphologic’s ‘Flower Animal’ or any other artwork agreed upon by Coral and City, to be printed on five municipal utility boxes throughout the city; and

C. Coral is willing to grant this License to City in consideration of and recognition of the receipt of \$200 per box provided by the City; and

D. The City and Coral desire to enter into this License Agreement to provide the terms and conditions upon which the City shall use the Images described below.

2. Right to Use Photographic Images from Flower Animal Collection.

Coral hereby grants a revocable license to City to use five photographic Images of the Zoanthus species from the ‘Flower Animal’ collection or any other artwork agreed upon between Coral and the City, for the purpose of participating in the Pompano Beach Utility Wrap Project.

3. Term of License to Use Utility Box Sites.

A. Duration. The Term of this Agreement shall commence on _____, 2016 for the life span of the utility box and/or the life of the public art project itself.

B. Right to Terminate Agreement. The City may terminate this Agreement for any reason by providing a sixty (60) day written notice of termination to the other party at the addresses provided for in Section 8, herein.

4. Responsibilities of the City.

A. The City shall coordinate with Coral Morphologic, LLC to provide Utility Box space for display of the aforementioned Images.

B. The City shall pay the artist \$200.00 per box for five (5) Utility Boxes, with a minimum payment of \$500.00 as consideration as indicated in section 1(C).

C. The City shall not sell or redistribute the images of this revocable license agreement to any third party without the expressed written approval of Coral. The redistribution does not include the City's use of the images of the artwork for advertisement purposes of the project including, but not limited to, advertisements on the City's website or publications and/or press releases.

5. Responsibilities of Coral.

A. Coral shall grant to the City a non-exclusive, non-transferable and non-assignable use of five (5) photographs from Coral Morphologic's 'Flower Animal' body of work which shall include the following:

- i. Zoanthus_Miami Vice;
- ii. Zoanthus_red people eaters;
- iii. Zoanthus_Royal flushes;
- iv. Zoanthus_searchlights;
- v. Zoanthus_Sky Blue Vices;

Coral further agrees that if any of the above five (5) photographs are not accepted by the City, the Artist shall agree to provide any other artwork mutually agreed to by Coral and the City to complete the Pompano Beach utility wrap art project.

B. Coral shall deliver electronically to the City high resolution images in the uncompressed.tiff digital file format in the dimensions and resolution requested by the City.

C. Coral shall provide the above images for the purpose of being printed on weather-resistant vinyl adhesive for purposes of wrapping a total of five municipal utility boxes as part of the public art project to beautify the City.

D. Coral hereby authorizes the City to re-install, re-print and re-wrap the utility box in the event of any damage or destruction to the utility box.

6. Representations. City represents and warrants to Coral that it holds all such rights and interests as required to permit City to enter into this Agreement and it is duly authorized to enter into this Agreement.

Coral warrants and represents to City that the Official Artwork and all derivatives thereof created by Coral and Colin Foord shall be original copies and shall not violate or infringe the copyright, trademark or other intellectual or proprietary rights of any third party; and Coral represents and warrants to City that (i) it holds all such rights and interests as are required to permit Coral to enter into this Agreement, (ii) it is duly authorized to enter into this Agreement and (iii) it hereby agrees to indemnify City and undertake to hold harmless against any action, claims, suits, losses, damages, or expenses brought against or incurred by City based on any third party claims that Coral is not possessed of such right, title and interest as to be entitle to grant the rights specified in this Agreement to City including, but not by way of limitation, claims of copyright, trademark and rights of publicity or which arises out of or in connection with the breach by Coral or any representations, warranties or agreements hereunder.

7. Image Ownership - Please note that nothing in this Agreement should be construed to mean that a transfer of ownership of the Official Artwork will occur. Coral retains complete ownership of the Official Artwork. All uses of the Images, other than those specified in this Agreement must be approved by Coral.

8. Notice. Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal services, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, that provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by written notice to the other party:

City: CITY OF POMPANO BEACH
100 West Atlantic Boulevard
Pompano Beach, Florida 33060
Attention: Scott Reale

Facility: Coral Morphologic, LLC
835 NW 7th Street
Miami, Florida 33136
Attn: Colin Foord

9. Interpretation. Each party had the full opportunity to participate in the drafting of this Agreement and, therefore, the Agreement shall not be interpreted against any party on the ground that the party drafted the Agreement or caused it to be prepared.

10. Authority to Enter Into Agreement. Each person signing below personally warrants and represents to Coral that the City has approved this License, intends to be bound by its terms and that they are duly authorized to execute this License Agreement on behalf of the City.

11. Entire Agreement. This Agreement and any documents attached hereto or mentioned herein, contain all of the Agreements of the parties regarding the Subject Property,

and no prior agreement or understanding pertaining to any such matter shall be effective for any purpose.

12. Independent Contractor. The relationship of the parties created by this Agreement shall be that of independent contractor. Nothing contained in this Agreement shall be construed or interpreted as creating a relationship of joint ventures, partners, principal and agent or employer and employee under any circumstances. Neither party shall have the power to obligate or bind the other party.

