

June 22, 2004

Agreement between
City of Miami Beach, Florida and Kevin Arrow, Artist
For Commissioned Artwork

This is an Agreement, made and entered into by and between: CITY OF MIAMI BEACH, FLORIDA, a political subdivision of the state of Florida, hereinafter referred to as "CITY," and KEVIN ARROW, hereinafter referred to as "ARTIST."

WHEREAS, CITY, with the support and cooperation of Miami Beach Art in Public Places, plans to install a visual work of art at the North Beach Bandshell Park, hereafter referred to as the "Site"; and

WHEREAS, pursuant to this Agreement, ARTIST will create a certain unique and original work of art;
and

WHEREAS, both parties wish to be represented by the Work.

NOW THEREFORE, IN CONSIDERATION of the mutual terms, conditions, promises, covenants and payments hereinafter set forth, CITY and ARTIST agree as follows:

ARTICLE 1
DEFINITIONS AND IDENTIFICATIONS

The definitions and identifications set forth below are assumed to be true and correct and are agreed upon by the parties.

- 1.1 **Agreement.** This document, and other terms and conditions which are included in the exhibits and documents that are expressly incorporated by reference.
- 1.2 **Artist.** The individual or business entity selected to perform services pursuant to this Agreement.
- 1.3 **City.** The City of Miami Beach, Florida. Unless otherwise provided in the Agreement, where certain approvals and submissions are required from the City in this Agreement, those shall be required by the Mayor and City Commission of the City of Miami Beach, Florida.
- 1.4 **City Manager.** Shall mean the Chief Administrative Officer of the City.
- 1.5 **Contract Administrator.** The designee of the City Manager, whose primary responsibilities are to coordinate and communicate with ARTIST and to manage and supervise execution and completion of the Scope of Services and the terms and conditions of this Agreement, as set forth herein.
- 1.6 **City Attorney.** The chief legal counsel for CITY who directs and supervises the Office of the City Attorney.
- 1.7 **Notice to Proceed.** A written Notice to Proceed for the Project issued by the Contract Administrator.
- 1.8 **Project.** That certain unique and original work of art to be situated in the North Beach Bandshell Park and to be known as the "*Beatles Mosaic Mandala*".

- 1.9 **Work.** Any work(s) required by Artist under this Agreement to successfully complete the Project.

ARTICLE 2
SCOPE OF SERVICES

- 2.1 ARTIST shall perform all Work identified in this Agreement and Exhibit A for the design, permitting, fabrication, transportation, and installation of the Project.
- 2.2 ARTIST acknowledges and agrees that the Contract Administrator has no authority to make changes that would increase, decrease, or otherwise modify the Scope of Services to be provided under this Agreement.
- 2.3 ARTIST shall provide monthly progress reports and/or deliverables in a manner acceptable to the Contract Administrator.
- 2.4 Upon installation of the Project, the ARTIST shall furnish the Contract Administrator with professional photographic documentation showing the completed Work. Photographs shall include the following:
1. Two (2) identical sets of twelve 35mm color slides illustrating various aspects of the artwork within the site.
 2. Two 4x5 color transparencies.
 3. Four 8x10 black and white photographs.

Slides and photographs shall be of acceptable professional quality as determined by the Contract Administrator.

In addition to the photographic documentation referenced above, ARTIST shall also provide Contract Administrator with any and all sketches, drawings, construction documents (if applicable), and as-built plans (if applicable) showing the completed Work.

- 2.5 Upon completion of the Project, ARTIST shall provide Contract Administrator with a detailed written schedule and instructions for the routine care, maintenance, and preservation specific to the Project, as set forth in Exhibit C, Cataloging Form, attached and made a part hereof.
- 2.6 ARTIST shall be responsible for the quality and timely completion of the Project. The ARTIST shall be responsible for designing the artwork so that it can be constructed without exceeding the approved overall budget.
- 2.7 While ARTIST agrees that an essential element of this Agreement is the personal skill and creativity of the ARTIST and that he is responsible for the quality of the Project, the ARTIST may subcontract and/or assign portions of the Work to another party subject to the prior written consent of the City. If so transferred, ARTIST will still be held responsible for all provisions of the Work. ARTIST further warrants that proper credit and/or compensation shall be granted to satisfy the interest of any third party whose creative or artistic work and/or intellectual property were used.
- 2.8 ARTIST agrees that all Work shall comply with all applicable Federal, State, Miami-Dade County, and City of Miami Beach laws, ordinances, codes and regulations. ARTIST shall be solely responsible for obtaining any required approvals and permits for the Project, although ARTIST shall not be required to pay fees charged by reviewing agencies for such approvals and permits.

2.9 The ARTIST shall not make any public information release in connection with the Project and/or the Work performed pursuant to this Agreement without the prior written permission of the Contract Administrator.

2.10 The ARTIST shall take all necessary steps to coordinate the Work with any ongoing work of the CITY, or any third party under the direction and control of the City, on or near the Site.

In the event the services of the ARTIST are combined or otherwise coordinated with services by the City or a third party responsible to the City (and not within the control of the ARTIST), the ARTIST shall not be responsible for such third party services. If any part of the Work depends upon proper execution or results of work of the CITY, or a third party responsible to the CITY and not under ARTIST's control, the ARTIST shall, prior to proceeding with the Work, promptly report in writing to the Contract Administrator any apparent discrepancies, defects, or delays in such other work which renders the Work unsuitable for timely and proper execution and results by the ARTIST.

