

CITY OF GLENDALE PUBLIC ART AGREEMENT

This Artist Contract (“Agreement”), is entered into as of the _____ day of October, 2022 (“Effective Date”), between John Randall Nelson, an individual (“Artist”), and the City of Glendale, an Arizona municipal corporation (“City”).

RECITALS

- A. WHEREAS, the City requires certain public art services pursuant to the terms of this Agreement, hereinafter called the “Artist’s Services,” as more specifically defined herein; and
- B. WHEREAS, the trained personnel needed for such Artist’s Services are not available within the City; and
- C. WHEREAS, the City desires to retain the Artist to perform Artist’s Services for the City at the Sierra Verde Park well site, located at 71st Avenue and Rose Garden Lane, Glendale, Arizona 85308 (the “Site”); and
- D. WHEREAS, the Artist desires to provide Artist’s Services for the City.

NOW, THEREFORE, in consideration of these premises and of the mutual clauses and agreement herein contained, and the performance thereof, the Artist and the City contract and agree as follows:

NOW, THEREFORE, in consideration of these premises and of the mutual clauses and agreement herein contained, and the performance thereof, the Artist and the City contract and agree as follows:

AGREEMENT

1. TERM.

- 1.1 This Agreement shall be effective on the date that this contract has been signed by both parties, and, unless terminated earlier pursuant to such provisions in the Agreement, shall extend until final acceptance of the Artwork by the City, or submission of final payment to the Artist by the City, whichever is later. Extension of time of performance hereunder may be granted upon the request of one party and the consent of the other thereto, which consent shall not be unreasonably withheld. Such extension shall be in writing, signed by both parties.
- 1.2 Force Majeure. If either party shall be delayed or prevented from the performance of any act required under this Agreement by an unforeseeable event, including delays in schedule not caused by, beyond the control of and without fault of the Artist (financial inability 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.

2. **ARTIST'S SERVICES.** The Artist's Services for the Artwork shall be as follows:

- 2.1 The City of Glendale is constructing a new well at Sierra Verde Park (the "Site"). The Artist will design, fabricate, and install original and site-specific Artwork for the enclosure walls of the new well (see Exhibit A).

The Artist, in coordination with Arts & Culture staff, will meet with the Glendale Water Services project team, members of the community and the well site design team prior to developing Artwork design concepts. The Artist will develop two design concepts that will be presented to the Arts Project Panel for review, selection, and recommendation to the Glendale Arts Commission and to the Glendale City Council for approval. Artist acknowledges that it is an essential element of the Artist's Services to coordinate with the City as well as any construction project contractors and other persons who may be involved with the development of the Site and Artwork design, fabrication, installation, and completion. For design, fabrication and installation of all public art elements, the artist must adhere to the project timeline as presented to the Artist by the Arts & Culture staff. Artwork installation must adhere to the designated areas and measurements as specified by the Arts & Culture staff. The City's right to approve or reject the design will be at the City's sole discretion. If the City determines that the proposed design is unacceptable, the Artist will be afforded an opportunity to submit an alternate design proposal within a reasonable period of time specified by the City. Artist acknowledges City approval of design is a requirement prior to commencement of fabrication. The Artist will submit any construction documents, including engineering stamps, required by the City in accordance with the City's construction schedule. Artist will contract with any and all fabricators required to create his artwork and provide City staff, primarily Arts & Culture staff, access to review progress of fabrication. Artist will contract with any and all installers required to install the Artwork and meet all City requirements to work on-site.

- 2.2 The Artist shall report to Mojgan Vahabzadeh, Arts & Culture Program Manager, or other staff as directed in writing.

2.3 The Artist shall:

- A. Secure any and all required licenses, permits and similar legal authorization at the Artist's expense as may be necessary for the completion of the Artwork.
- B. Design and fabricate the Artwork in accordance with the Artist's City-approved design and subsequent discussions between the Artist and the City.
- C. Perform all services and furnish all supplies, materials, tools, labor, and equipment as necessary for the design, fabrication, transportation, installation, and completion of the Artwork. Services shall be performed in a professional manner and in strict compliance with all terms and conditions in this Agreement including any scheduled dates.
- D. Determine the artistic expression, design, dimensions and materials of the Artwork, subject to review and acceptance by the City. The Artist will do so in a manner that ensures that the Artwork as installed shall not interfere with the intended use of the Site, pedestrian and other traffic flow, parking, safety devices and procedures, and other needs and functions of the Site as defined by City.
- E. Be responsible for providing the Artist's Services including, but not limited to, the quality and timely completion of the Artwork without exceeding the total budget.

