

**THIS DOCUMENT PREPARED BY
AND RETURN TO:**

Victoria C. Walker
Assistant City Attorney
City of Orlando
400 S. Orange Avenue
Orlando, Florida 32801
(407) 246-2295

**TRAFFIC CONTROL CABINET AND TRASH CONTAINER
ARTWORK AGREEMENT**

This Agreement, entered into this ____ day of _____, 2014, by and between the **City of Orlando**, a municipality duly enacted under the laws of the State of Florida, whose address is 400 South Orange Avenue, Orlando, Florida, 32801, (“City”), and **H.J. High Construction Company, Inc.**, a Florida corporation, whose address is 1015 West Amelia Street, Orlando, Florida 32805 (“Sponsor”) (hereinafter singularly referred to by their respective designation contained hereinabove, or as the “party”, and collectively as the “Parties”).

Recitals

WHEREAS, this Agreement involves certain property located in the City of Orlando, the boundaries of which are indicated on **Exhibit “B”** attached hereto and therefore incorporated herein (hereinafter referred to as “the Area” or “the Property”); and

WHEREAS, City owns and maintains traffic control cabinets (hereinafter referred to as “cabinets”) and unenclosed trash containers (hereinafter referred to as “containers”) at specific locations within the Area; and

WHEREAS, Sponsor has requested the City’s approval for painting or wrapping artwork (hereinafter referred to as “Artwork”) on the cabinets and containers to showcase local artists and to continue the progression of revitalization; and

WHEREAS, it is the Parties’ understanding and assumption that the Sponsor will select, install, and maintain Artwork that it installs on the cabinets and containers; and

WHEREAS, City and Sponsor intend, by this Agreement, to confirm Sponsor’s responsibilities for the installation and maintenance of Artwork on the cabinets and containers; and

WHEREAS, City and Sponsor acknowledge that installing and maintaining Artwork on the cabinets and containers serves a public purpose and benefits the citizens of the City of Orlando by turning blighted elements of the urban streetscape into works of art and thereby reducing graffiti; and

WHEREAS, Sponsor acknowledges the traffic control equipment contained inside the cabinets are critical to the safe movement of vehicles and pedestrians on City streets, and this equipment must continue to operate without impediment at all times; and

WHEREAS, Sponsor acknowledges that when installing the Artwork on the containers, the containers must not be moved in any way from their specific position, placement, and location; the containers' lid, if any, must not be handled; and any refuse that may be inside the containers must not be removed; and

WHEREAS, the Parties hereto desire to memorialize their agreement.

WITNESSETH

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Recitals. The above recitals are true and correct and hereby incorporated into the substantive body of this Agreement.

2. Artwork. Sponsor shall, at its sole cost and expense, install and maintain the Artwork for the duration of this Agreement on the cabinets and containers located at the intersections and areas indicated in **Exhibit "A"**, which is attached hereto and incorporated herein. Such installation and maintenance shall be consistent with all applicable laws, codes, rules, regulations, and this Agreement. The Artwork shall not operate as a sign, as defined under Chapters 64 and 66 of the Orlando City Code, and it shall not contain any nude images, religious symbols, political messages, images of a living person, or resemble graffiti. Any and all Artwork must be approved by the City prior to installation. If the location of the cabinet(s) or container(s) is within the boundaries of the Downtown Orlando Community Redevelopment Area (CRA), then any and all Artwork must be approved by the Appearance Review Board (ARB) prior to installation.

With regard to the cabinets, Sponsor or Artwork shall not interfere with the traffic control equipment located inside the cabinets and all vents, access panels, electrical connections, and key holes shall remain clear with no blockage and no overspray from paint. The Sponsor will not have access to the inside of the cabinet or be able to work on the cabinet while the cabinet doors are open. Artwork for the cabinets will be installed and maintained at the site where the cabinet is located.

