

ORIGINAL

CITY OF GLENDALE PUBLIC ART PROJECT AGREEMENT

**The Fountain of Youth Project
Installation at The Elsie McCarthy Sensory Garden
7637 North 55th Avenue, Glendale, Arizona 85301**

This public art agreement ("Agreement") is made and entered into on June 4, 2015, 2015, by and between the City of Glendale, an Arizona municipal corporation ("City"), and Kristine Kollasch, [REDACTED] ("Artist").

RECITALS

- A. The City requires certain public art services pursuant to the terms of this Agreement, hereinafter called the "Artist Services";
- B. The trained personnel needed for such Artist Services are not available within the City;
- C. The City desires to retain the Artist to perform Artist Services described in this Agreement for the City, hereinafter the "Project"; and
- D. The Artist desires to provide Artist Services, as more specifically defined herein.

NOW, THEREFORE, in consideration of the Recitals, mutual clauses, agreement below, and the performance thereof, the Artist and the City agree as follows:

- 1. **INDEPENDENT BUSINESS.** The Artist is an independent business and holds services out to the public as a separate business entity from the City and is not in business for the purpose of providing Artist Services solely to the City.
- 2. **COMPLIANCE WITH LAWS.** The Artist shall comply with all applicable federal, state and local laws, rules and regulations, and executive orders governing equal employment opportunities, non-discrimination and immigration including compliance with Immigration Reform and Control Act of 1986 as well as with all other regulations, restrictions and requirements, including business permits and licenses of any kind that may be required to perform the Artist Services required under this Agreement, during the term of this Agreement, which are applicable to the Project and shall obtain and keep in effect, at the Artist's own cost and expense, all necessary licenses, permissions and permits.

The Artist further agrees to the foregoing provisions in all related subcontracts, except subcontracts for standard commercial supplies or raw materials. Any violation of these provisions shall constitute a material breach of contract.

3. ARTIST SERVICES. The Artist Services for the Project shall be as follows:
 - A. Through partnerships with Free Arts For Abused Children of Arizona, Diana House and Northview Shelter, Kristine Kollasch "Artist" will conduct 8-weeks of art workshops with resident teens at shelter locations.
 - B. The Artist will work with teens to design and create mosaic tiles that will be used to create The Fountain of Youth ("Artwork") for The Elsie McCarthy Sensor Garden, 7637 North 55th Avenue, Glendale, Arizona 85301.
 - C. The Artist will work with teens to design and create the Fountain of Youth Mural "Artwork" at The Elsie McCarthy Sensory Garden, 7637 North 55th Avenue, Glendale, Arizona 85301.
 - D. The installation of the "Artwork" will be completed by August 30, 2015.
4. REPORTING. The Artist shall report to Mojgan Vahabzadeh, Public Arts Coordinator, or other staff as directed in writing.
5. COMPENSATION. The City shall pay the Artist according to the following terms and conditions:
 - A. For services described in Section 3 of this Agreement, the Artist shall receive a sum not to exceed **\$10,000.00**, which shall be payment in full for materials, labor, installation, travel, taxes, insurance and any other expenses needed to perform the Artist Services and complete the Artwork. Artist shall produce construction documents necessary for the completion of Artist Services. Payment for any sub-consultants to produce construction documents including the structural engineer and electrical engineer shall be the responsibility of the Artist.
 - B. Payments shall be paid in **two (2)** installments. City will pay 50% of the project fee upon execution of this Agreement and the remaining amount upon satisfactory completion of the project. Each payment will be made within thirty (30) days after receiving an invoice from the Artist. Artist should email invoices to Mvahabzadeh@glendaleaz.com.
6. CONTROL. Artist Services described in Section 3 shall be performed by the Artist. Any work done by assistants, other persons or other means must be under the direct control and supervision of the Artist. Quality of all Artist Services is subject to approval by the City.
7. INSTRUMENTALITIES. The Artist shall supply all equipment, tools, labor, materials and supplies to accomplish the Artistic Services and install the Artwork.
8. TITLE TO WORK. Title to all Artwork created under this Agreement will become property of the City upon the Artist's receipt of the final payment under this Agreement.

