

CITY CLERK ORIGINAL

C-7784
09/19/2011

ARTWERKS FIRST SATURDAY AGREEMENT

This Artwerks First Saturday Agreement ("Agreement") is entered into between the Fusion Foundation, an Arizona non-profit corporation ("Foundation"), and the City of Glendale, an Arizona municipal corporation ("City"), and is effective as of this 19th day of September, 2011 ("Effective Date").

RECITALS

- A. The City has designated the area bordered by 43rd, 67th, Ocotillo, and Myrtle Avenues in the corporate boundary of the City as the Centerline District ("District").
- B. The City wishes to enhance and complement the existing economic development activities within the District by transforming the District into a major artistic, tourism, and entertainment destination for the region.
- C. The City wishes to organize a series of free public performances and public artwork displays ("Activities") in the District on the first Saturday of every month and every Saturday between Thanksgiving and Christmas ("Artwerks First Saturday").
- D. The Foundation is experienced in assisting other municipalities in organizing and promoting Activities in Arizona.
- E. The City and Foundation wish to enter into this Agreement for the Foundation to assist the City in organizing and promoting the Artwerks First Saturday on the dates set forth in **Exhibit A**.

AGREEMENT

1. Obligations of the Parties.

1.1 City's Obligations.

- a. The City will make appropriate public spaces available for Activities at no cost to the artists on the dates set forth in **Exhibit A**.
- b. The City will timely approve the marketing and promotional plan ("Plan") for the Artwerks First Saturday.
- c. The City will pay Foundation a total amount of \$15,000 for services provided by the Foundation pursuant to this Agreement. The payment will be made in two installments. The first payment of \$7,500 will be paid on or before October 17. The second payment of \$7,500 will be made before January 7, 2012.
- d. The City will designate a City employee as the Artwerks Coordinator. The Artwerks Coordinator will supervise the Foundation's performance under this Agreement and perform other duties further described in this Agreement.

1.2 Foundation's Obligations.

- a. The Foundation will recruit and schedule qualified artists to participate in the Artwerks First Saturday Activities at no cost to the City. The Foundation will work with the Artwerks Coordinator to develop the criteria to identify a qualified artist.
- b. The Foundation will submit the participating artists to the Artwerks Coordinator for approval. For performing artists, the Foundation will submit the name of the artist(s) for approval at least 30 days before the

scheduled performance. For all other artists, the Foundation will submit the name of the artist for approval at least 14 days before the scheduled display day.

- c. The Foundation will develop the Plan with the Artwerks Coordinator within 30 days after the Effective Date.
- d. The Foundation will assist the City in finding additional sponsors to offset the cost of the Artwerks First Saturday. All sponsorships must be approved by the City and all revenues from the sponsors must be used to offset the cost of the Activities.
- e. The Foundation will meet with the Artwerks Coordinator at least once a week to discuss future Activities.

2. Indemnity and Insurance.

- 2.1 Foundation Indemnity. The Foundation will defend, indemnify, and hold harmless, the City, its officers, agents, servants, and employees from and against any and all loss, cost, expense, liability, damage for injury, including legal fees and disbursements, as a result of any claim or lawsuit for all damages or injuries of any kind or nature (including death) to all persons, and for all property damage to the extent caused by, resulting from, or arising out of, or in connection with the negligent, reckless, or intentional acts of the Foundation, its subcontractors, employees, servants, agents, officers, and party (excluding the City) with which the Foundation contracts for the purpose of performing its obligations under this Agreement.
- 2.2 City Indemnity. The City will defend, indemnify, and hold harmless the Foundation its officers, agents, servants, and employees from and against any and all loss, cost, expense, liability, damage for injury, including legal fees and disbursements, as a result of any claim or lawsuit for all damages or injuries of any kind or nature (including death) to all persons, and for all property damage to the extent caused by, resulting from, or arising out of, or in connection with the negligent, reckless, or intentional acts of Glendale or its subcontractors, employees, servants, agents, officers, out of Glendale's performance of, or failure to perform its obligations under this Agreement.
- 2.3 Third-Party Indemnity. The Foundation will warrant that in any agreement with any artist, subcontractor, or service provider, a provision containing the following or similar language: "The [Name of the artist, subcontractor, or service provider] will defend, indemnify, and hold harmless Glendale, its officers, agents, servants, and employees from and against any and all loss, cost, expense, liability, damage for injury, including legal fees and disbursements, any and all damage or injury of any kind or nature (including death) to all persons and to all property to the extent resulting from or caused by, or arising from, or arising out of the negligent, reckless, or intentional acts of the [Name of the artist, subcontractor, or service provider] or the employees, servants, agents, officers thereof, or the performance of or failure to perform its obligations under the Service Agreement or negligence in the performance of its obligations under such Agreement."
- 2.4 Insurance Requirements. Prior to commencing services pursuant to this Agreement and as long as this Agreement is in effect, the Foundation will secure and pay for insurance and submit for review evidence thereof to the City, in the ACORD certificate format or a form with the same format and including a 30 days' notice of cancellation, as follows:

- a. Occurrence form Commercial General Liability Insurance (Broad Form) to cover the Foundation's obligation to indemnify the City as set forth in this Agreement, although the existence of insurance will not be construed as limiting the liability of Foundation under this Agreement. Such insurance will name the City as an additional or named insured, as appropriate, with respect to operations performed under, or incident to this Agreement, including coverage for contractual liability and products/completed operations coverage issued by an insurance company licensed to conduct business in the State of Arizona with limits for each occurrence of \$1,000,000 combined single limit for bodily injury and property damage liability. Such commercial general liability insurance must be endorsed as Primary/Non-Contributory as to any insurance maintained by the additional named insureds and have a severability of interests clause. The Foundation expressly agrees to waive its rights, benefits, and entitlements under the "other insurance" clause of its commercial general liability insurance policy with respect to the City. All deductibles and retentions are the sole responsibility of the Foundation to pay and indemnify the City. With respect to such insurance, the Foundation will be the primary named insured with sole responsibility for fulfillment of the conditions of the policy, including, but not limited to, reporting of claims.
- b. An Excess Liability Policy providing the same coverage as set forth above in subsection (a) with the same additional insureds as the basic policy in the additional amount of \$5,000,000.
- c. The Foundation will provide its own Workers' Compensation coverage at the statutory limit, including Employer's Liability with limits of \$100,000 for each accident, \$100,000 for disease for each employee, and \$500,000 for each disease/policy limit.
- d. The Foundation will continue to provide its own Automobile Liability Insurance coverage.
- e. The insurance requirements in this section may be waived or reduced by the City's Risk Manager in writing.

3. Term.

- 3.1 Initial Term. The term of this Agreement will commence on the Effective Date, and unless otherwise terminated in accordance with the terms and provisions of this Agreement, this Agreement will terminate on May 30, 2012.
- 3.2 Early Termination. Either party to this Agreement will have the right to terminate this Agreement for the other party's failure to perform, after providing 30 days notice and a right to cure. Both parties may agree to early termination of this Agreement by written agreement of both parties.

4. General Provisions.

- 4.1 Notices. Unless otherwise specifically provided herein, all notices, demands, or other communications given hereunder will be in writing and will be deemed to have been duly delivered upon personal delivery as of the second business day after mailing by United States mail, postage prepaid, return receipt requested, or upon the next business day if delivered by Federal Express or similar overnight delivery system, addressed as follows:

To City: Justine Cornelius
Artwerks Coordinator
City of Glendale
5850 West Glendale Avenue
Glendale, Arizona 85301

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

To Foundation: Annie Loyd
President/CEO
2762 East Villa Rita Drive
Phoenix, Arizona 85032

The address to which any notice, demand, or other writing may be given, made, or sent to any party may be changed by written notice as provided in this section.

- 4.2 Defaults and Remedies. In the event a default should occur under any of the obligations of the City or Foundation as provided in this Agreement, each party will be entitled to exercise such rights or remedies as may be available pursuant to the terms of such document, at law or in equity, including without limitation, specific performance, except as such document may specifically limit such remedies.
- 4.3 Assignment or Changes in Ownership, Management and Control of the Foundation. The Foundation recognizes that the qualifications of its principals are of particular concern to the City and that it is because of such qualifications and identity that the City is entering into this Agreement. In recognition of Foundation's expertise and experience in community engagement, artistic event promotion and organization, the Foundation may not assign its rights under this Agreement without City's prior consent, which consent may be withheld in the City's sole and absolute discretion. Notwithstanding City's consent or assignment requiring no consent, any such assignment will not relieve the Foundation of any obligations. Moreover, no voluntary or involuntary successor-in-interest to the Foundation may acquire any rights under this Agreement except as expressly set forth in this section 4.3.
- 4.4 Institution of Legal Actions; Governing Law. Any legal actions instituted pursuant to this Agreement must be filed in the county of Maricopa, State of Arizona. The laws of the State of Arizona will govern the interpretation and enforcement of this Agreement.
- 4.5 Rights and Remedies Are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by any party of one or more of such rights or remedies will not preclude the exercise by it, at the same time, or different times, of any other rights or remedies for the same default or any other default by such defaulting party.
- 4.6 Conflict of Interests. No member, official, or employee of the City may have any direct or indirect interest in this Agreement, nor participate in any decision relating to this Agreement that is prohibited by law. This Agreement is subject to cancellation pursuant to the provisions of A.R.S. § 38-511.
- 4.7 Non-Liability of Officials, Partners, and Employees. No member, official, or employee of the City will be personally liable to the Foundation, or any successor in interest, in the event of any default or breach by the City, or for any amount which

may become due to the Foundation or successor, or on any obligation under the terms of this Agreement.