2.11 While ARTIST is solely responsible for the execution, fabrication, transportation, inspection and/or installation of the Project, the following provisions shall apply:

- a. The Contract Administrator shall notify ARTIST of the CITY's, or any other contractor's under the direction and control of the CITY, construction schedules in and around the area where the Work is to be performed or installed, if they are known by the CITY. The ARTIST shall perform the Work in a manner and time so as not to cause interference with any of the operations of the CITY or such third party contractor. In the event of conflict between the schedules of a third party contractor, CITY, and ARTIST, the conflict will be resolved by the Contract Administrator, and the Contract Administrator's decision and resolution as to same shall be binding upon ARTIST.
- b. ARTIST shall be solely responsible for conducting any and all inspections of the Site for purposes of ascertaining the condition of same and for the proper execution of the Work, and completion and installation of the Project. To the extent known or to the extent that same is in CITY's possession, CITY shall make available to ARTIST any background materials and information on matters affecting the Site.
- c. When working on the Site, ARTIST shall perform such periodic clean up as may be reasonably requested by the Contract Administrator. Upon completion, ARTIST shall remove his equipment, excess materials, and waste promptly from the Site, as directed by Contract Administrator.

2.12 ARTIST shall bear any transportation and storage costs resulting from the construction, delivery and installation of the Project.

2.13 Title to the Project shall pass to the CITY following the Contract Administrator's inspection of the Work and, if the Work is approved, upon Contractor's issuance of written final acceptance of the complete installed Project. In furtherance of the foregoing, it is understood that any risk of loss or damage to the Work and/or the Project shall be the sole responsibility and liability of ARTIST until such time as the Contract Administrator has issued a final written acceptance of the Project.

2.14 Upon Contract Administrator's written final acceptance of the complete installed Project, all documents related to the conception, proposal, fabrication, and installation of the Project, including "as built" documents, shall be turned over to the Contract Administrator and become the property of

CITY. CITY shall be free to exhibit and/or reproduce these documents as a record of ARTIST's conception of the Work.

ARTICLE 3
TERM and TIME OF PERFORMANCE

- 3.1 The term of this Agreement shall begin on the date it is fully executed by both parties. Thereafter, ARTIST shall diligently prosecute the Work in accordance with the Project Schedule set forth in Exhibit A-1.
- 3.2 Time shall be deemed to be of the essence in performing the duties, obligations and responsibilities required by this Agreement.
- 3.3 The CITY, through the Contract Administrator, may grant a reasonable extension of time to the ARTIST in the event that there is a delay on the part of the CITY in performing its obligations or in completing the underlying City capital project resulting in a delay of the Site being made available to ARTIST for proceeding with the Work, or if conditions beyond the ARTIST'S control render timely performance of the ARTIST'S services impossible or unexpectedly burdensome. All requests for extensions of time must be submitted in writing to the Contract Administrator by the ARTIST as soon as the delay or conditions become known and their impact is evaluated, and shall not be effective unless approved in writing by the Contract Administrator.
- 3.4 Either party is excused from performance and shall not be liable for any delay in delivery or for non-delivery, in whole or in part, caused by the occurrence of a force majeure event such as hurricane, fire, civil disobedience, riots, rebellions, explosion, flood, storm, Acts of God, and similar occurrences. Failure to fulfill contractual obligations due to force majeure set forth in the preceding sentence will not be considered a breach of contract, provided that such obligations shall be suspended only for the duration of such condition.

ARTICLE 4
COMPENSATION

- 4.1 CITY agrees to pay ARTIST, in the manner specified in Section 4.4 and Exhibit B, "Compensation and Schedule of Payments", the total amount of Fifty-five Thousand Dollars (\$55,000.00) for Work actually performed, completed and accepted pursuant to this Agreement, which amount shall be the sum total accepted by ARTIST as full compensation for the Project. No amount shall be paid to ARTIST for reimbursable expenses.
- 4.2 At its sole discretion, CITY may include a contingency, not to exceed ten (10) percent of the Project budget, to provide for unforeseen costs, including but not limited to, construction delays or site changes. This amount, in whole or in part, shall not be considered part of ARTIST'S compensation unless otherwise agreed to in writing by both parties, pursuant to the terms herein.
- 4.3 ARTIST may submit invoices for compensation no more often than on a monthly basis, but only after the Work for which the invoices are submitted has been completed. An original invoice plus one copy is due within fifteen (15) days of the end of the month, except the final invoice which must be received no later than sixty (60) days after completion of all Work by ARTIST. Invoices shall designate the nature of the services performed and/or the expenses incurred. A written progress report shall accompany each invoice, describing the Work completed during that period.