9. OWNERSHIP AND REPRODUCTION RIGHTS OF PUBLIC ARTWORK.

- A. The Artist agrees that the City owns the original Artwork created under this Agreement. The Artist warrants that the design being commissioned and produced under this Agreement is the original product of her own creative efforts along with that of her workshop participants; the Artwork is unique; it is an edition of one; it has not been accepted for sale elsewhere; and that the design shall not be offered for sale elsewhere without the express approval of the City.
- B. The Artist shall ensure that the design for the Artwork contains no material from other artworks, projects or other copyrighted material without the prior written permission of the owner of such material where the other artwork is copyrighted or where such permission is otherwise required.
- C. The Artist's designs, sketches, models and any other completed Artwork created and submitted by the Artist to the City under the terms of this Agreement as described in Section 3, shall be the property of the City.
- D. The Artist waives all rights to the Artwork under the Copyright Act of 1976, 17 U.S.C. §101, et seq., as amended by the Visual Artists Rights Act of 1990, and any successor act.
- E. The City shall have the sole right to display the Artwork and to display two-dimensional reproductions of all of the Artwork created under this Agreement.
- F. The City shall have the sole right to make, and to authorize the making of, photographs and other two-dimensional reproductions of the Artwork for educational, public relations, arts promotional and other noncommercial purposes. For the purposes of this Agreement, the following are among, but not limited to be reproductions for noncommercial purposes: brochures and pamphlets pertaining to the City; reproduction in books, slides, photographs, postcards, posters, and calendars; and film strips, websites and television intended for a mass audience.
- G. The City agrees all references to the Artwork shall credit the Artist in an appropriate manner.
- H. A plaque identifying the Artist, the title of the Artwork, and the year of completion shall be publicly displayed on or adjacent to the Artwork. The City shall maintain such identification plaque in good repair and shall replace it if it is stolen or damaged beyond repair.
- I. Notwithstanding any provision of this Agreement, the City specifically grants the Artist the right to make photographs and other two-dimensional reproductions of the Artwork for the noncommercial purposes of promoting of the Artist and any other art works produced by the Artist.

10. WARRANTY.

- A. The Artist warrants to the City that the fabrication and installation of the Artwork will be performed in a workmanlike manner and that the Artwork will be free of defects in workmanship or materials, including inherent vice, and that the Artist will, at the Artist's own expense, remedy any defects found in the Artwork fabricated by the Artist due to faulty workmanship or materials for a period of one (1) year after the Artwork is accepted by the City.
- B. The Artist warrants to the City that the Artwork will not require maintenance substantially in excess of that described in the maintenance recommendations to be provided by the Artist to the City set forth in Exhibit A.
- C. The Artist agrees to deliver and construct the Artwork free and clear of any liens and claims arising from any source.
- D. With the exception of damage due to vandalism or accident by any person other than the Artist or persons under their employ, direction or supervision, the Artist warrants that the Artwork will not contain any defect in design or construction including any defect which may be a hazard or a danger to the health and safety of the public and further agrees to cooperate in making or permitting adjustments to the Artwork, if necessary, to eliminate hazards or potential hazards which become apparent after the Artwork is accepted by the City.

11. MAINTENANCE AND REPAIRS.

- A. As a condition of and prior to final acceptance of the Artwork by the City, the Artist will supply the City with maintenance instructions set forth in Exhibit A. The City agrees to ensure that the Artwork is maintained and protected to the extent practical. During the lifetime of the Artwork, the Artist will supply at no cost to the Artist and at no charge to the City, advice as to problems arising in relation to maintenance of the Artwork.
- B. The City shall make every reasonable effort to consult with the Artist concerning repairs to the Artwork. To the extent practical, the Artist shall be given the opportunity to accomplish repairs at a reasonable fee. The City reserves the right to obtain competitive bids and to choose the highest quality and least expensive vendor for all repairs and restoration.

12. LICENSES AND TAXES. No payroll or employment taxes of any kind shall be withheld or paid with respect to payments to Artist.

13. CLAIMS AGAINST THE CITY. To the fullest extent permitted by law, the Artist shall defend, indemnify and hold harmless the City, its agents, officers, officials, employees and volunteers from and against all claims, damages, losses and expenses (including but not limited to attorney's fees, court costs, and the costs of appellate proceedings), arising out of, or alleged to have resulted from the negligent acts, errors, mistakes, omissions, work, services, or professional

services of the Artist, its agents, employees, or any other person (not the City) for whose acts, errors, mistakes, omissions, work, services, or professional services the Artist may be legally liable in the performance of this Agreement. It is the Artist's duty to hold harmless and indemnify the City, its agents, officers, officials, employees and volunteers shall arise in connection with any claim for damage, loss or expenses that is attributable to bodily injury, sickness disease, death, or injury to, impairment, or destruction of any person or property, including loss of use resulting there from, caused by any negligent acts, errors, mistakes, omissions, work, services, or professional services in the performance of this Agreement by the Artist or any employee of the Artist, or any other person (not the City) for whose negligent acts, errors, mistakes, omissions, work, or services the Artist may be legally liable. The amount and type of insurance coverage requirement set forth herein will in no way be construed as limiting the scope of indemnity in this section.