- F. Prior to the execution of any change in the approved design, present proposed changes in writing to the City for further review and approval. The Artist must provide a detailed description of any significant changes in the artistic expression, design, dimensions or materials of the Artwork. A significant change is any change in the concept of the Artwork as represented in the design or which materially affects installation, scheduling, site preparation or maintenance of the Artwork.
- G. If the Artwork is being constructed on site, avoid creating nuisance conditions arising out of the Artist's operations.

2.4 The City shall have the right to review the Artwork at reasonable times during the fabrication and installation thereof upon reasonable notice.

3. **TERMS OF PAYMENT AND TIMELINE.** The City shall pay the Artist according to the following terms and conditions:

3.1 For all services described in this Agreement, the Artist shall receive a sum not-to-exceed \$140,000.00, which shall be all inclusive and payment in full for materials, labor, work, permits, inspections, installation, travel, taxes, insurance and any other expenses needed to complete the Artist's Services and Artwork. Artist shall produce construction documents, if applicable, for the completion of Artist's Services. Payment for any sub-consultants to produce construction documents, including the structural engineer and electrical engineer, shall be the responsibility of the Artist.

3.2 Payments shall be paid in three installments. For each payment, the Artist shall submit an invoice to Arts & Culture staff by emailing the invoice to publicart@glendaleaz.com for labor and services at intervals stipulated in this Section 3 of the Agreement (See Exhibit B for invoice format). City will make payments within thirty (30) days of receipt of each invoice. Prior to commencing work under this Agreement, the Artist shall submit to the City Insurance documents as specified in Section 12.

- A. Initial payment - \$35,000 (25%) - Shall be paid upon execution of this contract.
- B. Second payment - \$70,000 (50%) - Shall be paid upon City approval of Artwork design
- C. Final payment - \$35,000 (25%) - Shall be paid upon Artist's completion and City's acceptance of 100% of the installed Artwork, estimated to be completed by October 30, 2022. The invoice shall be labeled as "final". The final invoice submitted by the Artist shall be submitted along with the Artistic, Technical and Maintenance Record set forth in Exhibit D. Title and ownership of Artwork transfer to the City upon Artist's receipt of this final payment.

3.3 In the event Artist incurs costs in excess of the maximum compensation set forth in this Section 3, Artist shall pay such excess from Artist's own funds. City shall not be required to pay any part of such excess and Artist shall not have any claim against City on account of any cost overruns or delays.

3.4 If at any time the City, upon review of the Artwork, determines that the Artwork does not conform to the approved final design or this Agreement, the City reserves the right to notify the Artist in writing of the deficiencies and that the City intends to withhold the next payment within 30 days of the determination. The Artist will have 30 days to cure the City's objections

and will notify the City in writing of completion of the cure. If the Artist disputes the City's determination, within 15 days of Artist's receipt of City's notice, Artist shall notify the City in writing. In such event, the City shall make reasonable efforts to resolve the dispute however, final determination as to whether Artist has complied with the terms of this Agreement will remain with the City.

3.5 The Artist shall notify the City in writing when all services as required of both Parties by this Agreement have been completed in substantial conformity with the Design and contract documents.

3.6 The City shall promptly notify the Artist in writing of its final acceptance of the Artwork. The effective date of final acceptance shall be the date the City submits written notice to the Artist of its final acceptance of the Artwork. Final determination as to whether all services have been performed according to this Agreement shall remain with the City.

4. **CONTROL.** Artist's Services described in Sections 2 and 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 work is subject to approval by the City.

5. **RISK OF LOSS; DELIVERY AND INSTALLATION; INSTRUMENTALITIES.**

5.1 Artist shall assume all risk of loss or damage to the Artwork prior to installation and completion. The Artist shall take such measures as are reasonably necessary to protect the Artwork from loss or damage. The Artist agrees to deliver and construct the Artwork free and clear of any liens and claims arising from any source.

5.2 Artist shall deliver Artwork in good condition and shall control installation. In the event of physical loss or damage to the Artwork prior to installation or completion, the Artist shall rectify the loss or damage by repair, restoration, replacement or other appropriate means as soon as possible at no additional cost to the City.