- 4.8 No Waiver. Except as otherwise expressly provided in this Agreement, any failure or delay by any party in asserting any of its rights or remedies as to any default, will not operate as a waiver of any default, or of any such rights, or remedies, or deprive any such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies. Nothing herein will constitute a waiver of the City's police powers or amount to an unlawful delegation of governmental authority by the City.
- 4.9 Severability. If any provision of this Agreement is found to be invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement will not be affected thereby and will be valid and enforceable to the fullest extent permitted by law, provided that the fundamental purposes of this Agreement are not defeated by such severability.
- 4.10 Entire Agreement; Waivers and Amendments. This Agreement may be executed in up to three duplicate originals, each of which is deemed to be an original. This Agreement and the below-listed Exhibit constitutes the entire understanding and agreement of the parties.

Exhibit A — Artwerks First Saturday Schedule

This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.

- 4.11 No Agency Created. Nothing contained in this Agreement creates any partnership, joint venture, or agency relationship between the City and Foundation. No term or provision of this Agreement is intended to be for the benefit of any person, firm, organization, or corporation not a party hereto, and no other person, firm, organization, or corporation may have any right or cause of action hereunder.
- 4.12 Immigration Law and Compliance.
- a. The Foundation, and on behalf of 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 subsection (a) above 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 of the Foundation or subcontractor employee who performs work under this Agreement to ensure that the Foundation or any subcontractor is compliant with the warranty under subsection (a) above.
 - d. The City may conduct random inspections, and upon request of the City, the Foundation will provide copies of papers and records of the Foundation demonstrating continued compliance with the warranty under subsection (a) above. The Foundation 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.

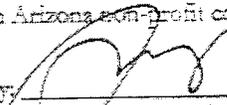
- e. The Foundation agrees to incorporate into any subcontracts under this Agreement the same obligations imposed upon the Foundation and expressly accrue those obligations directly to the benefit of the City. The Foundation also agrees to require any subcontractor to incorporate into each of its own subcontracts under this Agreement the same obligations above and expressly accrue those obligations to the benefit of the City.
- f. The Foundation'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.
- 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.

- 4.13 Prohibitions. The Foundation certifies under A.R.S. §§ 35-391 et seq. and 35-393 et seq., that it does not have, and during the term of this Agreement will not have, "scrutinized" business operations, as defined in the preceding statutory sections, in the countries of Sudan or Iran.
- 4.14 Modification. No modification, waiver, amendment, discharge, or change of this Agreement will be valid unless the same is in writing and signed by the party against which the enforcement of such modification, waiver, amendment, discharge, or change is or may be sought.
- 4.15 Attorneys' Fees. In the event either party commences litigation for the judicial interpretation, enforcement, termination, cancellation, or rescission hereof, or for damages for the breach hereof, then, in addition to any or all other relief awarded in such litigation, the prevailing party therein will be entitled to a judgment against the other for an amount equal to reasonable attorneys' fees, court, and other costs incurred.
- 4.16 Binding Agreement. Subject to any limitation on assignment elsewhere set forth herein, all terms of this Agreement will be binding upon, inure to the benefit of, and be enforceable by the parties hereto and their respective legal representatives, successors, and assigns.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Foundation and City have caused this Agreement to be executed as of the day first above written.

THE FUSION FOUNDATION,
an Arizona non-profit corporation

By: 
Printed Name: ANNIE BOYD
Its: Executive Director

CITY OF GLENDALE,
an Arizona municipal corporation


By: Eric Strunk
Its: Executive Director, Parks, Recreation, Library

ATTEST:

Pamela Hanna, City Clerk (SEAL)

APPROVED AS TO FORM

Craig Tindall, City Attorney

EXHIBIT A
SCHEDULE OF EVENTS

The Artwerks First Saturday will occur on the following dates:

- October 1, 2011
- November 5, 2011
- November 26, 2011
- December 3, 2011
- December 10, 2011
- December 17, 2011
- January 7, 2012
- February 4, 2012
- March 3, 2012
- April 7, 2012
- May 5, 2012

The Activities for each date will determined by the Artwerks Coordination with assistance from the Foundation.