14. INSURANCE.

- A. Without limiting any of her obligations or liabilities, the Artist, at her own expense, shall purchase and maintain the minimum insurance specified below with companies duly licensed or otherwise approved by the State of Arizona Department of Insurance and acceptable to the City, and with forms satisfactory to the City:
 - i. Automobile Liability Insurance with limits of not less than statutory requirements including coverages for owned, hired and non-owned vehicles, as applicable.
 - ii. The Artist shall provide Commercial General Liability Insurance with a limit of not less than \$1,000,000 for each occurrence with a \$1,000,000 General Aggregate Limit. The policy shall include coverage for bodily injury, property damage, personal injury, products and blanket contractual covering, but not limited to the liability assumed under the indemnification provisions of this Agreement.
- B. The Commercial General Liability Insurance coverage required by this Agreement shall name the "City of Glendale" as additional insured, and shall specify that insurance afforded by the Artist shall be primary insurance and that any insurance coverage carried by the Artist or its employees shall be excess coverage and not contributory coverage to that provided by the Artist. The Artist shall include all subcontractors as insured under her policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein for the Artist.
- C. Prior to commencing activities and services under this Agreement, except as noted above, the Artist shall furnish the City with Certificates of Insurance, or formal endorsements as required by the Agreement issued by Artist's insurer(s), as evidence that policies providing the required coverages, conditions and limits required by this Agreement are in full force and effect. Such certificates shall identify this Project and shall provide for not less than thirty (30) days advance Notice of Cancellation, Termination, or Material

Alteration and thirty (30) days for non-payment. Such certificates shall be sent directly to:

Mojgan Vahabzadeh
City of Glendale Public Art Program
5959 West Brown Street
Glendale, Arizona 85302
Phone: (623) 930-3557
Mvahabzadeh@glendaleaz.com

15. WORKERS' COMPENSATION. No workers' compensation insurance has been or will be obtained by the City for the Artist.

16. IMMIGRATION LAW AND COMPLIANCE

- A. The Artist, and on behalf any subcontractor, warrants, to the extent applicable under A.R.S. § 41-4401, compliance with all federal immigration laws and regulations that relate to their employees as well as compliance with A.R.S. § 23-214(A) which requires registration and participation with the E-Verify Program.
- B. Any breach of warranty under this section is considered a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement.
- C. The City retains the legal right to inspect the papers of any the Artist or subcontractor employee who performs services under this Agreement to ensure that the Artist or any subcontractor is compliant with the warranty under this section.
- D. The City may conduct random inspections, and upon request of the City, the Artist shall provide copies of papers and records of the Artist demonstrating continued compliance with the warranty under this section. The Artist agrees to keep papers and records available for inspection by the City during normal business hours and will cooperate with the City in exercise of its statutory duties and not deny access to its business premises or applicable papers or records for the purposes of enforcement of this section.
- E. The Artist agrees to incorporate into any subcontracts under this Agreement the same obligations imposed upon the Artist and expressly accrue those obligations directly to the benefit of the City. The Artist also agrees to require any subcontractor to incorporate into each of its own subcontracts under this Agreement the same obligations above and expressly accrue those obligations to the benefit of the City.
- F. The Artist's warranty and obligations under this section to the City is continuing throughout the term of this Agreement or until such time as the City determines, in its sole discretion, that Arizona law has been modified in that compliance with this section is no longer a requirement.

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G. The "E-Verify Program" above means the employment verification program administered by the United States Department of Homeland Security, the Social Security Administration, or any successor program.

17. SAFETY. The Artist shall be solely and completely responsible for conditions on any job site over which he has oversight responsibility, including the safety of all persons (including employees) and property during performance of services and installation of the Artwork. This requirement shall apply continuously and not be limited to normal working hours. Safety provisions shall conform to all applicable federal (including OSHA), state, county and local laws, ordinances, codes and regulations. Where any of these are in conflict, the more stringent requirement shall be followed. The Artist's failure to thoroughly familiarize herself with the aforementioned safety provisions shall not relieve her from compliance with the obligations set forth therein.

18. COMMUNICATIONS. Any communications and/or deliverables required under this Agreement shall be deemed sufficiently given when personally delivered or mailed via US Certified Mail, return receipt requested, and addressed as follows (or to any other address agreed upon in writing by both parties):

To City: City of Glendale
Public Art Program
5959 West Brown Street
Glendale, Arizona 85302

With copy to: City of Glendale
City Attorney
5850 West Glendale Avenue
Glendale, Arizona 85301

To Artist: Kristine Kollasch
P.O. Box 35454
Phoenix, Arizona 85069

19. DISPUTE RESOLUTION. In the event of a dispute concerning this Agreement, the parties will meet in good faith to attempt to resolve the dispute.

20. RIGHT OF TERMINATION.

A. The City and the Artist hereby agree to the full performance of the covenants contained herein, except the City reserves the right, at its discretion, to terminate or abandon all or any part of the Project at any time.

