

CITY CLERK ORIGINAL

C-7868
11/18/2011

CITY OF GLENDALE PUBLIC ART AGREEMENT

Photographs of Glendale Public Library

This Public Art Agreement ("Agreement") is entered into and effective the 18th day of November, 2011, by and between the City of Glendale, an Arizona municipal corporation ("City"), and **Brendan Regan**, an Independent Contractor ("IC").

RECITALS

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

NOW, THEREFORE, in consideration of these premises and of the mutual clauses and agreement herein contained, and the performance thereof, IC and the City contract and agree to the following terms.

AGREEMENT

1. Compliance with Laws.

- 1.1 IC will 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 maintaining valid business permits and licenses required to perform the work required under this Agreement at his own cost and expense.
- 1.2 IC further agrees to include foregoing provisions in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials. Any violation of such provisions will constitute a material breach of contract.

2. Terms of Payment and Timeline. The City will pay IC according to the following terms and conditions:

- 2.1 For services described in this Agreement, IC will receive a sum not to exceed **\$2,850.00**, which will be payment in full for materials, labor, installation, travel, taxes, insurance and any other expenses needed to perform the Artistic Services and complete the Project.
- 2.2 Payments will be paid in one installment. IC must submit an invoice to the City of Glendale Public Library, 5959 West Brown Street, Glendale, Arizona 85302. The invoice must include the description of all artwork as set forth in Exhibit A. Upon completion of services and City approval of work and billings, the City will make payment within thirty (30) days. Title and ownership transfer to the City upon IC's receipt of the payment.
- 2.3 Prior to commencing work under this Agreement, IC will submit to the City insurance documents as specified in Section 11. Upon request of IC, the City's Risk Manager may provide written waiver or modification to the insurance requirement.

3. Control. Artistic Services described in Exhibit A will be performed by IC. Any work done by assistants, other persons or other means must be under the direct control and supervision of IC. Quality of all work is subject to approval by the City.

4. **Instrumentalities.** IC will supply all equipment, tools, labor, materials and supplies to accomplish the designated tasks and services.
5. **Title of Project.** Title to all work created for the Project under this Agreement will become property of the City upon IC's receipt of the final payment under this Agreement. The City retains the option to return any part of the work to IC after Project completion.
6. **Ownership and Reproduction Rights of Public Artwork.**
 - 6.1 IC agrees that the City owns the original public artwork created for this Project. IC warrants that the design being commissioned and produced under this Agreement is the original product of IC's own creative efforts, the work is unique, it is an edition of one, it has not been accepted for sale elsewhere, and that the design will not be offered for sale elsewhere without the express approval of the City.
 - 6.2 IC will ensure that the design for the Project contains no material from other artworks or other copyrighted material without the prior written permission of the owner of such material where such other work is copyrighted or where such permission is otherwise required.
 - 6.3 The Project's designs, sketches, negatives and any other completed artwork created and submitted by IC to the City under the terms of this Agreement as described in Exhibit A, will be the property of the City.
 - 6.4 IC waives all rights to the Project 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.
 - 6.5 The City will have the sole right to display the Project and to display reproductions of the completed Project.
 - 6.6 The City will have the sole right to make, and to authorize the making of, photographs and other reproductions of the Project for educational, public relations, arts promotional and other noncommercial purposes. IC is authorized to reproduce the Project for educational, public relations, arts promotion and other noncommercial purpose. For the purposes of this Agreement, the following are among, but not limited to be reproductions for noncommercial purposes: brochures, pamphlets or promotional material pertaining to the City or IC; reproduction in books, slides, photographs, postcards, posters, and calendars; and film strips, websites and television intended for a mass audience.
 - 6.7 The City agrees all references to the Project will credit IC in an appropriate manner.
7. **Warranty.**
 - 7.1 IC warrants to the City that the composition and production of the Project will be performed in a workmanlike manner and that the Project will be free of defects in workmanship or materials, including inherent vice, and that IC will, at IC's own expense, remedy any defects found in the Project fabricated by IC due to faulty workmanship or materials for a period of one (1) year after the Project is accepted by the City.
 - 7.2 IC agrees to deliver and construct the Project free and clear of any liens and claims arising from any source.
 - 7.3 With the exception of damage due to vandalism or accident by any person other than IC or persons under their employ, direction or supervision, IC warrants that the Project will not contain any defect in design or assemblage 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 work, if necessary, to eliminate hazards or potential hazards which become apparent after the Project is accepted by the City.