- 4.4 CITY shall pay ARTIST for Work satisfactorily performed and accepted by the Contract Administrator, within thirty (30) calendar days of receipt of ARTIST's proper statement. To be deemed proper, all invoices must comply with the requirements set forth in this Agreement and must be submitted on the form and pursuant to instructions prescribed by Contract Administrator.
- 4.5 Notwithstanding any provision of this Agreement to the contrary, CITY may, at the sole discretion of the Contract Administrator, withhold, in whole or in part, a portion of any or all payment due under the Agreement, to the extent necessary to protect itself from loss on account of inadequate or defective work which has not been accepted by Contract Administrator, and has not been remedied or resolved in a manner satisfactory to Contract Administrator.
- 4.6 Payment shall be made to ARTIST at:
- Kevin Arrow
1315 Cleveland Road
Miami Beach, Florida 33141

ARTICLE 5
CHANGES IN SCOPE OF SERVICES

- 5.1 Any change to the Scope of Services must be accomplished by a written amendment, executed by the parties in accordance with Section 12.16.
- 5.2 The ARTIST shall, whenever required during the term of this Agreement, present to Contract Administrator, in writing, drawing or other appropriate media, for further review and approval, any significant changes in the scope, design, color, size, material, utility and support requirements, texture, or location of the Site or of the Project. A significant change is any change that affects the size, quality, installation, scheduling, Site preparation or maintenance of the Project, or the concept of the Project as represented in the original approved design.

ARTICLE 6
ARTIST'S WARRANTIES

- 6.1 The ARTIST warrants that (a) the Project being commissioned is the original product of the ARTIST's own creative efforts; and (b) unless otherwise stipulated, the Project is original, or in other words, an edition of one (1).
- 6.2 The ARTIST warrants that reasonable maintenance of the Project will not require any extraordinary procedures; and that ARTIST shall deliver the Project to the CITY free and clear of any liens from any source whatsoever.
- 6.3 The ARTIST warrants that he shall faithfully perform the Work in accordance with standards of care, skill, training, diligence and judgment provided by highly competent professionals who perform work of a similar nature.

ARTICLE 7

OBLIGATIONS OF CITY

- 7.1 CITY shall assist ARTIST by providing, upon ARTIST's request, all public information it has in its possession pertaining to the Site.
- 7.2 CITY shall:
- a. arrange for access so that ARTIST may enter upon the Site as required for ARTIST to perform the Work under this Agreement;
 - b. give prompt written notice to ARTIST whenever the CITY becomes aware of any development that affects the scope or timing of the Work;
 - c. arrange public meetings and consultations as needed for the ARTIST to fulfill the ARTIST's obligations under this Agreement;
 - d. review materials submitted pursuant to Exhibit A in a reasonably timely manner;
 - e. prepare and install, at its expense, a plaque or sign identifying the ARTIST, the title of the Project, materials used, year of completion, and a narrative explanation of the Project, including ARTIST's credits, and reasonably maintain such notice in good repair;
 - f. reasonably assure that the Project is properly maintained and protected, taking into account the recommendations of the ARTIST, as stated in the Cataloging Form provided by the ARTIST; and
- 7.3 As part of the Project, ARTIST acknowledges a need for sub-flooring, a retaining wall with perimeter pavers, and proper illumination. ARTIST has the option of the following, and shall provide CITY with timely written notice of one of the following options:
- a. ARTIST agrees to hire licensed professionals, including but not limited to a licensed professional engineer or architect registered in the State of Florida and a licensed General Contractor (as said term is defined in the Florida Statutes) to design, permit and construct the aforesated sub-flooring, retaining walls and illumination items. CITY agrees to allocate an additional amount not to exceed, Ten Thousand dollars (\$10,000.00) for this purpose. Such portion of the Work shall be done in accordance with the Florida Building Code and any other requirements imposed by any other regulatory agency with applicable jurisdiction. All appropriate approvals, licenses and permits shall be obtained by and shall be the sole responsibility of ARTIST, and ARTIST shall provide Contract Administrator with proof of same prior to commencement of design and permitting and, thereafter, construction of the Work. In the event that ARTIST does not comply with the preceding requirement, the City shall have no obligation to reimburse ARTIST pursuant to the sum allocated, as provided herein, or otherwise compensate ARTIST for any costs for portion of Work associated with this subsection 7.3(a).
- or -
- b. CITY shall construct, or shall cause to be constructed, the sub-flooring, retaining wall with perimeter pavers, and proper illumination for the Work. In connection therewith, CITY shall only be required to fund a maximum of Ten Thousand Dollars (\$10,000.00) for the provision and installation of said sub-flooring, retaining wall with pavers, and illumination. Should ARTIST elect to utilize CITY'S services to provide these items under this option, ARTIST agrees to accept these items in a time and manner that is at the full discretion of the CITY. ARTIST agrees to waive any

and all claims for defects, or for delays or damages related to CITY'S failure to provide these items in accordance with ARTIST'S time table, except as provided for in section 3.3.

