SAMPLE Artist Agreement
Title
Location

This Artist Agreement ("Agreement") is by and between the City of Tempe ("City") and XXXX (artist name), as an Independent Contractor ("IC") (collectively the "Parties") for the performance of certain tasks as specified in this Agreement.

In consideration of the mutual promises and agreement hereinafter contain, the Parties agree as follows:

1) INDEPENDENT BUSINESS: IC declares that IC is engaged in 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 City.

2) INDEPENDENT CONTRACTOR RELATIONSHIP. The relationship between IC and City is that of an independent contractor and nothing contained in this Agreement shall be construed as establishing an employer/employee relationship, partnership or joint venture, between City and IC, or cause City to be responsible in any way for the debts or obligations of IC.

3) SCOPE OF WORK AND SERVICES TO BE PERFORMED.

3.1 Through a competitive process, City selected IC to perform the following tasks or services ("Project"):  

3.1.1 Complete the Project design and create original temporary installation (the "Project") to be located at XXXX ("Location"). Within XXXX days of IC’s submittal of the Project design to the City, City shall notify IC of its acceptance of the design. If City would like to see changes in the design, the IC will incorporate City’s suggestions and changes into a revised design and submit the revised design to the City. If such revised design is not acceptable to the City, then City will have the right to terminate this Agreement pursuant to Section 19.

3.1.2 Make reasonable efforts to be available for media opportunities for the Project.

3.1.3 Attend a minimum of one (1) public event at City’s discretion.

3.1.4 After the Project final design has been approved by City following submittal by IC on or before (date)XXXXXX, IC shall complete and have the Project ready for installation at the location on or before date(XXXXXX).

3.2 City will provide for the installation of the Project at the Location. Project should remain installed for viewing by the public at the Location through date(XXXXXX), unless this Agreement is terminated earlier under Section 11.3.3 Warranty. IC warrants to the City that the Project will be free of defects in workmanship or materials, and that the IC will, at the IC’s own
expense, remedy any defects found in the Project, due to faulty workmanship or materials for the
term of this Agreement.

4) **BUDGET.** The budget for this XXXXX and IC will receive the payments from the City in the amount
to be determined as below, which shall constitute payment in full for the labor, supplies, travel
and all other expenses need to perform the services required by this Agreement. No additional
funds are available. If the Project design is not accepted by the City, no additional monies will be
paid beyond the $XXXX.

5) **SCHEDULE OF PAYMENT**

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6) **PAYROLL OR EMPLOYMENT TAXES.**

6.1 No payroll, employment, or taxes of any kind shall be withheld or paid by City, with
respect to payments to IC, or otherwise. Taxes that are the subject of this paragraph 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.

6.2 IC will be responsible for reporting and paying any applicable sales, privilege, use or
excise tax which may be payable in relation to this Agreement. The City is not to be invoiced nor
will it pay any said taxes.
7) **INSTRUMENTALITIES.** IC shall supply all equipment, tools, materials and supplies to accomplish the designated tasks and complete the Project. City shall incur no liability or responsibility for Location access, Project completion, installation, or otherwise unless expressly stated herein.

8) **CONTROL.** IC retains the sole and exclusive right to choose his/her assistants and control or direct the manner or means by which the work described herein is to be performed. IC agrees that it will not discriminate against any person in any manner or form in the performance of this Agreement. Quality of all work is subject to approval by City.

9) **WORKERS' COMPENSATION.** No workers' compensation insurance has been or will be obtained by the City on account of IC or IC's employees. IC shall comply with the workers' compensation laws with respect to IC and IC's employees.

10) **INDEMNIFICATION.** To the fullest extent permissible by law, IC agrees to defend, indemnify and hold harmless City and all of its officials, agents, and employees for all acts or failure to act of any kind or nature by IC or anyone under IC's control or supervision, and for any and all claims or causes of action or damages arising from services performed or to be provided under this Agreement, as well as any and all damages resulting to the Location.

11) **TERM AND TERMINATION.** This Agreement shall be in full force and effect only when it has been executed by the IC and the City. This Agreement will remain in effect until terminated by the City pursuant to Section 19 or when the Project is no longer featured at the Location, whichever is sooner. Upon Termination, IC shall return the Location to its original or better state, in a clean condition. Except as set forth herein, this Agreement may not be terminated earlier, except for cause or under ARS § 38-511, without ten (10) days prior written notice from one party to the other.