8. Maintenance and Repairs.

- 8.1 The City agrees to ensure that the Project is maintained and protected to the extent practical. During the lifetime of the Project IC will supply at no cost to IC and at no charge to the City, advice as to problems arising in relation to maintenance of the Project.
- 8.2 The City will make every reasonable effort to consult with IC concerning repairs to the Project. To the extent practical, IC will 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.

9. Licenses and Taxes. No payroll or employment taxes of any kind will be withheld or paid with respect to payments to IC.

10. Claims Against the City. To the fullest extent permitted by law, IC will 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 IC, its agents, employees, or any other person (not the City) for whose acts, errors, mistakes, omissions, work, services, or professional services IC may be legally liable in the performance of this contract. It is IC's duty to hold harmless and indemnify the City, its agents, officers, officials, employees and volunteers will 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 contract by IC or any employee of IC, or any other person (not the City) for whose negligent acts, errors, mistakes, omissions, work, or services IC 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 paragraph.

11. Insurance.

- 11.1 Without limiting any of his obligations or liabilities, IC, at its own expense, will 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:
- 11.2 IC will 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 will 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.
- 11.3 The Commercial General Liability Insurance coverage required by this Agreement will name the City of Glendale as Additional Insured, and will specify that insurance afforded by IC will be primary insurance and that any insurance coverage carried by IC or its employees will be excess coverage and not contributory coverage to that provided by IC. IC will include all subcontractors as insured under this policy or will furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors will be subject to all of the requirements stated herein for IC.
- 11.4 Prior to commencing activities and services under this Agreement, except as noted above, IC will furnish the City with Certificates of Insurance, or formal endorsements as required by the Agreement issued by IC'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 will identify this Project and will 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 will be sent directly to:

City of Glendale
Attention: Risk Manager
5850 West Glendale Avenue
Glendale, AZ 85301

- 11.5 The City's Risk Manager may modify the insurance requirements identified above.
12. **Workers' Compensation.** No workers' compensation insurance has been or will be obtained by the City for IC.
13. **Immigration Law and Compliance.**
- 13.1 IC, 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.
- 13.2 Any breach of warranty under subsection 13.1 above is considered a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement.
- 13.3 The City retains the legal right to inspect the papers of any of IC or subcontractor employee who performs work under this Agreement to ensure that IC or any subcontractor is compliant with the warranty under subsection 13.1 above.
- 13.4 The City may conduct random inspections, and upon request of the City, IC will provide copies of papers and records of IC demonstrating continued compliance with the warranty under subsection 13.1 above. IC 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.
- 13.5 IC agrees to incorporate into any subcontracts under this Agreement the same obligations imposed upon IC and expressly accrue those obligations directly to the benefit of the City. IC 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.
- 13.6 IC'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.
- 13.7 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.
14. **Prohibitions.** IC certifies under A.R.S. §§ 35-391 *et seq.* and 35-393 *et seq.*, that he does not have, and during the term of this Agreement, will not have "scrutinized" business operations, as defined above, in Sudan or Iran.
15. **Communications.** Any communications and/or deliverables required under this Agreement will 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
Attention: Mojgan Vahabzadeh
5959 West Brown Street
Glendale, Arizona 85302

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

To IC: Brendan Regan
Independent Contractor
2942 West Cactus Wren Drive
Phoenix, Arizona 85051

16. **Dispute Resolution.** In the event of a dispute concerning this Agreement, the parties will meet in good faith to attempt to resolve the dispute.

17. **Right of Termination.**

- 17.1 The City and IC 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.
- 17.2 In the event the City will terminate or abandon the service or any part of the services as herein provided, the City will notify IC in writing, and immediately after receiving such notice, IC will discontinue advancing work under this Agreement and proceed to close said operations under the Agreement.
- 17.3 IC will appraise the services completed prior to notification of termination and submit an appraisal to the City for evaluation. The City will have the right to inspect IC's work to appraise the services completed. The City will not pay more than the corresponding progress payment set forth above for the percentage of the Project completed to that point in time.
- 17.4 IC will deliver to the City all Project-related work, including copies of photographs, drawings, concepts, plans, reports, calculations, writing and computer disks, created and prepared by IC specifically for this Project together with all unused materials supplied to IC by the City or from funds paid by the City.
- 17.5 In the event of such termination or abandonment, IC will be paid for services performed and materials ordered or purchased, prior to receipt of said notice of termination.
- 17.6 The City will make final payment within thirty (30) days after IC has delivered the last of the completed and/or partially completed items, all Project-related materials and a final invoice for the final fee that has been agreed upon by both parties.
- 17.7 In the event this Agreement is terminated or abandoned, the City may make use of the completed or partially completed work for this Project for the uses for which it was intended. Any use of incomplete work for this Project by the City following termination without specific written authorization by IC will be without responsibility or liability to IC.
- 17.8 In the event this Agreement is terminated, the City will have the option of completing the Project, or entering into an Agreement with another party for the completion of the Project according to the provisions and agreements herein.
- 17.9 IC will have the right to cancel the Agreement within thirty (30) days after notice in writing to the City for non-payment.

