

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

Roy K. Payne
Chief Assistant City Attorney
City of Orlando
400 S. Orange Avenue
Orlando, Florida 32802
(407) 246-3483

STORMWATER DRAIN ARTWORK AGREEMENT

This Agreement, entered into this ____ day of _____, 2017, by and between the **CITY OF ORLANDO**, a municipality duly enacted under the laws of the State of Florida, whose address is 400 S. Orange Avenue, Orlando, FL, 32802, "City", and **THORNTON PARK DISTRICT, INC.**, a Florida non-profit corporation, whose address is 617 E. Central Blvd., Orlando, FL, 32801, "Organization".

Recitals

WHEREAS, Organization is the manager of certain property located in the City of Orlando, the boundaries of which are E. Washington St. between N. Eola Dr. and Brown Ave., Central Blvd. between Rosalind Ave. and Hill Ave., E. Pine St. between Rosalind Ave. and S. Eola Dr., Church St. between Osceola Ave. and N. Eola Dr., N. Eola Dr. between Robinson St. and Church St., and N. Summerlin Ave. between Robinson St. and Central Blvd., and more particularly described in **Exhibit "A"**, attached hereto and made a part hereof by reference ("Property"); and

WHEREAS, City owns and maintains stormwater drainage structures, "Structures," consisting of concrete inlets and grates throughout the Property and the surrounding area, as referenced in **Exhibits "B-1 and B-2"**; and

WHEREAS, the City approved a similar agreement with the Organization in August, 2016 under which artwork was installed on certain other stormwater drainage structures within the Property; and

WHEREAS, Organization has now requested the City's consent to painting artwork ("Artwork") on additional Structures to showcase local artists and continue the progression of revitalization in the area; and

WHEREAS, it is the parties' understanding and assumption that the Organization will, subject to the terms of this Agreement, select, approve, install, and maintain Artwork on the Structures; and

WHEREAS, City and Organization intend, by this Agreement, to confirm Organization's responsibilities for the installation and maintenance of Artwork on the Structures; and

WHEREAS, City and Organization acknowledge that installing and maintaining Artwork on the Structures serve 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.

WHEREAS, City and Organization acknowledge the Structures are critical to the safe movement of stormwater from streets, and properties adjacent thereto and must continue to operate without impediment at all times.

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. Organization shall, at its sole cost and expense, cause the Artwork to be installed and maintained on the Structures by an artist(s), "Artist," consistent with all applicable laws, codes, rules, regulations, and this Agreement. The Structures shown in Exhibit B-2 are slightly outside the Property and Organization will not install Artwork on the Structures shown in Exhibit B-2 until providing to the City written consent to said installation from the Lawsons/Ferncreek Neighborhood Association. 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 or religious/political symbols or resemble graffiti. Any and all Artwork must be approved by the City in writing prior to installation and shall comply in all respects with the application procedure established by the City for the installation of Artwork including the requirement that the Artwork represent themes related to Stormwater quality and the City's "Only Rain in the Drain" program. If the location of the Structure 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. The specifications of all paint utilized on the Structures under the terms of this Agreement must be approved by the City prior to installation of the Artwork. Organization or Artwork shall not interfere with the functioning of the Structures and said Structures shall remain clear of all debris or other blockage at all times. Organization is responsible for all aspects of the installation and maintenance of Artwork including permits as applicable. During installation/maintenance of the Artwork, Organization may, at its discretion, remove any City tags or stickers or painted symbols or language located on the Structures but shall replace same upon completion of the Artwork. City may install tags, stickers and other such identification on the Structures and the Artwork at any time without liability to Organization or the Artist.

