

COOPERATION AGREEMENT – 2022 BEGINNING OF BOLTED ART (BOBA) BRUNCH

THIS COOPERATION AGREEMENT – 2022 BEGINNING OF BOLTED ART (BOBA) BRUNCH ("Agreement") is entered into by and between the CITY OF OCALA, a Florida municipal corporation ("City"), and MAGNOLIA ART XCHANGE, a non-profit corporation duly organized and authorized to do business in the State of Florida (EIN: 47-4614706) ("MAX").

RECITALS:

WHEREAS, it is the common goal of City and MAX to encourage learning opportunities through the Artist in Residency Program as defined in Ocala's Community Cultural Arts Plan; and

WHEREAS, it is the common goal of City and MAX to celebrate community arts assets through events that highlight said assets and create accessibility to the arts; and

WHEREAS, it is the common goal of City and MAX to maximize the impact of their respective resources through collaboration; and

WHEREAS, City and MAX desire to facilitate their common goals, as set forth above, through the 2022 Beginning of Bolted Art (BOBA) Brunch (the "Event").

NOW THEREFORE, in consideration of the foregoing Recitals, the following mutual promises and benefits to the parties hereto, the adequacy of which is freely acknowledged, City and MAX do hereby agree as follows:

TERMS AND CONDITIONS:

1. **RECITALS.** City and MAX hereby represent, warrant, and agree that the Recitals set forth above are true and correct and are incorporated herein by reference.
2. **PURPOSE.** This Agreement shall serve as the premise for and govern the cooperation between City and MAX for the 2022 BEGINNING OF BOLTED ART (BOBA) BRUNCH (the "Event") to be held at the Ocala Union Train Station on FEBRUARY 19, 2022.
3. **EFFECTIVE DATE, TERM, AND TERMINATION.** This Agreement shall become effective commencing the date the last party signs the Agreement and continuing through and including FEBRUARY 28, 2022 (the "Term").
 - A. **Termination:** This Agreement may be terminated by either City or MAX for convenience and without cause upon providing written notice to the other party at least THIRTY (30) days prior to the effective date of such termination.
4. **COSTS, EXPENSES, AND REVENUE SHARE.** The parties acknowledge and agree that for business carried out by each of the parties pursuant to this Agreement, City and MAX shall each bear their respective costs and expenses.

- A. **Sponsorships:** All sponsorships solicited and received shall be made part of the Tuscahill Art Park Series and shall be retained by the City of Ocala for to provide cost recovery for event expenses, promotions, and catering.
- B. **Ticket Sales and Donations:**
- 1) City shall be responsible for selling tickets for the Event both in-person and via the EventBrite platform and shall collect all funds for event ticket sales.
 - 2) In accordance with the terms of this Agreement, City shall donate **FIVE AND NO/100 DOLLARS (\$5.00)** to MAX for every ticket sold to the Event to be used towards a scholarship for its Artist in Residency Program within **THIRTY (30) DAYS** of the completion of the Event.
 - 3) Any additional donations secured by MAX during the Event shall be retained by and/or paid directly to MAX.
5. **COOPERATION AND PUBLICITY.** The parties agree that they will collaborate in the development of event programs, radio and/or print advertising, event materials, and sponsorship solicitation. The parties agree not to use the name, logo, seal, or other likeness of the other party without prior written approval. Where relevant, branding will be accomplished in accordance with the parties' respective legal, policy, and procedural requirements.
6. **ROLES AND RESPONSIBILITIES.**
- A. **City's Role and Responsibilities:** Under the terms of this Agreement, the parties agree that the City's role and responsibilities shall include:
- 1) Facilitate the Event's artist discussion program.
 - 2) Contract musical entertainment for the Event.
 - 3) Facilitate the Event permit.
 - 4) Create the Event layout.
 - 5) Design and/or print promotional materials for the Event.
 - 6) Issue press releases.
 - 7) Solicit all vendors for Event.
 - 8) Update the City of Ocala website and social media pages to provide Event information.
 - 9) Solicit sponsorships.
 - 10) Provide staff for set-up and break-down of Event.
 - 11) Create signage for Event.
 - 12) Provide promotional materials to MAX to assist with promoting BOBA.