12) **COMPLIANCE WITH APPLICABLE LICENSES AND LAWS.** IC shall secure at IC’s expense all licenses, permissions and permits required for performing the services required under this agreement. IC shall comply with all applicable laws, including, but not limited, to the following requirements based on federal, state, and local law.

   A. Per Tempe City Code Chapter 2 Article VIII Section 2-603(5), it is unlawful for a City vendor or City contractor, because of race, color, gender, gender identity, sexual orientation, religion, national origin, familial status, age, disability, or United States military veteran status, to refuse to hire or employ or bar or discharge from employment any person, or to discriminate against such person in compensation, conditions, or privileges of employment. If applicable, IC shall provide a copy of IC’s antidiscrimination policy to City to confirm compliance with this requirement or attest in writing to compliance.

   B. A.R.S. § 1-502 requires that any natural person who applies to a municipality for a local public benefit (defined as a grant, contract, loan, appropriated funds) must demonstrate that he/she is lawfully present in the United States. Accordingly, IC agrees to sign a sworn affidavit stating that the documents IC submitted to the City demonstrating lawful presence are true.
C. To the extent applicable under A.R.S. § 41-4401, IC warrants IC is in compliance with all federal immigration laws and regulations that relate to IC’s employees and is in compliance with the E-verify requirements under A.R.S. § 23-214(A). IC’s breach of this warranty shall be deemed a material breach of the agreement that is subject to penalties up to and including termination of the agreement. The City retains the legal right to inspect the papers and records of the IC to ensure compliance with this warranty. IC shall cooperate with the City’s random inspections and IC waives its right to keep such papers and records confidential. IC hereby agrees to indemnify, defend and hold City harmless for, from and against all losses and liabilities arising from any and all violations thereof.

13) TITLE TO WORK. The IC will own the intellectual property rights to the Project subject to the rights granted to the City to use the Project under the license granted by the IC in Section 14.

14) COPYRIGHT AND LICENSE.

14.1 The IC warrants that the Project being commissioned and produced under this Agreement is the original product of his own creative efforts, the work is unique, it has not been accepted for sale elsewhere, and that the Project shall not be offered for sale elsewhere without the express approval of the City.

14.2 The IC shall ensure that the Project contains no material from other Projects 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. Such permissions shall be obtained by the IC in form and content acceptable to the City.

14.3 The IC grants a perpetual, irrevocable, royalty-free, worldwide, nonexclusive, sublicensable right and license to use and rebroadcast the Project on City’s website or through other electronic means and to publish still images, photographs, videos, digital images and drawings from the Project in conjunction with advertisements, publicity and promotion of the City and the Location without additional payment to the IC. Upon any publication, the City will use its best efforts to assure that the IC is given customary and appropriate identification as the author.

15) USEFUL LIFE OF PROJECT: The installation of the Project at the Location is to be considered temporary and IC acknowledges and agrees that the Project may be removed at any time, and for any reason, in City’s sole discretion.

16) COMMUNICATIONS/DELIVERABLES. All communications and/or deliverables required under this Agreement shall be deemed sufficiently given when personally delivered or mailed via e-mail, US certified mail, return receipt requested, and addressed as follows (or to any other address agreed upon in writing by both parties):

If to City: Contact information
If to IC: Artist Contact information
17) **DISPUTE RESOLUTION.** In the event of a dispute concerning this Agreement, the Parties will meet in good faith to resolve the dispute prior to any lawsuit being filed by either Party.

18) **DEFAULT.**

18.1 The occurrence of any or more of the following events shall constitute a material breach of and default under the Agreement:

18.1.1 Any failure by IC to observe, perform or undertake any provision, covenant or condition of this Agreement to be observed or performed by IC herein;

18.1.2 Any failure to make progress in the performance required pursuant to the Agreement and/or gives the City reason to believe that IC cannot or will not perform to the requirements of the Agreement; or,

18.1.3 Any failure of IC to commence work or services to be provided within the time specified herein, and to diligently undertake IC’s work to completion.

18.1.4 Upon and during the continuance of an event of default, City, at its option and in addition to any other remedies available by law or in equity, without further notice or demand of any kind to IC, may terminate this Agreement.