3. City Inspection. The Organization will notify the City's Streets and Drainage Division Manager, or her designee, in writing, at least two (2) business days before beginning installation or maintenance of Artwork at each location and within one (1) business day after

completion of such work. City shall have the right to inspect the work on the Structures at any time. If the City determines, in its reasonable discretion, that the Artwork was not properly installed or that the Artwork or Structures are not being properly maintained or if the Structures are damaged during installation or maintenance of the Artwork, City shall notify Organization in writing of said determination and of the appropriate repair or maintenance activities Organization must undertake. Organization shall have ten (10) days to make said repairs or accomplish said maintenance activities, after which the City may do so and invoice the Organization for the costs. If Organization fails to pay the invoices within thirty (30) days of receipt thereof, the City may enforce the payment as provided by law and may terminate this Agreement. City shall not be responsible for replacing Artwork or for any damages to Artwork as a result of repairs or maintenance of the Structures or other improvements in the right-of-way.

4. Artwork Installation Procedure:

- A. Organization will hire a pressure washing company to pressure wash the Structures prior to the installation of Artwork. The company shall be experienced in pressure washing within road rights-of-way. Pressure washing must be done in compliance with City Code, including though not exclusively, the following: (i) Only water may be used; no detergents, degreasers, bleach, etc. shall be used unless there is a plan, approved by the City, to recapture all water; (ii) debris and litter must be swept and removed before pressure washing begins, so as to keep these items from entering the storm drain; and (iii) any oil or grease staining the Structure to be pressure washed must be cleaned off via a dry cleanup method prior to pressure washing.
- B. The Organization will ensure that the Structure inlets are blocked with cardboard while the Artwork is installed and that the cardboard is removed upon the conclusion of installation activities on any given day.
- C. Prior to the installation/maintenance of the Artwork, City shall review the location of the Structures and prepare a Maintenance of Traffic Plan, "MOT," for Organization's use. The below referenced requirements may constitute the MOT for the installation/maintenance of Artwork on each Structure. Organization shall be responsible to ensure compliance with the MOT in all aspects of implementation. The parties acknowledge and agree that the City does not, by virtue of its approval of an MOT, assume any liability arising from the installation/maintenance of the Artwork. In addition to requirements otherwise provided by the City, Organization shall be responsible to ensure that: (i) orange safety cones are placed around the storm drains in visible positions at each location where Artwork is being installed/maintained, (ii) the Artists wear reflective vests while installing/maintaining the Artwork, (iii) the Artists are positioned outside the travel lanes at all times during installation/maintenance of the Artwork, (iv) the Artwork is installed/maintained at low-traffic volume times, (v) the Artwork is installed/maintained without any intrusion of materials or equipment into the travel lane and (vi) at least one individual will assist the Artist by observing traffic during the installation/maintenance of Artwork to ensure the Artist's safety.

- D. Organization shall ensure that the Artwork and the Structures are inspected periodically and that any required maintenance is conducted expeditiously.

5. Insurance. Organization shall possess and maintain, at all times during the installation and maintenance of the Artwork general liability insurance in the amount of at least Five Hundred Thousand and 00/100 Dollars, (\$500,000.00), 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 Structures. City shall be listed as an additional insured on the general liability policy. The above liability policy shall contain a contractual liability endorsement in favor of the City and shall provide that the City will receive written notice prior to termination of coverage. Said insurance shall also be primary, and not contributory, as to any insurance coverage maintained by the City. This provision shall survive termination of this Agreement to the extent necessary to protect the City from liability arising during the term of the Agreement. Nothing herein operates as a waiver of the City's grant of sovereign immunity or the limits of liability established under Florida law.

Organization shall provide proof of such insurance coverage prior to the initiation of any installation/maintenance activity under this Agreement.

6. Indemnification. The Organization 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 from or out of in any way connected with installation or maintenance of the Artwork on the Structures. Nothing in this Agreement operates as a waiver of the City's grant of sovereign immunity and the limits of liability established thereby.

7. 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.

8. Release. Organization, its employees, agents and assigns hereby release 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 Structure or its right-of-way. **Organization shall ensure that any person conducting the maintenance/installation of Artwork in the right-of-way under this Agreement, including anyone assisting the Artist, has executed a Waiver in the form attached hereto as "Exhibit "C", attached hereto and made a part hereof by reference.**

9. Priority of Structure. 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 Structures or any public or general utility and/or road improvements located within the City's right-of-way.