ARTICLE 8
ARTIST'S RIGHTS

- 8.1 It is understood that the specific location of the Project and its permanent public installation is integral to this Agreement. CITY agrees to make all reasonable efforts to maintain the integrity of the Project as defined by its location. The City will not knowingly make any use of the Project in a manner which would reflect unfavorably on ARTIST's name or reputation as an artist or which would violate the spirit of the Project or interfere with its creative intent.
- 8.2 CITY shall make a diligent effort to notify ARTIST of any proposed CITY action that would remove the Project from the Site, or have the result of irreparably damaging or destroying the Project, by providing notice to ARTIST by registered mail at the most recent address submitted by ARTIST and on file with the CITY. In that event, CITY shall offer the ARTIST the option of removing the Project from the Site, at no charge to ARTIST for the Project itself, provided that ARTIST will move and/or transport the Project from the Site at its sole cost and expense, and CITY shall have no liability to ARTIST as to the means and method of removal and transport, and shall have no liability to ARTIST in the event the Project is damaged or destroyed in the process. In the event that ARTIST fails, within ninety (90) days of receipt of such notice, to remove the Project, CITY shall have the right to proceed with the removal of the Project. In the event that CITY makes a diligent, good faith attempt without success to notify the ARTIST of its intended action, CITY shall have no further liability to ARTIST under this Agreement, or as to the Project, and ARTIST shall be deemed to have waived any and all claims that he may have against CITY, as a result of damage or destruction of the Project. The provisions of this subsection 8.2 shall be non-transferable and only apply as to ARTIST, and shall not apply or be enforceable by any heirs, successors, assignees, and/or other transferees and / or successors in interest of ARTIST.
- 8.3 CITY agrees to take such measures as are reasonable to maintain the Project, which includes maintenance and repair of each and every component part. CITY shall have the right to determine, after consultation with a professional conservator, when and if repairs and restorations to the Project will be made. During ARTIST's lifetime, CITY shall not repair the Project without consulting with the ARTIST. CITY shall attempt to notify ARTIST in the same manner as provided in subsection 8.2 above and, in the event the CITY makes a diligent, good faith attempt without success to notify ARTIST of its intended action, CITY shall have no further liability to ARTIST under this Agreement, or as to the Project, and ARTIST shall be deemed to have waived any and all claims that he may have against CITY, as a result of subsequent repairs or restoration to the Project, or in the event damage or destruction of the Project pursuant to this subsection 8.3. To the extent practical and during ARTIST's lifetime, the CITY, may in its reasonable discretion, consider ARTIST in making or personally supervising significant repairs, and, if CITY so deems ARTIST'S participation is necessary, ARTIST shall be paid a reasonable fee for any such services, provided that CITY and ARTIST shall agree in writing, prior to the commencement of any significant repairs or restorations upon ARTIST'S fee for such services all repairs and restorations shall be made in accordance with recognized principles of conservation.

ARTICLE 9
COPYRIGHTS

- 9.1 Neither the whole nor any portion of the Project, shall be the subject of any application for copyright or patent by or on behalf of the ARTIST without the prior written consent of the CITY. If such consent is given, and notwithstanding such rights, ARTIST hereby grants to CITY a non-exclusive, perpetual, irrevocable, and royalty free license to reproduce, make, print and/or publish photographic, filmed or videotaped reproduce, make, print and/or publish photographic, filmed or videotaped reproductions and other two-dimensional likenesses of the Project and/or the proposals for the Project for such purposes as determined solely by the CITY in its reasonable discretion. In this connection, it is understood that public promotional and advertising uses are without limitation. It is also understood that either of the parties to this Agreement may also permit photographic, filmed, videotaped or other reproductions of the Project to appear as editorial matter in newspapers, magazines, periodicals, books, motion picture films and/or videotaped films. In connection with any such reproduction and publication by any party, that party shall arrange for appropriate credit identifying the name of the ARTIST as the Project's creator, the title of the Project, the materials, dimensions, and the location thereof.
- 9.2 ARTIST agrees that all Work performed under this Agreement shall comply with all applicable patent, trademark and copyright laws, rules, regulations and codes. The ARTIST further agrees that the Work will not utilize any protected patent, trademark or copyright unless ARTIST has obtained proper permission and all releases and other necessary documents.
- 9.3 If the ARTIST uses any protected material, process or procedure, the ARTIST shall disclose such patent, trademark or copyright in the construction drawings and technical specifications.

ARTICLE 10
TERMINATION

- 10.1 This Agreement may be terminated for cause by CITY, through the Contract Administrator, or by ARTIST, upon thirty (30) days prior written notice by the party that elected to terminate.
- 10.2 Termination of this Agreement for "cause" shall include failure to continuously perform the Work in a timely manner calculated to meet or accomplish the objectives of CITY as set forth in this Agreement, a breach of the provisions of this Agreement (notwithstanding whether any such breach was previously waived or cured), or any other reason necessary to protect the health, safety, or welfare of the general public.
- 10.3 Notice of termination shall be provided in accordance with the NOTICES section of this Agreement except that notice of termination which Contract Administrator deems necessary to protect the public health, safety, or welfare may be by verbal notice which shall be promptly confirmed in writing in accordance with the NOTICES section of this Agreement.
- 10.4 The death or permanent incapacity of the ARTIST shall automatically terminate this Agreement. Neither the ARTIST nor the ARTIST's estate shall have any further right to perform hereunder. The CITY shall pay the ARTIST's estate the compensation payable for any Work rendered prior to such termination not heretofore paid, reduced by the amount of additional costs that shall be incurred by the CITY by reason of such termination.

ARTICLE 11
MISCELLANEOUS

11.1 AUDIT RIGHT AND RETENTION OF RECORDS

CITY shall have the right to audit the books, records, and accounts of ARTIST that are related to this Project. ARTIST shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Project.

ARTIST shall preserve and make available, at reasonable times for examination and audit by CITY, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Fla. Stat.), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by CITY to be applicable to ARTIST's records, ARTIST shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by CITY or ARTIST.