5.3 The Artist shall be required to inspect the Site prior to the transportation and installation of the Artwork and shall notify the City of any adverse conditions that will impact the installation of the Artwork and which need correction. Failure to do so by the Artist shall be deemed as an acceptance of the conditions.

5.4 The Artist is responsible for timely installation of the Artwork. Artist may not install the Artwork until authorized to do so by the City.

6. **TITLE TO WORK; REMOVAL OR RELOCATION; WARRANTIES BY ARTIST.**

6.1 Title to the Artwork and all work created by Artist's Services under this Agreement will become property of the City upon the Artist's receipt of the final payment under this Agreement. The City shall have the right to reproduce the Artwork as provided in this Agreement and outlined in Section 7.

6.2 Notwithstanding any provision of law, including but not limited to VARA, the parties agree that removal, destruction, or relocation of the Artwork may occur in accordance with the

City's "Guidelines for Review and Disposition of Art." Circumstances may arise that would make it prudent or desirable for the City to remove the Artwork from public display. The Parties hereby acknowledge that (i) the Artwork when installed shall be incorporated within and made a part of the Project in such a way that removing the Artwork from the Project, or destruction or modification of the Project, may cause the destruction, distortion, mutilation, or other modification of the Artwork; and (ii) the Artwork shall be the property of the City.

The City agrees that it will not consent to intentional alteration, modification, change, destruction of or damage to the Artwork without consulting the Artist; provided, however, that notwithstanding the foregoing and the rights of integrity conferred by 17 U.S.C Section 106(A)(a) and any other similar rights granted by federal or state law the City shall have the right, consistent with its ownership of the Artwork, to alter, modify, change, or destroy the Artwork after reasonable consultation with the Artist. "Alteration" of the Artwork includes, but is not limited to, a change in the interrelationship or relative locations of parts of the Work.

In the event of any alteration or damage, whether intentional, accidental, within or without the control of the City or otherwise, the Artist shall have the right to disclaim authorship of the Artwork; and upon written request of the Artist to the City shall remove the identification plaque at its expense. The Artist may take such other action as he may choose in order to disavow the Artwork. Because the Artwork is site specific, any alteration or removal without the Artist's permission will effectively destroy the Artwork.

Notwithstanding the foregoing, and to the extent practicable, the Artist shall have the opportunity to comment on all repairs to and restorations of the Artwork made during the Artist's lifetime. The City will give written notice to the Artist prior to undertaking repairs or restoration of the Artwork, and the Artist shall have thirty (30) days from the date that the notice is sent by the City to advise the City, as specified in the notice, of the Artist's wish to so comment. Notice will only be sent by the City to the address provided by the Artist, in keeping with the Communications provision of this Agreement in Section 16. Artist understands that the City's repairs and restoration of the Artwork will be limited and determined in significant part by funding decisions of the City, in which decisions Artist shall have no say or control. If Artist is not available to comment on repairs or restoration, the City agrees that any repairs and restorations will reasonably retain the Artist's conceptual intent.

6.3 Warranties of Title: The Artist represents and warrants that:

- A. The Artwork is and will be the original product of Artist's own creative efforts, is a unique single edition and does not infringe on any third party's copyrights or other intellectual property rights or the rights of any person. The Artwork (or duplicate thereof) has not been accepted for sale elsewhere;
- B. The Artist has not sold, assigned, transferred, licensed, granted, encumbered or utilized the Artwork or any element thereof or any copyright related thereto which may affect or impair the rights granted pursuant to this Agreement;
- C. The Artwork is free and clear of any liens from any source whatsoever.
- D. The Artist has the full power to enter into and perform this Agreement and to make the grant of rights contained in this Agreement; and
- E. All services performed hereunder shall be performed in accordance with all applicable laws, regulations, ordinances, etc. and with all necessary care, skill, and diligence.

6.4 These representations and warranties shall survive the termination or expiration of this Agreement.

7. OWNERSHIP, INTELLECTUAL PROPERTY, AND REPRODUCTION RIGHTS OF PUBLIC ARTWORK.

7.1 The Artist shall ensure that the design for the Artwork 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.

7.2 Except in the event of a termination of this Agreement by the City or as otherwise provided in this Agreement, the Artist retains: (i) all rights accruing under the Copyright Act of 1976, 17 U.S.C. § 106A, the Visual Artist Rights Act of 1990 ("VARA"); and (ii) all other rights expressly granted in this Agreement, as well as any and all other intellectual property rights in the Artwork, whether statutory or common-law, international, federal, state or local, except as provided in this Agreement.