With regard to the containers, the Sponsor or Artwork shall not interfere with City's operation and maintenance of the containers and all openings and wheels shall remain clear with no blockage. The Sponsor will not be permitted inside the container at any time or be able to

install Artwork inside the container. Artwork for the containers will be installed and maintained at a location mutually agreed upon by the Parties. If the location of the installation or maintenance is on property not owned by the City, Sponsor must obtain written permission from the property owner or the custodian of the container prior to installation or maintenance.

If there is a City sticker (i.e. identification, educational, instructional, or otherwise) on the cabinet or container, Sponsor shall not remove and Artwork shall not cover the sticker. If the cabinet or container does not contain a City sticker, the City maintains the right to place a sticker on the cabinets and containers even if Artwork has already been installed thereon. City will attempt to not interrupt the artwork design when deciding on placement of the sticker.

3. City Inspection. For cabinets, Sponsor will notify the City's Traffic Signal Maintenance shop (407-246-2617) at least 2 days (excluding weekends and City holidays) prior to and at the completion of installation and any maintenance of Artwork on the cabinets at each location. For containers, Sponsor will notify the City's Solid Waste Division (407-246-2314) at least 2 days (excluding weekends and City holidays) prior to and at the completion of installation and any maintenance of Artwork on the containers at each location.

City shall have the right to inspect the cabinets and containers at any time. If the City determines, in its reasonable discretion, that the Artwork installed on the cabinets and containers is not being properly maintained, City shall notify Sponsor in writing of said determination and of the appropriate repair or maintenance activities Sponsor must undertake consistent with all applicable laws, codes, regulations, and this Agreement. Sponsor shall have thirty (30) days to make said repairs or accomplish said maintenance activities, after which the City may do so and invoice the Sponsor for the costs. If Sponsor fails to pay the invoices within thirty (30) days of receipt thereof, the City may enforce the payment as provided by law.

If the cabinet or container is damaged, the City shall have the right to replace the cabinet or container. Sponsor shall be notified of such replacement in accordance with paragraphs 10 and 11 herein to remove any Artwork Sponsor installed on the cabinet or container. Sponsor shall be permitted to re-install Artwork on the new cabinet or container, unless Sponsor has failed to pay any invoices that may be due for repairs or maintenance activity conducted by the City.

City, the Florida Department of Transportation, City's Public Works Department, or either one of their respective contractors may also conduct emergency or routine repairs or maintenance of components on the containers or inside the cabinets without prior notice to Sponsor. City shall not be responsible for replacing Artwork or for any damages to Artwork as a result of such emergency or routine repairs or maintenance of the cabinets or containers.

4. Insurance. Sponsor shall possess and maintain, at all times during the installation and maintenance of the Artwork general liability insurance in the amount of at least One Million Dollars (\$1,000,000) in order to protect the City from any liability, claims, damages, losses or expenses arising from or out of in any way connected with installation or maintenance of the Artwork on the cabinets and containers. City shall be listed as an additional insured on the general liability policy. Sponsor shall provide proof of such insurance prior to the initiation of any installation activity under this Agreement.

5. Indemnification. Sponsor agrees that it shall release, indemnify, defend and hold harmless the City, their representatives, employees and elected and appointed officials from and against all claims, damages, loss and expenses of any sort including reasonable attorneys' fees and costs including appeals, arising out of or resulting from any tort, intentional action, negligent act or omission of the Sponsor, its tenants, agents, contractors, subcontractors, or anyone for whose act or acts any of them may be liable, for acts or omissions resulting from the installation, maintenance, or repair of the Artwork.

6. No Waiver/No Vesting. This Agreement does not constitute a waiver of the City's regulatory authority and the Property remains subject to all applicable laws, rules, codes and regulations. This Agreement does not operate to vest any interest or right whatsoever.

7. Release. Sponsor hereby releases the City, their representatives, employees and elected officials from any and all damages, claims, or liability, with respect to the Artwork that may arise due to the City's operation and maintenance of the cabinets and containers.

8. Priority. The Artwork shall not be installed and maintained in such a manner so as to interfere, in any way, with the City's operation or maintenance of the cabinets and containers, or any public or general utility improvements located thereon.