11.2 NONDISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY, and AMERICANS WITH DISABILITIES ACT

ARTIST shall not unlawfully discriminate against any person in its operations and activities or in its use or expenditure of funds in fulfilling its obligations under this Agreement. ARTIST shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded by CITY, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, ARTIST shall take affirmative steps to ensure nondiscrimination in employment against disabled persons. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility.

ARTIST's decisions regarding the delivery of services under this Agreement shall be made without regard to or consideration of race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation, or any other factor which cannot be lawfully used as a basis for service delivery.

ARTIST shall not engage in or commit any discriminatory practice in violation of the Miami Beach Human Rights Ordinance in performing any services pursuant to this Agreement.

11.3 PUBLIC ENTITY CRIMES ACT

ARTIST represents that the execution of this Agreement will not violate the Public Entity Crimes Act (Fla. Stat. §287.133), which essentially provides that a person or affiliate who is a contractor, consultant or other provider and who has been placed on the convicted vendor list following a conviction for a Public Entity Crime may not submit a bid on a contract to provide any goods or services to CITY, may not submit a bid on a contract with CITY for the construction or repair of a public building or public work, may not submit bids on leases of real property to CITY, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with CITY, and may not transact any business with CITY in excess of the threshold amount provided

in Section 287.017, Florida Statutes, for category two purchases for a period of 36 months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid hereto, and may result in debarment from CITY'S competitive procurement activities.

In addition to the foregoing, ARTIST further represents that there has been no determination, based on an audit, that it committed an act defined by Section 287.133, Florida Statutes, as a public entity crime and that it has not been formally charged with committing an act defined as a public entity crime regardless of the amount of money involved or whether ARTIST has been placed on the convicted vendor list.

11.4 INDEPENDENT CONTRACTOR

ARTIST is an independent contractor under this Agreement. Services provided by ARTIST pursuant to this Agreement shall be subject to the supervision of ARTIST. In providing such services, neither ARTIST nor its agents shall act as officers, employees, or agents of the CITY. This Agreement shall not constitute or make the parties a partnership or joint venture, and furthermore, this Agreement does not constitute a work for hire arrangement or agreement.

11.5 THIRD PARTY BENEFICIARIES

Neither ARTIST nor CITY intends to directly or substantially benefit a third party by this Agreement. Therefore, 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 either of them based upon this Agreement. The parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement.

11.6 NOTICES

Whenever either party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or by hand-delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the parties designate the following:

FOR CITY:

Art in Public Places
City of Miami Beach
1700 Convention Center Drive
Miami Beach, FL 33139
Attn: Dennis Leyva

with copies to:
City Manager
City of Miami Beach
1700 Convention Center Drive
Miami Beach, Florida 33139

FOR ARTIST:

Kevin Arrow
1315 Cleveland Road
Miami Beach, Florida 33141

11.7 ASSIGNMENT AND PERFORMANCE

ARTIST shall not assign, transfer, or encumber all or any portion of this Agreement without the prior written consent of the CITY.

ARTIST represents that all persons delivering the services required by this Agreement have the knowledge and skills, either by training, experience, education, or a combination thereof, to adequately and competently perform the duties, obligations, and services set forth in the Scope of Services and to provide and perform such services for the agreed compensation.

ARTIST shall perform its duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of ARTIST's performance and all interim and final product(s) provided to or on behalf of CITY shall be comparable to the best local and national standards.

11.8 CONFLICTS

Neither ARTIST nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with ARTIST's loyal and conscientious exercise of judgment related to its performance under this Agreement.

ARTIST agrees that none of its officers or employees shall, during the term of this Agreement, serve as an expert witness against CITY in any legal or administrative proceeding in which he or she is not a party, unless compelled by court process. Further, ARTIST agrees that such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of CITY in connection with any such pending or threatened legal or administrative proceeding. The limitations of this section shall not preclude ARTIST or any other persons from representing themselves in any action or in any administrative or legal proceeding.

11.9 CONTINGENCY FEE

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 firm, 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 a breach or violation of this provision, Board shall have the right to terminate this Agreement without liability at its discretion, or to deduct from the Agreement price or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

11.10 WAIVER OF BREACH

The failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

11.11 COMPLIANCE WITH LAWS

ARTIST and CITY shall comply with all federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations related to this Agreement.

11.12 SEVERANCE

In the event this Agreement or a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless CITY or ARTIST elects to terminate this Agreement. The election to terminate this Agreement based upon this provision shall be made within seven (7) days after the finding by the court becomes final.

11.13 JOINT PREPARATION

The parties hereto acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been a joint effort of the parties, the language has been agreed to by parties to express their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

11.14 PRIORITY OF PROVISIONS

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 13 of this Agreement shall prevail and be given effect.

11.15 APPLICABLE LAW AND VENUE

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Venue for litigation concerning this Agreement shall be in Miami Dade County, Florida. BY ENTERING INTO THIS AGREEMENT, ARTIST AND CITY EXPRESSLY WAIVE ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF, THIS AGREEMENT.

11.16 AMENDMENTS

No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the City Commission, if over \$25,000 or the City Manager, if less than \$25,000, and ARTIST.

11.17 PRIOR AGREEMENTS

This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document in accordance with Section 12.16 above.