7.3 The Artist may at the Artist's expense cause to be registered, with the United States Register of Copyrights, a copyright of the Artwork in the Artist's name. If such copyright is obtained, the Artist shall provide the City with a copy of the application for registration, the registration number, and the effective date of registration.

7.4 The Artist hereby grants the City a perpetual, non-exclusive, and royalty-free right and license to use and display all work products produced under or as a result of this Agreement, and any reproductions of such work products, and to loan such work products to other institutions with authority to display it publicly, including use on the internet and other electronic formats.

7.5 The Artist hereby non-exclusively licenses and authorizes the City to make, and to authorize the making of, photographs and other two-dimensional representations of any work products that result from the provision of the Services provided for hereunder for educational, public relations, arts promotional and other non-commercial purposes. For the purposes of this Agreement, the following are among those deemed to be reproductions for non-commercial purposes: brochures and pamphlets pertaining to the City; City-purchased advertising that promotes programs and services of the City; reproductions in exhibition catalogues, books, slides, photographs, postcards, posters, and calendars; reproductions on the internet and other electronic formats; reproductions in art magazines, art books and art and news sections of newspapers; reproductions in general books and magazines not primarily devoted to art but of an educational, historical or critical nature; reproductions in slides and film strips not intended for a mass audience; and reproductions on television from stations operated for educational purposes or on programs for educational purposes from all stations. Whenever possible, on any (or all) reproductions, the City will place a copyright notice in the form and manner required to protect the copyright in the results of the Services, as applicable, compliant with Section 401 of the Copyright Act of 1976 as amended, or any successor Act.

7.6 Notwithstanding the foregoing or any other provision of this Agreement, the City will own the finished final Artwork and all models, mock-ups, and material samples created by the Artist

as part of the services provided by the Artist under this Agreement. The Artist hereby assigns to the City all ownership, right (including copyright(s)), title, and interest in and to such models, mock-ups, and material samples.

8. ARTIST’S WARRANTIES OF QUALITY AND CONDITION.

- 8.1 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, fabrication, materials or installation, including inherent vice, and that the Artist will, at the Artist’s own expense, remedy any defects found in the Artwork due to faulty workmanship, fabrication, materials or installation for a period of two (2) years after the final acceptance of the Artwork by the City. Artist shall repair or replace in the City’s sole discretion and at no additional cost to the City any portion of the Artwork that is found to be defective during the warranty period.
- 8.2 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 C.
- 8.3 With the exception of damage due to vandalism or accident by any person other than the Artist or persons under Artist’s 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 work, if necessary, to eliminate hazards or potential hazards which become apparent after the Artwork is accepted by the City.
- 8.4 The Artist represents and warrants that the Artwork and the materials used are not currently known to be harmful to public health and safety.
- 8.5 Artists agrees that no work or services funded by this Agreement shall inhibit, promote, or convey a religion, a political party or position, or a religious or political message or advocacy.
- 8.6 These representations and warranties shall survive the termination or expiration of this Agreement.

9. MAINTENANCE AND REPAIRS. 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 C. The City is responsible for the proper care and maintenance of the Artwork. The City agrees to ensure that the work 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.

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.

10. LICENSES AND TAXES; COMPLIANCE WITH LAW.

- 10.1 No payroll or employment taxes of any kind shall be withheld or paid with respect to payments to Artist.
- 10.2 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 work required under this Agreement, during the term of this agreement, which are applicable to the Artist's work 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 subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials. Any violation of such provisions shall constitute a material breach.