9. Removal, Relocation or Adjustment of Artwork. It is understood between the Parties hereto that the City may order the removal, relocation or adjustment of the Artwork at any time in the future as determined to be necessary by the City. For cabinets, the Sponsor shall be given sixty (60) calendar days notice to remove, relocate, or adjust any Artwork the Sponsor has installed after which time the City may do the same and invoice the Sponsor for the associated costs. For containers, the Sponsor shall be given seven (7) days notice to remove, relocate, or adjust any Artwork the Sponsor has installed after which time the City may do the same at its own cost.

10. Exchange or Removal of Containers. It is understood between the Parties hereto that the City may from time to time exchange a container for another container of similar, larger or smaller size or remove a container from its location either permanently or temporarily. The

Sponsor shall be given seven (7) calendar days notice of such an exchange or removal to remove any Artwork the Sponsor installed after which time the City may remove the same at its own cost. The Sponsor will be permitted to re-install the same Artwork on the new container provided any invoices that may be due for repairs or maintenance activity conducted by the City have been paid. If Sponsor wishes to install new Artwork, approval from the City or CRA is required pursuant to paragraph 2 herein.

11. Removal of Cabinets. It is understood between the Parties hereto that the City may from time to time have to replace a cabinet with a new cabinet. The Sponsor shall be given (7) calendar days notice of such replacement to remove any Artwork Sponsor installed on the cabinet being replaced after which time the City may remove the same at its own cost. The Sponsor will be permitted to re-install the same Artwork on the new cabinet provided any invoices that may be due for repairs or maintenance activity conducted by the City have been paid. If Sponsor wishes to install new Artwork, approval from the City or CRA is required pursuant to paragraph 2 herein.

12. Notices. Any notices which may be permitted or required hereunder shall be in writing and shall be deemed to have been duly given as of the date and time the same are personally delivered, transmitted electronically or within three (3) days after depositing with the United States Postal Service, postage prepaid by registered or certified mail, return receipt requested, or within one (1) day after depositing with Federal Express or other overnight delivery service from which a receipt may be obtained, and addressed as follows:

City: City of Orlando, Florida
400 South Orange Avenue
Orlando, Florida 32801
Attn: Transportation Engineer
Telephone: (407) 246-2281
Telecopy: (407) 246-3383

Sponsor: H.J. High Construction Company, Inc.
Attn: Robert J. High, President
1015 West Amelia Street
Orlando, Florida 32805

or to such other address as either party hereto shall from time to time designate to the other party by notice in writing as herein provided.

13. Modification. This Agreement may not be amended, modified, altered, or changed in any respect whatsoever, except by a further Agreement in writing duly executed by the Parties.

14. Assignment. Sponsor shall not assign this Agreement without the prior and written consent of the City.

15. Entire Agreement. This Agreement constitutes the entire agreement between the Parties hereto with respect to the transactions contemplated herein, and it supersedes all prior understandings or agreements between the Parties.

16. Attorneys' Fees. In the event of any dispute regarding this Agreement, each party shall be responsible for its attorneys' fees, expert's fees and costs.

17. Relationship Between the Parties. Nothing contained in this Agreement, nor the relationship between the Parties which may arise as a result of the provisions of this Agreement, are intended to, or shall be construed as, creating a partnership, joint venture, or other such relationship as between the Parties.

18. Section Headings. The section headings as used herein are for convenience of reference only and shall not be deemed to vary the content of this Agreement or the covenants, agreements, representations and warranties herein set forth, or limit the provisions or scope of any section herein.

19. Severability. This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Agreement or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

20. Counterpart Execution. This Agreement may be executed in counterparts, each of which shall constitute an original, but all taken together shall constitute one and the same instrument.

21. Termination. The Sponsor or City may terminate this Agreement at any time and for any reason upon thirty (30) days written notice to the non-terminating party. In the event of termination by either party, the Sponsor shall remove any and all Artwork it installed within thirty (30) days of the date of mailing of the written notice, whether or not the notice is received, unless the City agrees in writing to the abandonment and acceptance of the Artwork so installed. If the Sponsor fails to remove said Artwork within the above-described timeframe, and the City

has not accepted the Artwork, City may remove the Artwork and invoice the Sponsor for the costs.