11.18 MULTIPLE ORIGINALS

This Agreement may be fully executed in three (3) copies by all parties, each of which, bearing original signatures, shall have the force and effect of an original document.

11.19 INSURANCE

ARTIST shall maintain, at its sole cost and expense, the following types of insurance coverage at all times throughout the term of this Agreement or until final acceptance of the Project by the Contract Administrator, whichever is later, only if ARTIST exercises the option provided for in section 7.3:

- a. Comprehensive General Liability in the minimum amount of Three Hundred Thousand (\$300,000) dollars per occurrence bodily injury, death, property damage, and personal injury. This policy must also contain coverage for premises operations, products and contractual liability.
- b. Contractors must submit proof of Workers' Compensation and Employer's Liability in the form of a Certificate of Insurance. All other State regulations apply.
- c. Automobile insurance is required in the amount of Three Hundred Thousand (\$300,000) dollars if ARTIST will be parking vehicles on public property, which is not a designated public parking space, to unload materials/supplies.

The City of Miami Beach must be named as an additional insured and policyholder on all insurance certificates issued. All insurance policies must be issued by companies that are authorized to do business in the State of Florida, and have a rating of B+VI or better in the current edition of Best's Key Rating Guide.

The policies of insurance referred to above shall not be subject to cancellation or changing coverage except upon at least thirty (30) days prior written notice to the CITY, and then only subject to the prior written approval of the Contract Administrator. Prior to the Commencement Date of this Agreement, ARTIST shall provide Contract Administrator with a Certificate of Insurance for each such policy. ALL POLICIES SHALL NAME THE CITY OF MIAMI BEACH, FLORIDA AS AN ADDITIONAL NAMED INSURED. All such policies shall be obtained from companies authorized to do business in the State of Florida with an A.M. Best's Insurance Guide (latest edition) rating acceptable to the City's Risk Manager, and any replacement or substitute company shall also be subject to the approval of the City's Risk Manager. Should ARTIST fail to obtain, maintain or renew the policies of insurance referred to above, in the required amounts, the CITY may, at its sole discretion, obtain such insurance, and any sums expended by CITY in obtaining said insurance, shall be repaid by ARTIST to CITY, plus ten percent (10%) of the amount of premiums paid to compensate CITY for its administrative costs. If ARTIST fails to repay CITY's expenditures within fifteen (15) days of demand, the total sum owed shall accrue interest at the rate of twelve percent (12%) until paid, and such failure shall be deemed an event of default hereunder.

Notwithstanding the insurance requirements in this subsection 11.19, ARTIST shall be solely responsible for the safe keeping and preservation of any and all Work, and of the Project, and shall be solely responsible and liable for any risk of loss or damage to any and all Work, and/or to the Project, up to the CITY's final written acceptance of the Project. In the event that all or any portion of the Work, or the Project, is lost, stolen, damaged, or destroyed (whether in whole or in part) prior to the CITY's final written acceptance of the Project, ARTIST shall be solely responsible for undertaking such corrective measures as shall be deemed reasonably necessary by the CITY, to repair, replace, redo, and/or restore any and all lost, stolen, damaged, and/or destroyed (as the case may be) portions of the Work, or of the Project, and such measures shall be undertaken in accordance with means and methods, as well as a

completion schedule, as shall be approved by the Contract Administrator, such approval not to be unreasonable withheld. Further, such measures shall be undertaken at ARTIST's sole cost and expense, at no additional cost, and/or liability to the CITY.

11.20 INDEMNIFICATION

ARTIST agrees to indemnify and hold harmless the CITY OF MIAMI BEACH and its officers, employees and agents, from and against any and all actions, claims, liabilities, losses, and expenses, including, but not limited to, attorneys' fees, for personal, economic or bodily injury, wrongful death, loss of or damage to property, at law or in equity, which may arise or be alleged to have arisen from the negligent acts, errors, omissions or other negligent conduct of the ARTIST, its employees, agents, sub-consultants, or any other person or entity acting under ARTIST's control, in connection with the ARTIST's performance of the Work pursuant to this Agreement; and to that extent, the ARTIST shall pay all such claims and losses and shall pay all such costs and judgments which may issue from any lawsuit arising from such claims and losses, and shall pay all costs and attorneys' fees expended by the CITY in the defense of such claims and losses, including appeals. The parties agree that one percent (1%) of the total compensation to the ARTIST for performance of the Work under this Agreement is the specific consideration from the CITY to the ARTIST for the ARTIST's Indemnity Agreement.

The ARTIST's obligation under this Subsection shall not include the obligation to indemnify the CITY OF MIAMI BEACH and its officers, employees and agents, from and against any actions or claims which arise or are alleged to have arisen from negligent acts or omissions or other negligent conduct of the CITY and its officers, employees and agents. The parties each agree to give the other party prompt notice of any claim coming to its knowledge that in any way directly or indirectly affects the other party.

[The rest of this page is left intentionally blank]

IN WITNESS WHEREOF, the parties have made and executed this Agreement on the respective dates under each signature: City of Miami Beach, Florida, signing by and through its Mayor, authorized to execute same by the City Commission, and ARTIST, duly authorized to execute same.