11. INDEMNIFICATION.

- 11.1 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, cost of litigation, and the costs of appellate proceedings), arising out of, or alleged to have resulted from the wrongful, negligent, or willful acts, errors, mistakes, omissions, work, services, or professional services of the Artist, its agents, employees, or any other person in connection with this Agreement. It is the Artist's duty to hold harmless and indemnify the City, its agents, officers, officials, employees and volunteers for 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. Notwithstanding any provision of this Agreement to the contrary, no Party shall recover from the other Party to this Agreement in an action, of whatever nature, in contract or tort, any consequential or incidental damages, lost profits, or any type of expectancy damages. 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. The Artist is responsible for primary loss investigation, defense and judgment costs where this indemnification applies. In consideration of the award of this Agreement, the Artist agrees to waive all rights of subrogation against the City, its agents, officers, officials, employees and volunteers for losses arising from or related to this Agreement.
- 11.2 Artist also agrees to protect, defend, indemnify and hold City, its officers, agents and employees harmless from any action, claim, suit or liability based on a claim that work performed under this Agreement by Artist, or Artist's agents or Artist's subcontractors constitutes an infringement of any patent, copyright, trademark, trade name or other proprietary right of any party.
- 11.3 This Section 11 shall survive the termination or expiration of this Agreement.

12. **INSURANCE.** The Artist must obtain and maintain the following insurance (“Required Insurance”):

12.1 Commercial General Liability - Occurrence Form

The policy must include bodily injury, property damage and broad form contractual liability coverage.

- General Aggregate: \$2,000,000
- Products - Completed Operations Aggregate: \$1,000,000
- Personal Injury: \$1,000,000
- Each Occurrence: \$1,000,000

- a. The policy must be endorsed to include the following additional insured language: "The City of Glendale is named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of [the Artist]".
- b. Artist's subcontractors shall be subject to the same minimum requirements identified above.

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

- a. The City, its officers, elected, 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.

12.4 Claims Made Policies – If any coverage required is written on a claims-made coverage form:

1. The retroactive date must be shown, and this date must be before the execution date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of contract work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective, or start of work date, the Artist must purchase extended reporting period coverage for a minimum of five (5) years after completion of contract work.
4. A copy of the claims reporting requirements must be submitted to the City for review.

12.5 Acceptability of Insurers
Insurance is to be placed with insurers with a current A.M. Best rating of no less than A: VII, unless otherwise acceptable to the City.

12.6 Waiver of Subrogation
Artist hereby agrees to waive rights of subrogation which any insurer of Artist may acquire from Artist by virtue of the payment of any loss. Artist agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Artist, its employees, agents and subcontractors.

12.7 Verification of Coverage
Artist shall furnish the City with original certificates and amendatory endorsements, or copies of the applicable insurance language, effecting coverage required by this contract. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Artist's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements, required by these specifications, at any time. Such certificates shall be sent to:

City of Glendale
Arts & Culture Division
5850 W. Glendale Avenue – Suite 217
Glendale, AZ 85301
Phone (623) 930-3557
Publicart@glendaleaz.com

12.8 Subcontractors
Artist shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Artist shall ensure that City is an additional insured on insurance required from subcontractors.

12.9 Special Risks or Circumstances
City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other circumstances.

13. **INDEPENDENT CONTRACTOR; WORKERS' COMPENSATION.** The Artist is engaged as an independent contractor and will be responsible for any federal, state and local taxes and fees applicable to payment. 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 services solely to the City. The Artist and its subcontractors and employees are not employees of the City and are not eligible for any benefits through the City, including without limitation of federal social security, health benefits, workers' compensation, unemployment compensation, and retirement benefits. The Artist shall not hold himself out as an authorized agent of the City with the power to bind in any manner.

14. **E-VERIFY, RECORDS AND AUDITS.** To the extent applicable under A.R.S. § 41-4401, the Contractor warrant their compliance and that of its subcontractor with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under

A.R.S. § 23-214(A). The Contractor or subcontractor's breach of this warranty shall be deemed a material breach of the Agreement and may result in the termination of the Agreement by the City under the terms of this Agreement. The City retains the legal right to randomly inspect the papers and records of the other party to ensure that the other party is complying with the above-mentioned warranty. The Contractor and subcontractor warrant to keep their respective papers and records open for random inspection during normal business hours by the other party. The parties shall cooperate with the City's random inspections, including granting the inspecting party entry rights onto their respective properties to perform the random inspections and waiving their respective rights to keep such papers and records confidential.