13. Amendments. No provision of this Agreement may be amended except by the written agreement of both parties.

IN WITNESS WHEREOF, the parties hereunto have executed this Agreement as of the date first above written.

"CITY":

Witnesses:

CITY OF POMPANO BEACH

By: _____
Lamar Fisher, Mayor

By: _____
Dennis Beach, City Manager

Attest:

Asceleta Hammond, City Clerk

(SEAL)

Approved As To Form:

Mark E. Berman, City Attorney

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instruments were acknowledged before me this _____ day of _____, 2016 by **LAMAR FISHER**, as Mayor, **DENNIS BEACH** as City Manager and

ASCELETA HAMMOND, as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who is personally known to me.

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

"FACILITY":

Witnesses: CARLOS PEDEZ
[Signature]

Coral Morphologic, LLC., a Florida limited liability Company

By: [Signature]

Print Name: Colin Foord

Title: Co-founder

(SEAL)

STATE OF FLORIDA
COUNTY OF ~~BROWARD~~
DADE

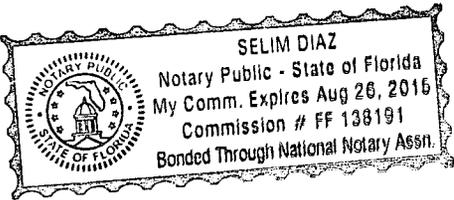
The foregoing instrument was acknowledged before me this 10 day of December, 2015 by COLIN FOORD as CO FOUNDER of CORAL MORPHOLOGIC, LLC, a Florida limited liability Company. He/she is personally known to me or who has produced PG20-119-82-050-0 (type of identification) as identification.

NOTARY'S SEAL:

[Signature]
NOTARY PUBLIC, STATE OF FLORIDA

SELIM DIAZ
Name of Acknowledger Typed, Printed or Stamped

Commission Number



L:/agr/License Agreement Utility Boxes/Coral



Pompano Beach Public Art Committee

Commission Chambers
Conference Room

October 22, 2015
5:00 P.M.

Utility Wraps

Ms. Gomez stated that there have been a few changes with the project. She commented that the re-bid process went well, but that some additional details came up, in particular, nine of the sites have a second mini-box next to the main box. She stated that it was decided that these mini-boxes were added to the project at a cost of \$1,800.

MOTION by Chad Kovac and second by Chris Mullon to pay the \$1,800 out of the contingency fund. All voted in favor.

Ms. Gomez stated that the artist selected for the NW part of the City specializes in endangered animals. She stated that he was asked by Staff to prepare one of the designs to incorporate a tiger, since the community is so passionate about this symbol. The Committee discussed adding an additional box near Blanche Ely at 6th Avenue and 15th Street that would feature a tiger.

MOTION by Chris Mullon and second by Linda Houston-Jones to add the box at 6th Avenue and 15th Street to the project. All voted in favor.

NOTE: At this point in the meeting, Ms. Linda Houston-Jones left.

→ Ms. Gomez stated that Colin Foord, one of the artists selected, proposed an agreement to license images instead of a copyright assignment. Ms. Gomez asked the Committee how they felt about accepting this.

→ Ms. Maguire stated that she felt that this would be unfair to the other artists.

→ Mr. Davis stated that this kind of agreement is common.

→ Mr. Kovac suggested that the City ask if the artist would agree to allow the images to be on the City website.

→ Ms. Mimi Botscheller commented that she has artwork at Port Everglades and she understands if the Port would want to use her work for publicity reasons.

→ Mr. Davis stated that he does not have a problem with the artist's wishes.

→ The Committee asked Ms. Gomez to ask the artist for the City to have permission to use photos of the box, and also to have the right to replace any of his boxes if they were to be damaged.

Tracy Lyons

From: Scott Reale
Sent: Wednesday, January 20, 2016 3:54 PM
To: Tracy Lyons
Subject: FW: License Agreement revision

FYI

From: Coral Morphologic [<mailto:coralmorphologic@gmail.com>]
Sent: Wednesday, January 20, 2016 3:50 PM
To: Scott Reale
Subject: Re: License Agreement revision

Hi Scott,

The change is totally fine. Thanks for asking first. Glad I don't have to pay for another notary signature! Keep us posted as to when these wraps are ready to be printed!

Cheers,
Colin
[Coral Morphologic](#)

On Wed, Jan 20, 2016 at 3:31 PM, Scott Reale <Scott.Reale@copbfl.com> wrote:

Colin,

The City Attorney's Office has made a couple of minor revisions to the License Agreement that you previously signed. The changes are highlighted in the attachment. Basically, "2015" was changed to "2016" except for the executed page you already signed which will remain 2015. Otherwise, there was no content change except for a spelling correction.

Rather than have you go through the trouble of signing and notarizing the updated Agreement, and to avoid further delay, the City Attorney's Office has asked that you indicate, by replying to this email, that you acknowledge and approve the minor changes.

Thanks in advance for your prompt response.

Sincerely,