CITY CLERK
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C-10599
01/14/2016

ARTIST CONTRACT
Between
TROY MOODY
And
CITY OF GLENDALE

This Artist Contract ("Agreement"), is entered into as of January 14, 2016 ("Effective Date"), between Troy Moody, an individual ("Artist"), and the City of Glendale, an Arizona municipal corporation ("City").

RECITALS

A. The City desires to participate in the In Flux Event ("Event") to be held at the Westgate Entertainment District, owned and operated by The New Westgate, LLC ("Westgate").

B. Participation in the Event is funded by the City of Glendale Public Art Fund;

C. The City is authorized to hire an artist to display a temporary original artwork at the Event;

D. The Artist has been selected through a competitive process; and

E. The City and the Artist desire to memorialize their understandings with this Agreement.

AGREEMENT

The City and the Artist agree as follows:

1. **Project.** The Artist will complete the temporary, original artwork ("Artwork") as described in the Project attached as **Exhibit A.**

2. **Location.** The Event will be held at Westgate, more specifically, in the storefront property located at 9380 West Westgate Blvd., Suite D-102, Glendale, Arizona ("Location"). The Artwork will be displayed at this Location.

3. **Terms.** The Artist will complete the Artwork on or before February 30, 2016 and the Artwork will remain displayed through September 30, 2016, unless this Agreement is terminated earlier.

4. **Access.** Westgate and the City will have full access to the Location. Artist will have reasonable access to the Location to set up and remove the Artwork.

5. **Media.** The Artist will make reasonable efforts to be available for media and marketing opportunities to promote the Artwork at the Event.

6. **Compensation.** The City will pay the Artist as follows:

   6.1 An amount not to exceed $4,000 paid in two installments.

   6.2 The first installment will be $2,000 due within 14 calendars days of the effective date of this Agreement.

   6.3 The second installment will be $2,000 due upon completion of the installation of the Artwork at the Location to the satisfaction of the City.

7. **Payroll or Employment Taxes.** No payroll, employment, or taxes of any kind shall be withheld or paid by the City, with respect to payments to the Artist, or otherwise. The Artist will be solely responsible for reporting and paying any applicable sales, privilege, use or excise tax which may be payable in relation to this Agreement.

8. **Termination.**

8.1 This Agreement shall remain in full force and effect until September 30, 2016, unless otherwise provided under the terms of this Agreement.

8.2 The City reserves the right to terminate this Agreement with or without cause at any time.

9. **Conflict.** This Agreement is subject to cancellation pursuant to A.R.S. § 38-511.

10. **Independent Contractor.** The Artist shall be and act as an independent contractor and under no circumstances shall this Agreement be construed as an agency, partnership, joint venture or employment between the Parties.

11. **Discrimination.** The Artist agrees to not discriminate against any person in any manner or form in the performance of this Agreement.

12. **Workers' Compensation.** No workers' compensation insurance has been or will be obtained by the City to benefit the Artist or the Artist's employees. The Artist will comply with the workers' compensation laws with respect to the Artist and Artist's employees.

13. **Indemnification.** The Artist agrees to indemnify and hold harmless the City, and all of its officials, agents, employees for all acts or failure to act of any kind or nature by the Artist or anyone under the Artist's control or supervision, for any and all claims or causes of action arising from services performed or to be provided or performed under this Agreement, including any damage to the Artwork, to the full extent permitted by law.

14. **Insurance.** The Artist must obtain and maintain the following insurance ("Required Insurance"):

14.1 Minimum Scope and Limit of Required Insurance. Coverage shall be on an "occurrence" basis, covering Commercial General Liability ("CGL"), including products-completed operations, personal & advertising injury, with limits no less than **$1,000,000** per occurrence.

14.2 Other Insurance Provisions. The CGL policy is to contain, or be endorsed to contain, the following provisions:

a. The City, its officers, officials, employees, and volunteers are to be covered as additional insured's with respect to liability arising out of the use of the Location, including work or operations performed by or on behalf of the Artists and materials, parts, or equipment furnished in connection with such work or operations.

b. For any claims related to this Agreement, the Artist's insurance coverage will be the primary insurance and any insurance or self-insurance maintained by the City shall be excess of the Artist's insurance and shall not be considered or applied as contributory.

c. The Insurance Company agrees to waive all rights of subrogation against the City for losses paid under the terms of any policy covering the facility rental or any activities of the Artists, his guests, agents, representatives, employees or subcontractors. This provision applies whether or not the City has received a waiver of subrogation endorsement from the insurer.