15. **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 the work. 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 himself with the aforementioned safety provisions shall not relieve Artist from compliance with the obligations set forth therein.
16. **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
Economic Development
5850 W. Glendale Avenue – Suite 217
Glendale, Arizona 85301
publicart@glendaleaz.com

With Copy to: City of Glendale
City Attorney
5850 W. Glendale Ave.
Glendale, Arizona 85301

To Artist: John Randall Nelson
32 West Palmdale
Tempe, AZ 85282
Whonelson@cox.net

17. **DISPUTE RESOLUTION.** In the event of a dispute concerning this Agreement, the parties will meet in good faith to attempt to resolve the dispute. Both parties hereby waive any right to a jury trial which they may otherwise have in the event of litigation arising out of this Agreement or the subject matter thereof and consent to a trial to the court.

18. RIGHT OF TERMINATION.

- 18.1 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 Artist's Services and/or Artwork at any time.
- 18.2 In the event the City shall terminate or abandon the service 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 work under this Agreement and proceed to close said operations under the Agreement. 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 work to appraise the services completed. The City will not pay more than the corresponding progress payment set forth above for the percentage of work completed to that point in time for the corresponding progress payment. The Artist shall deliver to the City all Artwork-related work, including copies of photographs, drawings, concepts, plans, reports, calculations, writing and computer disks, created and prepared by the Artist specifically for this Artwork together with all unused materials supplied to the Artist by the City or from funds paid by the City.
- 18.3 In the event of such termination or abandonment, the Artist shall be paid for services performed and materials ordered or purchased, prior to receipt of said notice of termination. 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 Artwork-related materials and a final invoice for the final fee that has been agreed upon by both parties.
- 18.4 In the event this Agreement is terminated or abandoned, the City may make use of the completed or partially completed work for this Artwork for the uses for which it was intended. Any use of incomplete work for this Artwork by the City following termination without specific written authorization by the Artist will be without responsibility or liability to the Artist.
- 18.5 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 work.
- 18.6 In the event of death or incapacity of Artist this Agreement shall automatically terminate. Neither the Artist nor the estate of Artist shall have any further right to perform hereunder and shall cede control of the Artwork. The City will pay the Artist or the estate of Artist the compensation payable for any Artist's Services rendered prior to such termination not heretofore paid, reduced by the amount of additional costs which will be incurred by the City by reason of such termination.
- 18.7 The Artist shall have the right to cancel the Agreement within thirty (30) days after notice in writing to the City for non-payment.
- 18.8 This Agreement may be canceled pursuant to the provisions of ARS 38-511.
- 18.9

19. ENTIRE AGREEMENT; WAIVER; SEVERABILITY; NO ISRAEL BOYCOTT.

- 19.1 This Agreement shall 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 shall be void and of no effect.
- 19.2 The waiver by any party of a breach or violation of any term of this Agreement by the other party shall not operate or be construed as a waiver of any subsequent breach.
- 19.3 If any term, covenant, condition or provision of this Agreement, or the application thereof to any person, party, or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Agreement, or the application thereof to any person, party, or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
- 19.4 To the extent A.R.S § 35-393 through § 35-393.03 are applicable, the parties hereby certify that they are not currently engaged in, and agree for the duration of the Agreement to not engage in, a boycott of goods or services from Israel, as that term is defined in A.R.S § 35-393.

20. SUCCESSORS AND ASSIGNS. Artist shall not assign this Agreement, in whole or in part, or any right or obligation, without the prior written approval of the City. The Artist's Services required of the Artist are personal and shall not be assigned, sublet, or transferred unless prior written consent is given by the City. The City shall have the right to assign or transfer any and all of the City's rights and obligations under this Agreement.

21. GOVERNING LAW AND VENUE. 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.

[Signatures appear on following page.]

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

Kevin Phelps
City Manager

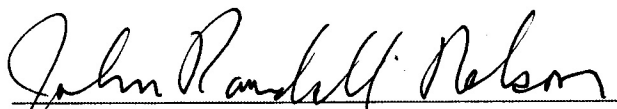
ATTEST:

Julie K. Bower
City Clerk (SEAL)

APPROVED AS TO FORM:

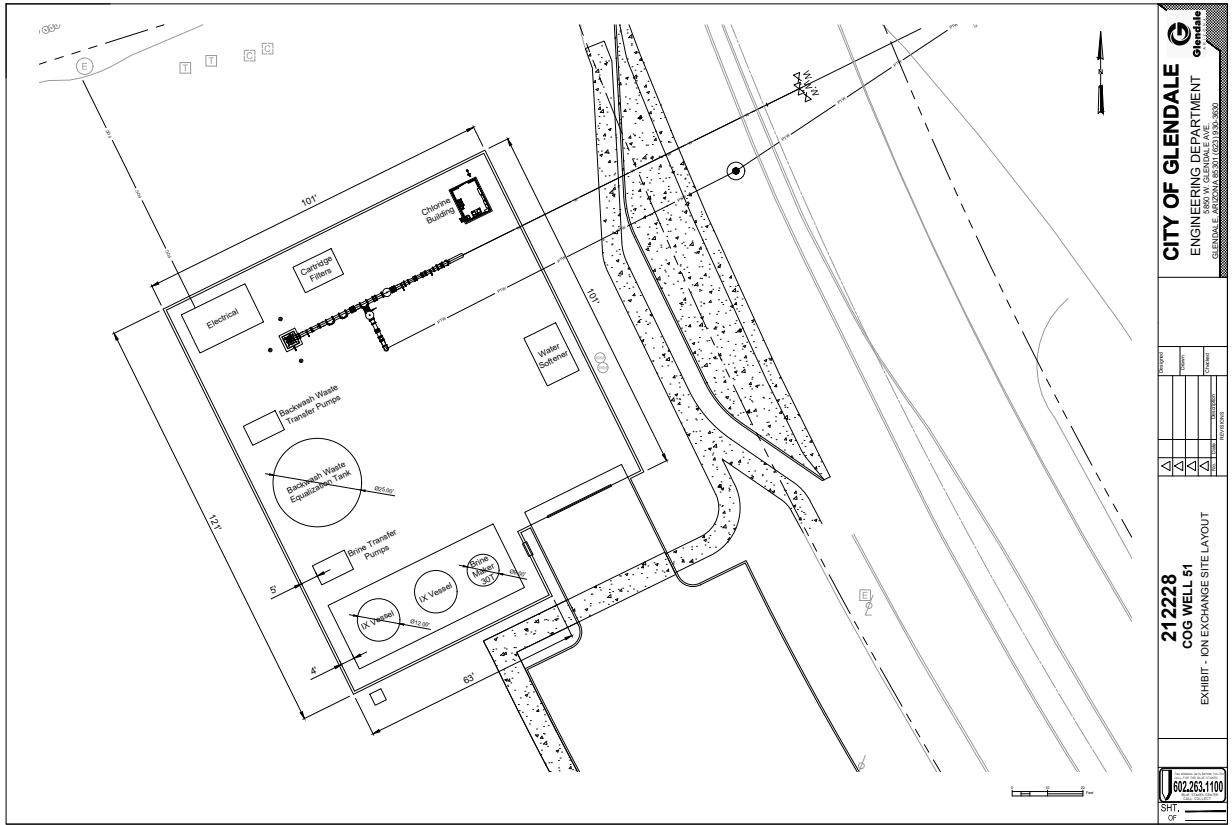
Michael D. Bailey
City Attorney

ARTIST,



John Randall Nelson
Artist

EXHIBIT A Sierra Verde Park Well Site



CITY OF GLENDALE
ENGINEERING DEPARTMENT

212228
COC WELL 51
EXHIBIT - ON EXCHANGE SITE LAYOUT

602.263.1100



EXHIBIT B
APPROVED FORMAT FOR INVOICES

INVOICE

TO: City of Glendale
Economic Development
5850 W. Glendale Ave. – Suite 217
Glendale, AZ 85301
Attn: Mojgan Vahabzadeh

FROM: Artist Name
Company
Address
City/State/Zip
Telephone and Email

DATE: Date of invoice

RE: Name of Project

INITIAL PAYMENT (use for first invoice)
SECOND PAYMENT (use for second invoice)
FINAL PAYMENT (use for final invoice)

AMOUNT: Amount of payment

EXHIBIT C
ARTISTIC, TECHNICAL AND MAINTENANCE RECORD
(To be submitted to Arts & Culture staff with final invoice)

1. General Information

Artist(s) Name:

Title of artwork:

Location:

General description of artwork:

2. Artist's Statement about Artwork – To be used for publicity about the artwork.

3. Artwork Information – In depth information for overall Artwork 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 Artwork; 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 work.

6. Special Considerations and/or Additional Pertinent Information

7. Plaque Text

Artist(s) Name

Title of Artwork & Year Completed

City of Glendale Public Art Program