

**POMPANO BEACH
COMMUNITY REDEVELOPMENT AGENCY**

4

Meeting Date: May 15, 2018

Agenda Item _____

REQUESTED CRA BOARD ACTION:

Resolution(s) Consideration Approval Other

SHORT TITLE OR MOTION: A RESOLUTION OF THE POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY (CRA), APPROVING AND AUTHORIZING THE PROPER OFFICIALS TO EXECUTE A LICENSE AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND THE CRA FOR THE USE OF THE EXTERIOR WALL OF THE BAILEY CONTEMPORARY ARTS BUILDING LOCATED AT 41 NE 1ST STREET FOR THE PAINTING OF A MURAL BY ARTIST FABIO GONCALVEZ, PROVIDING AN EFFECTIVE DATE.

Summary of Purpose and Why:

The cultural arts scene in Pompano Beach has expanded in recent years in large part to the City and CRA's efforts. The City and CRA work symbiotically to promote cultural arts events and opportunities for the community. This agenda item presents another chance for the CRA and City to work together and bring one of the Public Art Committee's projects to fruition. The City would like its mural to be located on the Bailey Contemporary Arts (BaCA) building. CRA staff recommends this location and presents this Board the License Agreement with the City for the mural, created by artist Fabio Goncalvez, to be placed on the exterior, western, back wall of the BaCA building. Approval of this agenda item will support the continuation of the cooperative relationship the City and CRA have promoting Pompano Beach's cultural assets.

QUESTIONS TO BE ANSWERED BY ORIGINATING DEPARTMENT:

- (1) Origin of request for this action: Staff
- (2) Primary staff contact: David Hasenauer Ext. 7835
- (3) Expiration of contract, if applicable: 5 Year Term -
- (4) Fiscal impact and source of funding: License Agreement Fee - 160-1920-539.48-50 Marketing and Special Events in the amount of \$10

<u>DEPARTMENTAL COORDINATION</u>	<u>DATE</u>	<u>DEPARTMENTAL RECOMMENDATION</u>	<u>AUTHORIZED SIGNATURE OR ATTACHED MEMO NUMBER</u>
_____	_____	_____	_____

- CRA Executive Director
- CRA Attorney
- Finance Director

Greg Harrison
Claudia M. McKenna
A. Dem-Pore

ACTION PREVIOUSLY TAKEN BY CRA BOARD:

<u>Resolution Results:</u>	<u>Consideration Results:</u>	<u>Other Results:</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____



P. O. Drawer 1300
Pompano Beach, FL 33061

Phone: (954) 786-5535
Fax: (954) 786-7836

MEMORANDUM

DATE: May 15, 2018

TO: Pompano Beach CRA Board

FROM: David Hasenauer, Project Manager

THUR: Greg Harrison, Executive Director

SUBJECT: License Agreement for Fabio Goncalvez Mural at BaCA

The City's Public Arts Committee has been working diligently on enhancing the aesthetic and cultural value of the city. Concurrently, the CRA's Bailey Contemporary Arts (BaCA) and Ali Cultural Arts (the Historic Ali) have been hosting exhibitions and programs, which have been featured prominently on local media and even won the attention of the prestigious Knights Foundation. The CRA and City are working together to transition the programming, staffing and promotion of Pompano Beach's cultural assets.

The Public Arts Committee approved the artist, Fabio Goncalvez, his design, the design location at their meeting on October 17, 2017. It was determined that the back western exterior wall of the Bailey Contemporary Arts (BaCA) would be an appropriate location as it is beginning to be known as "Artist Alley."

CRA staff recommends the CRA Board allow the City's Public Arts Committee to place this mural on BaCA through a License Agreement. The area around BaCA is an emerging arts & entertainment district that has seen the introduction of new murals, so having this mural on BaCA is fitting. The License Agreement between the CRA and the City of Pompano Beach is for a five-year term with a two year renewal, however the mural will be allowed to stay on the building for a total of seven years. The CRA will pay a nominal fee for recognition of the receipt of the improvement to the property. This arrangement is a great opportunity to converge the City and CRA's efforts to bring cultural arts into the community.

POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY

A RESOLUTION OF THE POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY (CRA), APPROVING AND AUTHORIZING THE PROPER OFFICIALS TO EXECUTE A LICENSE AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND THE CRA FOR THE USE OF THE EXTERIOR WALL OF THE BAILEY CONTEMPORARY ARTS BUILDING LOCATED AT 41 NE 1ST STREET FOR THE PAINTING OF A MURAL BY ARTIST FABIO GONCALVEZ; PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY THAT:

SECTION 1. The License Agreement (Agreement) between the City of Pompano Beach and Pompano Beach Community Redevelopment Agency for the use of the Bailey Contemporary Arts located at 41 NE 1st Street, for the painting of a mural on the exterior western wall referred to as the "Design Location" a copy of which Agreement is attached hereto and incorporated by reference as if set forth in full, is hereby approved.

SECTION 2. The proper officials are hereby authorized to execute the Agreement.

SECTION 3. This Resolution shall become effective upon passage.

PASSED AND ADOPTED this _____ day of May, 2018.

LAMAR FISHER, CHAIRPERSON

ATTEST:

MARSHA CARMICHAEL, SECRETARY

LICENSE AGREEMENT

THIS AGREEMENT, made this _____ day of _____ 2018, by and between:

POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY, a public body corporate and politic, under Part III, Chapter 163, Florida Statutes (hereinafter "CRA"),

and

CITY OF POMPANO BEACH, a municipal corporation of the State of Florida (hereinafter "CITY").

WITNESSETH:

WHEREAS, CRA is the owner of the commercial property known as the Bailey Contemporary Arts building which is located at 41 NE 1 Street, Pompano Beach, FL 33060 (the "Property"); and

WHEREAS, the CITY, through its hired artist, Fabio Goncalvez, would like to paint the mural depicted in the Design Proposal attached hereto and made a part hereof as Exhibit "A" upon the west exterior wall of the Bailey Contemporary Arts building (the "Design Location") located on the Property (the "Project");

WHEREAS, the Design Location is under the exclusive ownership, custody and control of the CRA; and

WHEREAS, the CITY's Public Art Committee approved the foregoing artist, his Design Proposal and the Design Location at its meeting on October 19, 2017; and

WHEREAS, CRA desires to allow CITY to use the Property as heretofore described for the Project.

NOW, THEREFORE, in consideration of the foregoing and mutual covenants and conditions hereinafter contained, it is agreed by the parties hereto as follows:

1. AUTHORIZATION AND LICENSE FEE. CRA hereby grants to CITY and CITY hereby accepts from CRA, a license to install and maintain, at CITY's sole cost, the mural depicted in Exhibit "A" on the "Design Location" subject to the terms, covenants, fees and conditions hereinafter set forth. In exchange, CITY agrees to pay CRA Ten Dollars (\$10.00) as compensation for this License as well as provide the in-kind benefit of installing and maintaining the Project, at CITY's sole cost, on CRA's Property, the receipt and sufficiency of which are hereby acknowledged.

2. TERM. The term of Agreement shall commence upon date this Agreement is fully-executed by both parties (the "Effective Date") and continue in duration for a minimum of five (5) years after installation of the mural at the Design Location is complete regardless if ownership of the Property changes before expiration of the five (5) year period. Said condition shall be included in the writing of any future Purchase and Sales Agreement.

3. USE OF PREMISES. CRA hereby grants to CITY and CITY hereby accepts from CRA, a license to use the Design Location, upon and subject to all of the terms, covenants, fees and conditions hereinafter set forth. CITY specifically agrees the Property shall not be used for any other purpose whatsoever without the written consent of CRA; that CITY shall not permit the Design Location to be used or occupied in any manner that is inconsistent with the use granted herein; and that CITY shall take good care of the Design Location, suffer no waste or injury thereto, and take no action which would interfere with the commercial business operating on the Property.