14.3 Acceptability of Insurers. Required Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise authorized by the City.

14.4 Verification of Coverage. The Artist will furnish the City with original certificates and amendatory endorsements effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City at least five days before the Artist begins to display the Artwork at the Location.

15. **Damage to Personal Property.**

    15.1 The City, its council, agents, employees, volunteers and representatives will not be liable for any loss or damage caused by loss or damage caused by, but not limited to, fire, flood, earthquake or theft of his/her personal property, regardless of how such loss or damage may have occurred.

    15.2 "Personal Property" may include, but is not limited to, the Artwork, display equipment and other art-related materials stored at the Location.

    15.3 The Artist is responsible to obtain insurance for the Artwork and his/her own Personal Property stored at the Location.

    15.4 The Artist waives any right to subrogation against the City for loss or damage to the Artist's Personal Property.

16. **Copyrighted Material.** The Artist agrees not to display any copyrighted materials owned by others without first obtaining (at his/her own expense) all necessary rights and licenses and paying in full all required royalties or other fees.

17. **Entire Agreement.** The Parties agree that this document contains the entire agreement between the Parties. The Artist has fully read, understands and agrees to be bound to all terms in this Agreement.

18. **Jurisdiction.** This Agreement will be governed, construed and interpreted by the laws of the State of Arizona without regard to conflicts or choice of law provisions. Any action to enforce any provision of this Agreement or to obtain any remedy hereunder will be brought in the Superior Court, Maricopa County, Arizona. The prevailing party, whether by settlement or trial, shall be entitled to reasonable attorneys' fees and costs, in addition to any other available remedy.

19. **Compliance with law.** The Artist will comply with all federal, state and local laws regarding business permits and licenses of any kind that may be required to comply with this Agreement.

20. **Amendment.** This Agreement cannot be amended except in writing and signed by both Parties.

21. **Assignment.** The Artist will not sublet or assign all or parts of this Agreement, or the rights provided to it herein, nor permit individuals other than employees or representatives to use the facilities provided, without the express written consent of the City not less than 15 days prior to the Event.

22. **Title and Ownership.** Title to all works created under this Agreement will be and will remain the property of the Artist, except that the City shall retain ownership of, and have the unlimited right to possession and use, the digital image of the Artwork. "Digital Image" is defined as the original visual image, a reproduction, a published reproduction, or a copy of a published reproduction.

23. **Survival Clause.** Except as otherwise provided, all agreements, representations, and warranties set forth in this Agreement shall survive the expiration or earlier termination of this Agreement for a period of one (1) year.

24. **Notices.** All notices under this Agreement shall be in writing and hand-delivered or mailed via U.S. Mail, electronic mail or fax, to the following:

"Artist"	Troy Moody 1127 West 17th street Tempe, Arizona 85281 troymoody@yahoo.com (480) 707-3127

"Artist":

Troy Moody

"City":

CITY OF GLENDALE

1.14.16

Erik Strunk, Director
Community Services Department

ATTEST:

City Clerk (SEAL)

APPROVED AS TO FORM:

Michael D. Bailey
City Attorney

"City"

City of Glendale
Attn: Mojgan Vahabzadeh
Public Arts Coordinator
5959 West Brown Street
Glendale, Arizona 85302
mvahabzadeh@glendaleaz.com
(623) 930-3557

With required copies to:

City of Glendale
City Manager
5850 West Glendale Avenue
Glendale, Arizona 85301

City of Glendale
City Attorney
5850 West Glendale Avenue
Glendale, Arizona 85301

25. **Severability.** If any part of this Agreement is found by a court to be unenforceable, the remaining provisions shall, nonetheless be enforceable to the extent allowed by law.

(The remainder of this page left blank intentionally. Signatures appear on the following page.)

PROJECT

EXHIBIT A

1. The artist agrees to design, fabricate, or otherwise construct the temporary, original artwork, titled "A Veiled Aesthetic," as presented to and approved by the Glendale Arts Commission on Thursday, November 19, 2015 ("Artwork"). Fabrication will be undertaken at the Artist's studio and onsite, as needed.
2. The Artist agrees to transport, deliver, and install the Artwork at the Location. The Artist will supply all equipment, tools, materials and supplies to install the Artwork.
3. The Artwork will remain installed for viewing by the public at Location from February 30, 2016 to September 30, 2016, unless this Agreement is terminated earlier under the provisions of the Agreement.
4. The Artist agrees to remove the Artwork from the Location following the completion of the Agreement. The Artist will supply all equipment, tools, materials and supplies to remove the Artwork. When removing the Artwork, the Artist will return the Location to a clean condition, in its original or better state.