CITY


City of Miami Beach, Florida

By 

Mayor

6th day of July, 2004

ATTEST:



City Clerk

ARTIST


Kevin Arrow

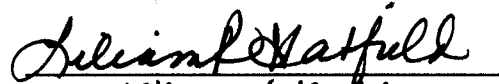
22 day of June, 2004

WITNESSES:



Print: Lillian Beauchamp

WITNESSES:


Print: Lillian Hatfield

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

 6-17-04

EXHIBIT A

SCOPE OF SERVICES

ARTWORK/PROJECT: Beatles Mosaic Mandala

PURPOSE: ARTIST will design, fabricate and install an artwork/Project to commemorate the Fortieth Anniversary of the appearance of the Beatles on Miami Beach in 1964.

LOCATION OF FACILITY/SITE: North Shore Bandshell Park, between 72nd and 73rd Streets on Collins Avenue, Miami Beach, Florida.

ADMINISTRATIVE COORDINATION: The CONTRACT ADMINISTRATOR may designate a public art project manager. The ARTIST shall maintain regular communication with the public art project manager via phone, fax, letter or e-mail.

DESIGN COLLABORATION: During the design of the artwork, the ARTIST shall collaborate and coordinate with the Contract Administrator or his/her designated public art project manager, and the CITY's designated Architect/Engineer, Construction Manager, and General Contractor, respectively, at the Facility/Site. The design of the artwork shall be coordinated with the Facility/Site design process in the following areas: aesthetics, public presentations, construction documents, cost estimates and Facility project schedules. Should the design of the artwork require specialized professional services, the ARTIST shall hire an appropriate sub-consultant and/or sub-contractor subject to the prior written approval of the Contract Administrator. Upon approval of the artwork design, the ARTIST shall create independently all necessary construction documents for the art and ancillary/support facilities needed to install the art as required by the CITY and/or applicable laws and codes; or provide all necessary information on a timely basis in the event that relevant components of the artwork design must be incorporated into the final construction documents for the Facility, if appropriate.

CONSTRUCTION AND INSTALLATION COORDINATION: During the construction of the Facility and the installation of the artwork, the ARTIST shall collaborate and coordinate with the Contract Administrator or his/her designated public art project manager, and the CITY's designated Facility Architect/Engineer, the Construction Manager, and the General Contractor. The ARTIST shall coordinate the installation of the artworks with the Facility construction schedule and install the artwork in compliance with the Facility construction documents. The ARTIST shall be responsible for construction oversight during the fabrication and integration of all artist-designed components, whether fabricated by ARTIST's subcontractors or included in construction documents to be fabricated and installed by others.

DELIVERABLES: the ARTIST shall provide the following deliverables:

I-A Research.

1. The ARTIST shall provide documentation of background research involving site specific environmental and cultural elements, site documentation, and future users of the Facility.
2. The research phase includes two, two-day, site visits for meetings, including an initial orientation visit, a coordination meeting with the design team, and community representatives and partner agency presentation meeting(s).

I-B Conceptual Design. The ARTIST shall develop a conceptual design proposal and shall secure its approval by the Miami Beach Art in Public Places Professional Advisory Committee for the Project, as follows:

1. The ARTIST shall personally present the conceptual design proposal to the Professional Advisory Committee.
 2. This phase of work includes a site visit for presentation to the Professional Advisory Committee and coordination with the design team.
- I-C Design Development. The ARTIST shall complete the design development of the approved artwork conceptual design and shall secure its approval from the CONTRACT ADMINISTRATOR. Approval and notice to proceed on fabrication shall occur after an architectural coordination review and submittal of all artwork design development deliverables. Based on the requirements of the approved artwork conceptual design, the CONTRACT ADMINISTRATOR can waive the submittal of any unnecessary design development deliverables or postpone the submittal to the fabrication and installation phase.
1. The ARTIST shall submit final design drawings for fabrication, artist proofs, material samples, artwork and artwork support specifications for inclusion in Facility construction documents, verified cost estimate, sub-contractor list, building permits, and a fabrication and installation schedule.
 2. If the verified cost exceeds the budget, the artist is obligated to redesign the artwork to fit within the established budget inclusive of all payments to the ARTIST.
 3. This phase includes a Site visit for coordination and presentation purposes.
- I-D Fabrication and Installation. The ARTIST shall fabricate, deliver and install all artwork and artwork support components as per the approved design development drawings.
- I-E Final Conservation Documents. The ARTIST shall submit all photographic documentation and completed cataloguing forms. If the ARTIST utilizes computer technology in the fabrication of the artwork, the ARTIST will submit electronic copies of any computer files that will support on-going operations or future repairs and conservation of the artwork.

COMPLETION AND INSPECTION: Upon completion and installation of all designed and fabricated components, the ARTIST shall be responsible for obtaining final approval from the CONTRACT ADMINISTRATOR.

PHOTOGRAPHIC DOCUMENTATION: Professional photo-documentation suitable for publication shall include images of all major aspects of the entire project. The artist-supplied photo-documentation shall be reproducible, at no cost to the City, for any and all applicable uses by the City.

COMMUNITY INVOLVEMENT and EDUCATIONAL OUTREACH: In the development of the artwork design, the ARTIST shall research the relevant concerns and interests of the CITY, future users of the Facility and the surrounding community. The ARTIST shall participate in at least one community meeting and two other public meetings, as shall be determined by the CONTRACT ADMINISTRATOR.

