

CITY CLERK ORIGINAL

C-7991
04/13/2012

CITY OF GLENDALE PERSONAL SERVICES CONTRACT WITH ANGELA ELLSWORTH AND GREGORY SALE

This Personal Services Contract ("Contract") is entered into this 13th day of April, 2012 between the City of Glendale, an Arizona municipal corporation ("City"), and Angela Ellsworth and Gregory Sale, as Independent Contractors ("IC"), for the performance of certain musical and public arts tasks.

WHEREAS, the parties desire to enter into a Contract;

WHEREAS, IC declares that IC is engaged in an independent business and has complied with all federal, state and local laws regarding business permits and licenses required to carry out the said business and the tasks to be performed under this Contract; and

WHEREAS, IC declares that IC holds services out to the public as a separate business entity from City and is not in business for the purpose of providing services solely to City.

NOW, THEREFORE, in consideration of the foregoing representations and the following terms and conditions, the parties agree:

1. SERVICES TO BE PERFORMED. By this Contract, City contracts with IC to perform the following tasks or services:

- a. The IC will serve as the arts education team for the "Something to Write Home About" public art project.
- b. This public art project will occur on April 14 and 15, 2012, during the Glendale Jazz and Blues Festival.
- c. The IC will oversee students involved in performance and temporary public art who will produce a series of projects that will unfold over the two-day festival. Twenty-eight students will present various interactive performances and installations that respond to the culture of jazz and blues and the community of Glendale, the social dynamics of the festival setting and/or an organizing concept of home. They will address public and private space by activating the interior, exterior, and shared space around two structures.
- d. The IC shall report to Mojgan Vahabzadeh, Public Art Coordinator for the City or other City staff as directed.

2. TERMS OF PAYMENT. City will pay IC according to the following terms and conditions:

- a. In consideration for the services described herein, the City shall pay compensation in the total amount of \$12,000. \$6,000.00 of that total will be payment for IC. Payments will be paid to IC in two installments. The first installment is not to exceed \$4,000 and will be paid upon the signing of this Contract. The second installment of \$2,000 will be paid within thirty (30) days after IC has satisfactory completed all work required herein
- b. However, the City will not pay the second installment until it has received a signed accounting statement that the remaining \$6,000.00 has been properly and appropriately distributed to the students involved in the musical and public arts project. No single

student is to be paid more than \$500.00. IC will be responsible for distribution of funds to the students. Upon payment to students, IC will provide Mojgan Vahabzadeh with the names and contact information of all paid students, along with the amount paid to each student.

3. INSTRUMENTALITIES. IC will supply all equipment, tools, materials and supplies. City and IC further agree that any travel costs incurred by IC should not be paid for or reimbursed by the City.

4. CONTROL. Tasks and services described in Section 1 of this Contract are personal services and, therefore, IC will personally perform all requirements of this Contract. City understands that IC will supervise assistants to complete the tasks and services described in Section 1 of this Contract.

5. TAXES. No payroll or employment taxes of any kind will be withheld or paid with respect to payments to IC. City is not responsible for the payment of any kind for any of IC tax obligations. The payroll or employment taxes that are the subject of this section include, but are not limited to FICA, FUTA, federal personal income tax, state personal income tax, state disability insurance tax and state unemployment insurance tax. IC is required to be licensed, and to report and pay all city, county, and state privilege, sales, or excise taxes.

6. WORKERS' COMPENSATION. No workers' compensation insurance has been or will be obtained by City for IC or any employee working for or on behalf of IC.

7. COPYRIGHT. All rights for the documentation owned by the City will be waived by the IC under the Visual Art Rights Act of 1990, and any successor act except the IC reserves all rights under Sec 106 of the Copyright Act of 1976. The IC shall retain ownership and possession of any original sketches, drawings, or paintings created in connection with the completion of the temporary public artwork. The City shall be granted and shall possess an exclusive license to publish any likeness, including, but not limited to photographs, drawings, and electronic reproductions of IC's temporary artwork. The City shall be granted and shall possess an exclusive license to publish any likeness, including, but not limited to photographs, drawings, and electronic reproductions of the IC's temporary public artwork under this Contract in conjunction with advertisements, publicity, promotions, websites, or other forms of media without additional payment to the IC.