18.2 Upon and during the continuance of an event of default, City, at its option and in addition to any other remedies available by law or in equity, without further notice or demand of any kind to IC, may do the following:

18.2.1 Terminate the Agreement;

18.2.2 Pursue and/or reserve any and all rights for claims to damages for breach or default of the Agreement; and/or,

18.2.3 Recover any and all monies due from IC, including but not limited to, the detriment proximately caused by IC’s failure to perform his or her obligations under the Agreement, or which in the ordinary course would likely result therefrom, including, any and all costs and expenses incurred by City in (a) maintaining, repairing, altering and/or preserving the Project; (b) costs incurred in selecting and retaining substitute artist for the purchase of services, materials and/or work from another source; and (c) attorneys’ fees and costs in pursuing any remedies under the Agreement and/or arising therefrom. The exercise of any one of City’s remedies shall not preclude subsequent or concurrent exercise of further or additional remedies.

19. **RIGHT OF TERMINATION.**

19.1 City and the 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. 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 IC in writing, and immediately after receiving such notice, the IC shall discontinue working under this Agreement.

19.2 The City also reserves the right to terminate the Agreement if the IC’s Project design is unacceptable to the City.
19.3 In the event of death or incapacity of the IC, the City shall reserve the right to terminate this Agreement.

19.4 The IC shall have the right to cancel the Agreement within thirty (30) days after notice in writing to the City for non-payment.

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

20. **ENTIRE AGREEMENT.** 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.

21. **SUCCESSORS AND ASSIGNS.** This Agreement shall not be assignable except at the written consent of the parties hereto.

22. **FORCE MAJEURE.** If either party shall 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 the IC (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.

23. **GOVERNING LAW.** This Agreement shall be governed by and construed under the laws of the State of Arizona and venue for any litigation related to this Agreement shall be in Maricopa County, Arizona.

24. **RETENTION OF RECORDS.** City, through any authorized representative, will have access to and the right to examine and copy all records, books, papers or documents related to services rendered under this Agreement. IC will retain all books and records related to the services performed for a period of not less than the greater of any applicable law retention requirement or five (5) years following termination of this Agreement.

25. **HEADINGS, CONSTRUCTION OF LANGUAGE.** The headings contained in this Agreement are inserted for convenience of reference only and shall not be a part of or control or affect the meaning hereof. The language of this Agreement shall be construed according to its fair meaning and shall not be construed against the party responsible for drafting this Agreement or any provision hereof. Words in this Agreement shall be deemed to refer to whatever number or gender that the context requires. It is the intention of the parties that if any provision of this Agreement is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

26. **NON-WAIVER PROVISION.** No breach or event of default hereunder shall be deemed to have been waived by the City except by a writing to that effect signed on behalf of the City and no waiver of any such breach or default shall operate as a waiver of any other breach or default on a future occasion, or as a waiver of that breach or default after written notice thereof and demand by the City for strict performance of this Agreement. Acceptance of partial or delinquent performance shall not constitute the waiver of
any right of the City. All rights, remedies, and privileges of the City hereunder shall be cumulative and not alternative.

27. **SURVIVAL.** If the Agreement is terminated, any terms or provisions herein intended to survive said termination, including Section 10 (Indemnification), Section 12 (Legal Compliance), Section 13 (Title to Work), Section 14 (Copyright and License, Section 17 (Dispute Resolution), Section 23 (Governing Law) and Section 24 (Retention of Records).

Agreed to this X day of XX, 2020, at Tempe, Arizona.

City: (City of Tempe):
Supervisor: XXXXXX
Project Manager: XXXXXXXX

INDEPENDENT CONTRACTOR:
By (name): XXXXXXX
INDIVIDUAL ARTIST INSURANCE REQUIREMENTS

A. Minimum Scope and Limits of Insurance. Artist shall provide insurance coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a “following form” basis. Artist undertakes and assumes for its officers, agents, employees, contractors and subcontractors all risk of dangerous conditions, if any, on or about City property.