- B. **MAX's Role and Responsibilities:** Under the terms of this Agreement, the parties agree that MAX's role and responsibilities shall include:
- 1) Ensure the Ocala Union Train Station (three salons, restrooms, and the surrounding train platform) is clean and clear for use for the Event no later than Friday, February 18, 2022.
 - 2) Ensure all paths of egress and doorways are clear.
 - 3) Ensure restrooms are stocked with paper products and soap.
 - 4) Assist with marketing and promotion via MAX's standard promotional methods, including social media sites, newsletters, website calendars, and/or onsite posters/postcards.
 - 5) Provide City with a high-resolution MAX logo for use on promotional materials.
 - 6) Provide one (1) MAX representative that will be present at the Event as a source of information and interest for residency program at MAX.
 - 7) Provide any MAX promotional materials for MAX residency programs.
7. **EFFECT OF AGREEMENT ON LEGAL STATUS.** City and MAX enter into this Agreement with the desire and intent to maintain their own separate and unique missions, mandates, and accountabilities. Unless specifically provided for elsewhere in this Agreement, the mutual cooperation among the parties as outlined in this Agreement shall not be construed as creating any partnership, agency, or other type of legal entity. Unless otherwise specified, nothing in this Agreement shall be construed as superseding or interfering in any way with Agreements entered into between the parties, either prior or subsequent to the execution of this Agreement.
8. **MUTUAL INDEMNIFICATION.** Each party agrees to be responsible and indemnify the other party against the indemnifying party's wrongful or negligent acts or omissions and those of its officers, agents, employees, or subcontracted third parties arising in any way out of this Agreement to the extent permitted by law. The liability of both parties is limited, however, to the limits set forth in section 768.28, Florida Statutes that were in force and effect at the time this Agreement was entered into by the parties. Each party shall bear its own responsibility and be liable for any claims, demands, suits, actions, damages and causes of action arising out of or occurring during travel to or from the Event site.
9. **NO WAIVER OF SOVEREIGN IMMUNITY.** Nothing in this Agreement is intended to serve as a waiver of sovereign immunity protections, rights, or limits to liability provided to both parties under section 768.28, Florida Statutes, or other applicable law. This term shall survive the termination of all performance or obligations under this Agreement and shall be fully

binding until any proceeding brought under this Agreement is barred by any applicable statute of limitations.

10. **CONFIDENTIALITY.** Where applicable, the parties will comply with all applicable provisions of the Florida Public Records Act, Chapter 119, Florida Statutes.
11. **RIGHTS OF THIRD PARTIES.** Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or because of this Agreement on any persons other than the parties hereto and their respective legal representatives, successors and permitted assigns. Nothing in this Agreement is intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement, nor shall any provision give any third persons any right of subrogation or action over or against any party to this Agreement.
12. **NOTICES.** All notices, certifications, or communications required by this Agreement shall be given in writing and shall be deemed delivered when personally served, or when received if by facsimile transmission with a confirming copy mailed by registered or certified mail, postage prepaid, return receipt requested. Notices may be concurrently delivered by e-mail. All notices shall be addressed to the respective parties as follows:

To City: Preston Pooser, Director Recreation and Parks
City of Ocala
828 NE 8th Avenue
Ocala, Florida 34470
Telephone: 352-368-5517
ppooser@ocalafl.org

With a copy to: Tiffany Kimball, Contracting Officer
City of Ocala
110 SE Watula Avenue, 3rd Floor
Ocala, Florida 34471
Telephone: 352-629-8366
tkimball@ocalafl.org

With a copy to: Robert W. Batsel, Jr., Esq.
Gilligan, Gooding, Batsel & Anderson, P.A.
1531 SE 36th Avenue
Ocala, Florida 34471
rbatsel@ocalalaw.com

To MAX:

Justin McDonald, President
Magnolia Art Xchange
531 NE First Avenue
Ocala, Florida 34470
Telephone: 352-629-8414
E-Mail: president@maxocala.org

13. **ATTORNEYS' FEES.** If any civil action, arbitration or other legal proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provision of this Agreement, the successful or prevailing party shall be entitled to recover reasonable attorneys' fees, sales and use taxes, court costs and all expenses reasonably incurred even if not taxable as court costs (including, without limitation, all such fees, taxes, costs and expenses incident to arbitration, appellate, bankruptcy and post-judgment proceedings), incurred in that civil action, arbitration or legal proceeding, in addition to any other relief to which such party or parties may be entitled. Attorneys' fees shall include, without limitation, paralegal fees, investigative fees, administrative costs, sales and use taxes and all other charges reasonably billed by the attorney to the prevailing party.