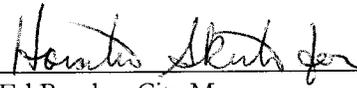
17.10 This Agreement may be canceled pursuant to the provisions of A.R.S. § 38-511.

18. **Entire Agreement.** This Agreement will constitute the entire agreement between the parties hereto. 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 hereto and any attempt at oral modification of this Agreement will be void and of no effect.
19. **Successors and Assigns.** This Agreement will not be assignable except at the written consent of the parties hereto.
20. **Force Majeure.** If either party will be delayed or prevented from the performance of any act required under this Agreement by reason of acts of God or other cause, including delays in schedule not caused by, beyond the control of and without fault of IC (financial inability excepted), performance of that act will be excused, but only for the period of the delay. The time for performance of the act will be extended for a period equivalent to the period of delay.
21. **Governing Law.** This Agreement will be governed by and construed under the laws of the State of Arizona and any court actions related to this Agreement will be filed in Maricopa County, Arizona.
22. **Execution.** This Agreement will be in full force and effect only when it has been executed by the duly authorized representatives of IC and the City.

The parties have executed this Agreement as of the listed effective date.

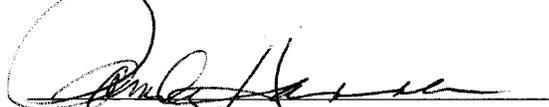
“City”:

CITY OF GLENDALE,
an Arizona municipal corporation



Ed Beasley, City Manager

ATTEST:



Pamela Hanna, City Clerk (SEAL)

APPROVED AS TO FORM:



Craig Tindall, City Attorney

“IC”:

BRENDAN REGAN,
an Independent Contractor



Brendan Regan

EXHIBIT A – PROPOSAL

(See Attachment Below)

Regan Photography
2942 West Cactus Wren Drive
Phoenix, AZ 85051

Bill To:

Glendale Public Library
5959 West Brown Street
Glendale, AZ 85302-1248

Invoice #: 00000093
Date: 8/15/11
Ship Via:
Page: 1

Description

Amount

Photographic Services as outlined below.
Glendale Public Safety Memorial
- Photographed
- 3 Edited Photographs - Overview and Detail
Territorial Sherriff
- Photographed
- One edited photograph - Overview
The Sun and the Moon
- Photographed
- One Edited Photograph - Overview
The Enlivened Pathway
- Photographed
- 4 edited photographs - Overviews and Details
Glendale History Walk
- Photographed
- 2 edited photographs - Overviews
Glendale: Strong Facility
- Photographed
- 4 edited photographs - Individual steel images

- Unlimited rights granted for all images.
- Images will be high resolution Tiff files.
- Time frame will be agreed upon after acceptance of proposal.

\$2,850.00

THIS IS A PROPOSAL AND NOT AN INVOICE.

Your Order #:
Shipping Date:
Terms: Net 30

Total Amount: \$2,850.00
Amount Applied: \$0.00
Balance Due: \$2,850.00



Registered Name

Information Search

Generated by TnT Names Search Version 3.11

Instructions

General Information

File ID	472061
Description	Trade Name
Status	Active
Name	REGAN PHOTOGRAPHY - KINVARA COMMUNICATIONS
Address 1	2942 WEST CACTUS WREN DRIVE
City	PHOENIX
State	AZ
ZIP	85051-
Business Type	COMMUNICATIONS
Domestic Begin Date	9/28/2009
Registered Date	10/6/2009

Agent/Owner Information

Agent ID	Type	Fullname	Address	City	State	ZIP	Phone
948398	Owner	BRENDAN REGAN	2942 WEST CACTUS WREN DRIVE	PHOENIX	AZ	85051-	

Registration Information

Received	Amended	Assigned	Expiration	Cancelled	Revoked
10/6/2009			10/6/2014		

Correspondence History

Description	Date	Printed	Filmed	Loc. No.	Page No.	Pages
Application	10/6/2009	10/6/2009 10:39:29 AM				1

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