B. General Liability – Occurrence Form. Policy shall include bodily injury, death, property damage, including personal and advertising injury, products and completed operations, and broad form contractual liability coverage covering, but not limited to, the liability assumed under the indemnification provisions of this Agreement in the minimum amounts as follows:
- General Aggregate $2,000,000
- Products – Completed Operations Aggregate $1,000,000
- Personal and Advertising Injury $1,000,000
- Each Occurrence $1,000,000

C. Worker’s Compensation and Employer’s Liability. If applicable, Artist shall maintain Workers’ Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over any of Artist’s employees engaged in the performance of work or services; and Employer’s Liability insurance in the minimum amount as follows:
- Each accident $1,000,000
- Disease coverage for each employee $1,000,000
- Disease policy limit $1,000,000
In case any work is subcontracted, Artist will require the subcontractor to provide Worker’s Compensation and Employer’s Liability to at least the same extent as required of Artist.

D. Automobile. If Artist owns and/or operates vehicles in Arizona, Artist shall maintain Commercial/Business Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than $1,000,000 each occurrence with respect to any owned, hired, and non-owned vehicles assigned to or used in performance of the Artist’s work. Coverage shall be at least as broad as coverage Symbol 1, “any auto” (Insurance Service Office Policy Form CA 0001 or any replacements thereof).

E. Professional Liability. If Artist will be using design professionals (such as architects, landscape architects or engineers) who provide Artist with any signed stamped drawing(s) or calculations, Artist will provide Professional Liability for all such design professionals. Such insurance shall have limits not less than $1,000,000.00 for each claim with respect to negligent acts, errors and omissions, and any deductible may not exceed $50,000.00 each claim. Artist or Artists’ contractors or subcontractors shall obtain such insurance when Artist subcontracts for any work from such design professional and prior to the submittal of any construction documents. Any design professional required to obtain professional liability insurance must maintain proof of insurance for the term of this Agreement.
F. **Additional Insurance Requirements.** Except for workers compensation, the policies shall include, or be endorsed to include, the following provisions:

   i. The certificate of insurance provided shall include City and its officers, employees and agents as additional insureds, and shall specify that insurance afforded by the Artist shall be primary insurance and that any insurance coverage carried by the city or its employees shall be excess coverage and not contributory coverage to that provided by the Artist. This shall not be construed as giving rise to responsibility or liability of City for applicable deductible amounts under such policy(ies). Any deductible or self-insured retention shall be assumed by and be for the account of, and at the sole risk of Artist who shall be solely responsible for the deductible and/or self-insured retention.

   ii. Coverage will be at least as broad as Insurance Services Office, Inc. policy form CG 00 01 10 01 and CG 20 37 07 04 or equivalent thereof, including but not limited to severability of interest and waiver of subrogation clauses.

G. **Notice of Cancellation.** For each insurance policy required by the insurance provisions of this Agreement, Artist must provide to City, within ten (10) business days of receipt, a notice if a policy is suspended, voided or cancelled for any reason. Such notice shall be mailed, emailed, or hand delivered to City of Tempe at the address in Section I below.

H. **Acceptability of Insurers.** Insurance is to be from companies possessing a current A.M. Best, Inc. rating of A-VII, or better and legally authorized to do business in the state by the Arizona Department of Insurance. City in no way warrants that the above-required minimum insurer rating is sufficient to protect Artist from potential insurer insolvency.

I. **Verification of Coverage.** Prior to commencing activities and services under this Agreement, Artist shall furnish City with certificates of insurance (ACORD form or equivalent approved by City) and any applicable endorsements as required by this Agreement (e.g. additional insured endorsement). All certificates of insurance shall identify the policies in effect on behalf of Artist, their policy period(s) and limits of liability. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All initial and renewal certificates and any required endorsements are to be sent directly to:

   **City of Tempe, Tempe Public Art, 700 West Rio Salado Parkway, Tempe, AZ 85281**

   The amounts of any self-insured retentions and a descriptive identifier of the Project are to be noted on the certificate of insurance. If a policy does expire during the Term of this Agreement, a renewal certificate showing a new policy must be sent to City ten (10) business days prior to the expiration date.

J. **Contractors/Subcontractors Insurance.** When applicable, Artist shall require that each and every one of its contractors and subcontractors who perform work carry, in full force and effect, workers’ compensation, commercial general liability, including fire damage, pollution liability and automobile liability insurance coverages of the type, with the restrictions and in the amounts which Artist is required to obtain under the terms of this Agreement. The Artist shall include all contractors and subcontractors as insureds under the policies or shall furnish separate certificates and endorsements for each contractor and subcontractor.