22. Abandonment. If the Sponsor consistently fails to maintain the Artwork on the cabinets or containers, the City shall deem the Artwork abandoned and City may either accept the Artwork or remove the Artwork and invoice the Sponsor for the associated costs.

23. Governing Law. This Agreement shall be governed by and construed under the laws of the State of Florida and all duly adopted ordinances, regulations, and policies of the City of Orlando now in effect and those hereinafter adopted. The location for settlement of any and all claims, controversies, or disputes, arising out of or relating to any part of this Agreement, or any breach hereof, shall be Orange County, Florida.

24. License. This Agreement constitutes a License and does not rise to the level of a real property interest in the area in which the cabinets and containers are located.

25. Term. Unless earlier terminated, this Agreement shall remain in effect for the period of two (2) years commencing on the date this Agreement is executed by all parties. This Agreement shall be renewable upon satisfactory performance by Sponsor for an additional two-year period under the same terms and conditions, subject to subsequent approval of the City Council or Director of Public Works.

26. Expiration. Upon expiration of this Agreement, the City may remove or maintain the Artwork installed on the cabinets and containers at its own cost, unless this Agreement is renewed in accordance with paragraph 24 herein.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date set forth above.

THE CITY OF ORLANDO

By: _____
Mayor/Mayor Pro Tem

ATTEST:

Alana C. Brenner, City Clerk

APPROVED as to form and legality,
for the use and reliance of the
City of Orlando, Florida only.

_____, 2014.

Assistant City Attorney
City of Orlando

STATE OF FLORIDA
COUNTY OF ORANGE

Personally appeared before me, the undersigned authority, _____,
[] well known to me or [] who has produced his/her _____ as
identification, and known to me to be the Mayor/Mayor Pro Tem of the City of Orlando, and
acknowledged before me that he/she executed the foregoing Traffic Control Cabinet and Trash
Container Artwork Agreement on behalf of the City of Orlando as its true act and deed, and that
he/she was duly authorized to do so.

WITNESS my hand and official seal this ____ day of _____, 2014.

NOTARY PUBLIC

Print Name: _____

My Commission Expires: _____

Signed in the presence of Two Witnesses:

Sign Name: _____

H.J. High Construction Company, Inc., a
Florida corporation.

Print Name: _____

Sign Name: _____

By: _____

Print Name: _____

Title: _____

STATE OF FLORIDA
COUNTY OF ORANGE

Personally appeared before me, _____, who is [] well known
to me or [] who has produced his/her _____ as identification,
and known to me to be the _____ of H.J. High Construction Company, Inc., and
acknowledged before me that he/she executed the foregoing Traffic Control Cabinet and Trash
Container Artwork Agreement on behalf of said corporation as its true act and deed, and that
he/she was duly authorized to do so.

WITNESS my hand and official seal this ____ day of _____, 2014.

NOTARY PUBLIC

Print Name: _____

My Commission Expires: _____

EXHIBIT "A"

Location Sites of Traffic Control Cabinets for Artwork

<u>Signal Number</u>	<u>Intersection</u>
123	W Colonial Dr & N Westmoreland Dr
100	W Amelia St & N Westmoreland Dr
116	W Robinson St & N Westmoreland Dr
118	W Washington St & N Westmoreland Dr
115	N Parramore Ave & W Washington St
98	N Hughey Ave & W Washington St

Location Sites of Unenclosed Trash Containers for Artwork

<u>Number</u>	<u>Address</u>
4-2848	820 W. Washington St.
2-1436	806 W. Washington St.
4-2242	648 W. Washington St.
6-1538	211 N. Parramore Ave.
8-2199	101 N. Parramore Ave.
4-1428	100 Polk St.

EXHIBIT "B" (Map of Area)