- B. In the event the City shall terminate or abandon the Artist services or any part of the services as herein provided, the City shall notify the Artist in writing, and immediately after receiving such notice, the Artist shall discontinue advancing Artwork under this Agreement and proceed to close said operations under the Agreement.
- C. The Artist shall appraise the services completed prior to notification of termination and submit an appraisal to the City for evaluation. The City shall have the right to inspect the Artist's Artwork to appraise the Artist services completed. The City will not pay more than the corresponding progress payment set forth above for the percentage of Artwork completed to that point in time.
- D. The Artist shall deliver to the City all Project-related works, including copies of photographs, drawings, concepts, plans, reports, calculations, writing and computer disks, created and prepared by the Artist specifically for this Project together with all unused materials supplied to the Artist by the City or from funds paid by the City.
- E. The City shall make final payment within thirty (30) days after the Artist has delivered the last of the completed and/or partially completed items, all Project-related materials and a final invoice for the final payment that has been agreed upon by both parties.
- F. In the event this Agreement is terminated or abandoned, the Artist shall be paid for Artist services performed and materials ordered or purchased, prior to receipt of said notice of termination. The City may make use of the completed or partially completed Artwork for this Project for the uses for which it was intended. Any use of incomplete Artwork for this Project by the City following termination without specific written authorization by the Artist will be without responsibility or liability to the Artist.
- G. In the event this Agreement is terminated, the City shall have the option of completing the Artwork, or entering into an agreement with another party for the completion of the Artwork according to the provisions and agreements herein.
- H. The Artist shall have the right to cancel the Agreement within thirty (30) days after notice in writing to the City for non-payment.
- I. This Agreement is subject to cancellation for conflicts of interest under the provisions of A.R.S. § 38-511.

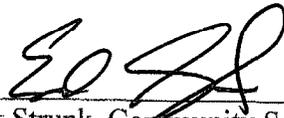
21. ENTIRE AGREEMENT. This Agreement shall constitute the entire agreement between the City and Artist. No oral representation has been made by any of the parties. This Agreement may not be amended, changed, modified or rescinded except in writing signed by all parties and any attempt at oral modification of this Agreement shall be void and of no effect.

22. SUCCESSORS AND ASSIGNS. This Agreement shall not be assignable except at the written consent of the parties.

excepted), performance of that act shall be excused, but only for the period of the delay. The time for performance of the act shall be extended for a period equivalent to the period of delay.

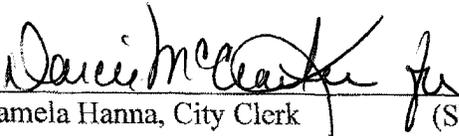
24. GOVERNING LAW. This Agreement shall be governed by and construed under the laws of the State of Arizona and any court actions related to this Agreement shall be filed in Maricopa County, Arizona.
25. FULL FORCE AND EFFECT. This Agreement shall be in full force and effect only when it has been executed by the duly authorized representatives of the Artist and the City.

CITY OF GLENDALE,
an Arizona municipal corporation



Erik Strunk, Community Services Director

ATTEST:



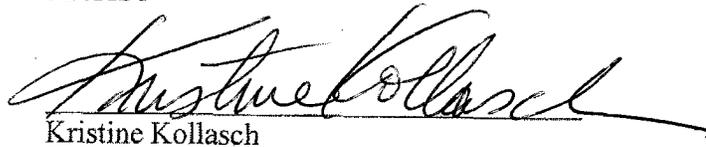
Pamela Hanna, City Clerk (SEAL)

APPROVED AS TO FORM:



Michael D. Bailey, City Attorney

ARTIST



Kristine Kollasch

**EXHIBIT A – ARTIST, TECHNICAL AND MAINTENANCE RECORD
TO BE SUBMITTED WITH FINAL INVOICE**

1. General Information

Artist

Title of Artwork

Location

General description of Artwork

2. Artist's Statement about Artwork – to be used for publicity of the Artwork.

3. Artwork Information – in depth information for the overall Project and for each individual element.

Medium and Description of Materials (include materials thickness, welding rod alloy or joint material, casting alloy, wax body, glass or fiber type)

Special Methods Utilized in Execution of Artwork (welding or joint method, technique or construction method – attach fabrication drawings)

Material Finish (glaze, paint color and type, sanding grit, tool pattern, patina, surface sealer)

Installation Method(s) (foundation installation structure, bolt/pin size, grout)

Placement of Artwork (cautions regarding sunlight, heat, etc.)

4. Vendors/Parts/Storage – include supplier's name, address and phone number, description for all components of Project; attach copies of manufacturer specifications whenever possible.

5. Regular Maintenance Schedule – include cleaning agents and recommended cleaning procedure, yearly maintenance schedule for the entire Artwork and recommended procedure to check any electrical or mechanical parts that are integrated in this Artwork.

6. Special Considerations and/or Additional Pertinent Information

7. Plaque Text

Artist's Name

Title of Artwork, Year Completed

Glendale Arts Commission, City of Glendale