TIMELINE FOR COMPLETION: ARTIST shall be aware of Facility design and construction timelines and shall ensure that all artwork components are completed and installed according to the established schedule.

PERMITS: It shall be ARTIST'S responsibility, where applicable, to obtain all necessary permits as required in cooperation with the Architect and General Contractor, and provide proof of same to the Contact Administrator prior to fabrication. The CITY agrees to pay for any required permit fees.

EXHIBIT A-1
PROJECT SCHEDULE

EXHIBIT B

COMPENSATION AND SCHEDULE OF PAYMENTS

ARTIST will be paid the specified installment, upon submitting invoice and documentation substantiating satisfactory completion of each phase of Work and upon the CITY's acceptance of said portion of the Work as detailed in the installment invoice. CITY shall pay ARTIST the total sum of Fifty-five Thousand Dollars (\$55,000.00) for Work that shall include all costs associated with design development and fabrication of the artwork, materials, labor by sub-consultants and subcontractors, delivery and installation. The CITY agrees to compensate ARTIST an additional Ten Thousand Dollars (\$10,000.00) if ARTIST undertakes the additional elements noted in Section 7.3 (a) of the Agreement.

Payments to ARTIST shall be made for Work satisfactorily completed according to the following schedule:

1. Twenty Thousand Dollars (\$20,000.00), which is approximately 36.36% of the fixed fee, to be paid upon execution of this Agreement.

This amount increases to Thirty Thousand Dollars (\$30,000.00) if ARTIST designs and constructs the elements as described in Section 7.3(a) of the Agreement.

2. Fifteen Thousand Dollars (\$15,000.00), which is approximately 27.27% of the fixed fee, to be paid upon submission to and acceptance by the CONTRACT ADMINISTRATOR of all conceptual design deliverables as written in the scope of work and obtaining approval of the artwork conceptual design proposal from the Art in Public Places and the City Commission.
3. Ten Thousand Dollars (\$10,000.00), which is approximately 18.18% of the fixed fee, to be paid upon submission to and approval by the CONTRACT ADMINISTRATOR of photographic documentation demonstrating that the artwork is 100% fabricated. At Contract Administrator's sole option, Contract Administrator may deem that a physical inspection of the artwork is warranted prior to acceptance and payment, and ARTIST shall make the artwork available to Contract Administrator.
4. Ten Thousand Dollars (\$10,000.00), which is approximately 18.18% of the fixed fee, to be paid upon delivery, installation, and acceptance of the artwork.

RESERVE FOR PROMOTION AND CONTINGENCIES: ARTIST has agreed to fully perform the Scope of Services set forth in Article 2 for the total compensation set forth in Section 4.1 above. However, promotional cost may be allocated, and unforeseen cost may be considered insofar as construction delays or Site changes or other events which are beyond the control of and are not the fault of ARTIST may adversely affect ARTIST'S costs. Therefore, CITY has set aside a promotion and contingency reserve amount of Five Thousand Dollars (\$5,000.00) that may, in the sole discretion of CITY, be paid to ARTIST in whole or in part, or may be used for other Project costs. Any additional compensation paid to ARTIST from the contingency reserve shall be pursuant to written documentation in accordance with Section 11.16 of the Agreement and that the document shall be signed by the Contract Administrator and the ARTIST. For purposes of this Section, unforeseen costs shall not include expenses that the Contract Administrator reasonably determines should have been contemplated by ARTIST when developing the Project budget, including the original design and related artwork budget.

EXHIBIT C

Catalog # _____

CITY OF MIAMI BEACH ART IN PUBLIC PLACES

CATALOGING FORM

1. Artist Information

A. 1. Name:

2. Name you want to use on label and PR materials, if differs from above:

B. Date of Birth:

C. Place of Birth:

D. Address, e-mail, web site:

E. Contact Phone numbers

Business:

Home:

Fax:

F. One paragraph biography of artist:

II. Work of Art

A. Title:

B. Medium:

C.1. Dimensions in inches or centimeters:

H:

W:

D:

2. Image with frame (if any):

H:

W:

D:

D. Frame Description:

E. Inscription, marks:

F. In case of portable and multiple artwork, note on artist preference for sequential series, installation height, spacing, etc...): display (ex:

G. Artwork with electronic components used:

-Name of item:

-Manufacturer info (address, telephone, fax, e-mail):

-Supplier info (address, telephone, fax, e-mail):

H. Artist's statement:

III. Fabrication Information

A. Material(s) used in Artwork:

B. Material Finish:

C. Materials used in the presentation of the project (maquette):

D. Fabricators (name, address, phone, fax, e-mail, web site):

E. Fabrication method (attach diagrams or drawings):

F. Architect/Engineer (name, address, telephone, fax, e-mail):

IV. Installation

A. Installation executed by (name, address, phone, fax, e-mail, website):

B. Installation method (attach diagram of substructure, footings):

C. Date of Installation:

V. External Factors

A. Describe physical positioning of the artwork:

B. Describe existing environmental factors which may affect the condition of the artwork:

C. If the work is site-specific, describe the relationship of the work to its site:

VI. Maintenance (attach schedule of maintenance for specific items: light bulb, electronics etc...)

A. Short-term:

B. Long-term:

C. Note desired appearance of the artwork:

VII: Digital copies for use in repair of sound art and graphic reproduction:

Signature

Date