14. **JURY WAIVER.** IN ANY CIVIL ACTION, COUNTERCLAIM, OR PROCEEDING, WHETHER AT LAW OR IN EQUITY, WHICH ARISES OUT OF, CONCERNS, OR RELATES TO THIS AGREEMENT, ANY AND ALL TRANSACTIONS CONTEMPLATED HEREUNDER, THE PERFORMANCE HEREOF, OR THE RELATIONSHIP CREATED HEREBY, WHETHER SOUNDING IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, TRIAL SHALL BE TO A COURT OF COMPETENT JURISDICTION AND NOT TO A JURY. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY. NEITHER PARTY HAS MADE OR RELIED UPON ANY ORAL REPRESENTATIONS TO OR BY ANY OTHER PARTY REGARDING THE ENFORCEABILITY OF THIS PROVISION. EACH PARTY HAS READ AND UNDERSTANDS THE EFFECT OF THIS JURY WAIVER PROVISION.

15. **GOVERNING LAW.** This Agreement is and shall be deemed to be a contract entered and made pursuant to the laws of the State of Florida and shall in all respects be governed, construed, applied and enforced in accordance with the laws of the State of Florida.
16. **JURISDICTION AND VENUE.** The parties acknowledge that a majority of the negotiations, anticipated performance and execution of this Agreement occurred or shall occur in Marion County, Florida. Any civil action or legal proceeding arising out of or relating to this Agreement shall be brought only in the courts of record of the State of Florida in Marion County or the United States District Court, Middle District of Florida, Ocala Division. Each party consents to the exclusive jurisdiction of such court in any such civil action or legal proceeding and waives any objection to the laying of venue of any such civil action or legal proceeding in such court and/or the right to bring an action or proceeding in any other court. Service of any court paper may be effected on such party by mail, as provided in this Agreement, or in such other manner as may be provided under applicable laws, rules of procedures or local rules.
17. **REFERENCE TO PARTIES.** Each reference herein to the parties shall be deemed to include their successors, assigns, heirs, administrators, and legal representatives, all whom shall be bound by the provisions hereof.
18. **MUTUALITY OF NEGOTIATION.** MAX and City acknowledge that this Agreement is a result of negotiations between MAX and City, and the Agreement shall not be construed in favor of, or against, either party because of that party having been more involved in the drafting of the Agreement.
19. **SECTION HEADINGS.** The section headings herein are included for convenience only and shall not be deemed to be a part of this Agreement.
20. **AMENDMENT.** No amendment to this Agreement shall be effective except those agreed to in writing and signed by both parties to this Agreement.
21. **COUNTERPARTS.** This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument.
22. **ELECTRONIC SIGNATURE(S).** Each party, if and by offering an electronic signature in any form whatsoever, will accept and agree to be bound by said electronic signature to all terms and conditions of this Agreement. Further, a duplicate or copy of the Agreement that contains a duplicated or non-original signature will be treated the same as an original, signed copy of this original Agreement for all purposes.
23. **ENTIRE AGREEMENT.** This Agreement, including exhibits, (if any) constitutes the entire understanding between the parties hereto with respect to the subject matter hereof. There are no other representations, warranties, promises, agreements or understandings, oral,

written or implied, among the parties, except to the extent reference is made thereto in this Agreement. No course of prior dealings between the parties and no usage of trade shall be relevant or admissible to supplement, explain, or vary any of the terms of this Agreement. No representations, understandings, or agreements have been made or relied upon in the making of this Agreement other than those specifically set forth herein.

24. **LEGAL AUTHORITY.** The individuals signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

25. **IN WITNESS WHEREOF,** the parties have executed this Agreement on _____.

ATTEST:

CITY OF OCALA

Angel B. Jacobs
City Clerk

Ken Whitehead
Assistant City Manager

Approved as to form and legality:

MAGNOLIA ART XCHANGE

Robert W. Batsel, Jr.
City Attorney

Justin McDonald
President