8. TERMINATION. This Contract may be terminated by either party upon fifteen (15) days written notice. If City terminates this Contract for any reason other than for cause prior to completion of the required work by IC, City will compensate IC for the reasonable value of the work at the time of receipt of notice (which will be deemed to be five days after posting with the USPS). If IC terminates this Contract for any reason other than for cause prior to completion of the work, IC will be due no money under this Contract.

9. IMMIGRATION LAW COMPLIANCE.

- a. IC, and on behalf of any allowable 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 9(a) above is considered a material breach of this Contract and is subject to penalties up to and including termination of this Contract.
- c. The City retains the legal right to inspect the papers of any IC or subcontractor employee who performs work under this Contract to ensure that IC or any subcontractor is compliant with the warranty under subsection 9(a) above.

- d. The City may conduct random inspections, and upon request of City, IC must provide copies of papers and records of IC demonstrating continued compliance with the warranty under subsection 9(a) above. IC agrees to keep papers and records available for inspection by City during normal business hours. IC must cooperate with 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. IC must incorporate into any subcontract agreements that are allowable under this Contract, if any, the same obligations imposed upon IC and expressly accrue those obligations directly to the benefit of City.
- f. IC's warranty and obligations under this section to the City is continuing throughout the term of this Contract or until such time as 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.

10. PROHIBITION. IC 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 Contract will not have, "scrutinized" business operations, as defined in the preceding statutory sections, in the countries of Sudan or Iran.

11. CONFLICT. IC acknowledges this Contract is subject to A.R.S. § 38-511, which allows for cancellation of this Contract in the event any person who is significantly involved in initiating, negotiating, securing, drafting, or creating the Contract on City's behalf is also an employee, agent, or consultant of any other party to this Contract.

12. INDEMNIFICATION.

- a. To the fullest extent permitted by law, IC must defend, indemnify, and hold harmless City and its elected officials, officers, employees and agents (each, an "Indemnified Party," collectively, the "Indemnified Parties"), for, from, and against any and all claims, demands, actions, damages, judgments, settlements, personal injury (including sickness, disease, death, and bodily harm), property damage (including loss of use), infringement, governmental action and all other losses and expenses, including attorneys' fees and litigation expenses (each, a "Demand or Expense"; collectively, "Demands or Expenses") asserted by a third-party (i.e. a person or entity other than City or IC) and that arises out of or results from the breach of this Contract by IC or IC's negligent actions, errors or omissions (including any Sub-contractor or other person or firm employed by the IC), whether sustained before or after completion of the tasks and services described in Section 1 of this Contract.
- b. This indemnity and hold harmless provision applies even if a Demand or Expense is in part due to the Indemnified Party's negligence or breach of a responsibility under this Contract, but in that event, IC will be liable only to the extent the Demand or Expense results from the negligence or breach of a responsibility of IC or of any person or entity for whom the IC is responsible.
- c. IC is not required to indemnify any Indemnified Parties for, from, or against any Demand or Expense resulting from the Indemnified Party's sole negligence or other fault solely attributable to the Indemnified Party.

13. INTEGRATION. This Contract contains, except as stated below, the entire agreement between City and IC and supersedes all prior conversations and negotiations between the parties regarding this Contract.

14. SURVIVAL. Except as specifically provided otherwise in this Contract each warranty, representation, indemnification and hold harmless provision, insurance requirement, and every other right, remedy and responsibility of City or IC, will survive the termination of this Contract.

15. SEVERABILITY. If any provision of this Contract is voided or found unenforceable, that determination will not affect the validity of the other provisions, and the voided or unenforceable provision will be reformed to conform to applicable law.

“CITY:”

CITY OF GLENDALE,
an Arizona municipal corporation



Ed Beasley, City Manager

ATTEST:



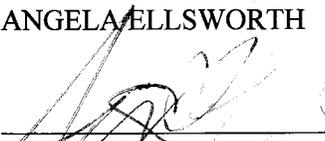
City Clerk (SEAL)

APPROVED AS TO FORM:



City Attorney

“IC:”

ANGELA ELLSWORTH


Angela Ellsworth

GREGORY SALE


Gregory Sale