CITY agrees to accept the Design Location in the condition and state of repair on the date hereof, "as is", and expressly acknowledges and agrees that CRA shall not be obligated to make repairs to, or to perform any work on it.

4. **ASSIGNMENT.** CITY is not permitted to assign, transfer, convey or otherwise dispose of this License to any other person or corporation without the previous written consent of CRA.

5. **MAINTENANCE.** CITY agrees to at all times maintain and repair the Project at its sole cost and expense. CRA agrees that what constitutes reasonable maintenance and repair of the mural Project shall be determined by CITY, in CITY's sole discretion.

6. **INDEMNIFICATION AND NO WAIVER OF SOVEREIGN IMMUNITY.** Nothing contained in this Agreement shall be deemed to affect the rights, privileges and immunities of either party as set forth in § 768.28, Florida Statutes, nor shall anything included herein be construed as consent to be sued by third parties in any matter arising out of this Agreement or any other contract. Both parties are state agencies or political subdivisions as defined in § 768.28, Florida Statutes, and agree to be fully responsible for the acts and omissions of their respective agents or employees to the extent permitted by law.

To the extent permitted by law, CRA and the CITY shall at all times, indemnify, hold harmless and defend one another, including each other's respective agents and employees from and against all claims, suits, actions, damages or causes of action arising during the term of this Agreement by reason of the service(s) to be performed, including costs, reasonable attorneys' fees and expenses incurred in or by reason of the defense of any such claim, suit or action and the investigation thereof.

Both parties acknowledge and agree they would not enter into this Agreement but for the foregoing indemnification and that their entering into this Agreement shall constitute good and valuable consideration for this indemnification. The provisions and obligations of this Section shall survive the expiration or earlier termination of this License.

7. **AMENDMENTS.** No modification, amendment or alteration of the terms or conditions contained herein shall be effective unless contained in a written document executed by the parties hereto, with the same formality and of equal dignity herewith.

8. **SURRENDER UPON TERMINATION.** CITY shall peaceably surrender this license and, at CITY's sole cost, restore the Design Location to the condition it was in prior to installation of the Project upon written notice as provided for in Section 12 herein.

9. **WAIVER.** Failure of either party to insist upon strict performance of any covenant or condition of this Agreement, or to exercise any right herein contained, shall not be construed as a waiver or relinquishment for the future of any such covenant, condition or right; but the same shall remain in full force and effect. None of the conditions, covenants or provisions of this Agreement shall be waived or modified except by the parties hereto in writing.

10. **TERMINATION.** CITY may cancel this Agreement for convenience or cause at any time during the term thereof upon sixty (60) days written notice to CRA.

11. **NOTICES.** Any notice or demand, which under the terms of this Agreement or by any statute or ordinance must be given or made by a party hereto shall be in writing and provided by email, fax or certified mail to the other party as set forth below, or to such other address as such party may from time to time designate by notice.

Addresses of the parties are as follows:

FOR CITY: City Manager
City of Pompano Beach
Post Office Box 1300
Pompano Beach, Florida 33061
Greg.Harrison@copbfl.com
954-786-4601 office
954-786-4504 fax

With a copy to:
Laura Atria, Public Art Program Manager
100 West Atlantic Boulevard
Pompano Beach, Florida 33061
Laura.Atria@copbfl.com
954-786-4310 office
954-786-4666 fax

FOR CRA: Executive Director
Pompano Beach CRA
P.O. Box Drawer 1300
Pompano Beach, Florida 33061
Greg.Harrison@copbfl.com
954-786-4601 office
954-786-4504 fax

12. ENTIRE AGREEMENT. This Agreement embodies the entire agreement between the parties. It may not be modified or terminated except as provided herein. If any provision herein is invalid, it shall be considered deleted here from, and shall not invalidate the remaining provisions.

13. MISCELLANEOUS PROVISION. It is expressly understood and agreed that no real or personal property is leased to CITY and that CITY is a licensee not a lessee.