10. Removal. It is understood between the parties hereto that the City may notify the Organization to remove, relocate or adjust the Artwork at any time and for any reason. The Organization shall be given thirty (30) calendar days from said notice to remove, relocate or adjust any such Artwork consistent with procedures contained in the notification, after which

time the City may do so and invoice the Organization for said costs.

11. 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, FL 32802
Attn: Streets and Stormwater Division Manager
Telephone: (407) 246-3646
Fax: (407) 246-2266

Organization: Thornton Park District, Inc.
617 E. Central Blvd.
Orlando, FL 32801
Attn: Lisa M. Cuatt, Director
Telephone: 407-701-9382

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.

12. 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 and recorded in the Public Records of Orange County, Florida.

13. Successors and Assigns. The terms and conditions of this Agreement shall constitute covenants running with the land, and all rights and privileges granted herein shall be appurtenant to the lands herein described, and, except as hereinafter set forth, shall run with said lands forever and be binding upon and inure to the benefit of and be enforceable by the heirs, legal representatives, successors and assigns of the Parties hereto and shall continue in perpetuity, unless otherwise modified in writing by the Parties hereto. All obligations of the Parties hereunder shall be binding upon their respective successors-in-title and assigns. Organization shall not assign its interest in this Agreement without the prior written consent of the City.

14. 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.

15. Attorneys' Fees. In the event of any dispute regarding this Agreement, the prevailing party shall be entitled to payment of its attorneys' fees, expert's fees and costs.

16. 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.

17. 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.

18. 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.

19. 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.

20. Termination. This Agreement shall terminate at the end of the Initial Term as provided in Paragraph 23, below. In addition, either party may terminate this Agreement at any time and for any reason, upon thirty (30) days written notice to the non-terminating party. The City's Public Works Director is hereby authorized to terminate this Agreement on behalf of the City. In the event of termination, the Organization shall remove any and all Artwork installed by the Organization, within thirty (30) days of either the expiration of the Initial Term or 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 Organization fails to remove said Artwork within the above-described timeframe, the City may remove improvements and invoice the Organization for the costs.

21. Governing Law. This Agreement shall be governed by and construed under the laws of the State of Florida.

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

23. Term. Unless earlier terminated, this Agreement shall remain in effect for a period of two (2) years commencing on the date this Agreement is executed by all parties, "Initial Term". The Initial term may be extended for an additional two (2) years at the City's sole discretion upon written notice from City to the Organization at least sixty (60) days prior to expiration of the Initial Term. The City's Public Works Director, in consultation with City staff, is hereby authorized to extend the Initial Term on behalf of the City. There shall be no further extensions absent City Council approval.

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

ATTEST:

CITY OF ORLANDO, FLORIDA, a municipal corporation, organized and existing under the laws of State of Florida

By: _____
City Clerk

By: _____
Mayor / Mayor Pro Tem

Date: _____

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing was acknowledged before me this _____ day of _____, 2017, by _____, as Mayor/Mayor Pro Tem, of City of Orlando, Florida, a municipal corporation, organized and existing under the laws of the State of Florida, on behalf of the City. He/she is personally known to me or has produced _____ as identification.

(Signature of Notary Public)

(Printed name of Notary Public)
My commission expires:

Signed in the presence of Two Witnesses:

“ORGANIZATION”

THORNTON PARK DISTRICT, INC.,
a Florida non-profit corporation

Signature
Print Name: _____

By: _____

Signature
Print Name: _____

Name: _____

Title: _____

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing was acknowledged before me this _____ day of _____, 2017, by _____, as _____ of Thornton Park District, Inc., a Florida non-profit corporation. He/she is personally known to me or has produced _____ as identification.

(Signature of Notary Public)

(Printed name of Notary Public)