14. LAWS AND ORDINANCES. CITY shall observe all local, state and federal laws, ordinances and other regulations directly relating its use of the Property.

15. RECORDATION OF AGREEMENT. This Agreement shall be recorded in the Public Records of Broward County, Florida, at the expense of CITY, with a copy given to CRA.

16. GOVERNING LAW AND VENUE. The Agreement shall be governed by the laws of the State of Florida, both as to interpretation and performance. CITY and CRA submit to the jurisdiction of Florida courts and federal courts located in Florida with respect to claims under this Agreement. The parties agree that proper venue for any suit at law or in equity attendant to this Agreement shall be instituted and maintained only in courts of competent jurisdiction in Broward County, Florida.

No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and in addition to every other remedy given herein, now or hereafter existing at law or in equity or by statute or otherwise. Both parties agree to waive all rights to sue or collect from the other any damages other than direct damages and they expressly waive benefit of the bargain, punitive, special, exemplary, treble or consequential damages.

17. NO THIRD PARTY BENEFICIARIES. The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. None of the parties intends to directly or substantially benefit a third party by this Agreement. The parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the parties based on this

Agreement. Nothing herein shall be construed as consent by any agency or political subdivision of the State of Florida to be sued by third parties in any manner arising out of any contract.

18. NON-DISCRIMINATION. Neither CITY nor CRA shall discriminate against any Person in the performance of duties, responsibilities and obligations under this Agreement because of race, age, religion, color, gender, national origin, marital status, disability or sexual orientation.

19. CONTINUITY. This Agreement shall be binding on and inure to the benefit of the parties, their successors and assigns.

20. PUBLIC RECORDS. Each party shall maintain its own respective records and documents associated with this Agreement in accordance with the records retention requirements applicable to public records. Each party shall be responsible for compliance with any public documents request served upon it pursuant to §119.07, Florida Statutes, and any resultant award of attorney's fees of non-compliance with that law.

21. FORCE MAJEURE. Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds alone on the part of CRA be deemed Force Majeure.

22. ENTIRE AGREEMENT AND INTERPRETATION. This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and both parties agree there are no commitments, agreements or understandings concerning the subject matter herein that are not contained in this Agreement. Accordingly, both parties agree no deviation from the terms herein shall be predicated upon any prior representations or agreements, whether oral or written.

Regardless of which party or party's counsel prepared the original draft and subsequent revisions of this Agreement, both CITY and CRA and their respective counsel have had equal opportunity to contribute to and have contributed to its contents, and this Agreement shall not be deemed to be the product of, and therefore construed against either party.

It is further agreed the omission of a term or provision contained in an earlier draft of this Agreement shall have no evidentiary significance regarding the contractual intent of the parties and that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document agreed to and executed by authorized representatives of both parties with the same formality of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year hereinabove written.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

"CITY":

Witnesses:

CITY OF POMPANO BEACH

By: _____
LAMAR FISHER, MAYOR

By: _____
GREGORY P. HARRISON, 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 _____, 2018 by **LAMAR FISHER** as Mayor, **GREGORY P. HARRISON** 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 are personally known to me.

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

“CRA”:

Signed, Sealed and Witnessed
In the Presence of:

**POMPANO BEACH COMMUNITY
REDEVELOPMENT AGENCY**

By: _____

Lamar Fisher, Chairman

Print Name: _____

ATTEST:

Marsha Carmichael, Secretary

Print Name: _____

EXECUTIVE DIRECTOR:

By: _____

Gregory P. Harrison

Print Name: _____

Print Name: _____

Approved as to Form:

Claudia M. McKenna, CRA Attorney

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this _____ day of _____, 2018, by **LAMAR FISHER** as Chairman, **GREGORY P. HARRISON** as Executive Director, and **MARSHA CARMICHAEL** as Secretary of the Pompano Beach Community Redevelopment Agency, who is personally known to me.

NOTARY’S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

