Replace
Item 56

OCT 25 2007

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MEMORANDUM **Community Services Department Memo No. CS08-097**

DATE: **OCTOBER 22, 2007**

TO: **MAYOR AND CITY COUNCIL**

THRU: bos **W. MARK PENTZ, CITY MANAGER** RD

FROM: **MARK M. EYNATTEN, COMMUNITY SERVICES DIRECTOR**

SUBJECT: **REMOVAL OF AGENDA ITEM #56**

Staff is requesting that Item #56 **Purchase and Fabrication of a metal sculpture by Chandler artist Joan Walters** be removed from the October 22, 2007 Chandler City Council Study Session agenda so that staff may confirm an issue with the artist. It is anticipated that the item will be resubmitted for Council consideration at the November 5, 2007 study session.

cc: Rich Dlugas, Assistant City Manager

#56

OCT 25 2007

Chandler • Arizona
Where Values Make The Difference

MEMORANDUM **Community Services Department Council Memo No. CS-059**

DATE: **October 25, 2007**

TO: **MAYOR AND COUNCIL**

THRU: **W. MARK PENTZ, CITY MANAGER**
MARK M. EYNATTEN, COMMUNITY SERVICES DIRECTOR
KATRINA MUELLER, ARTS CENTER MANAGER

FROM: **ERIC FAULHABER, VISUAL ARTS COORDINATOR**

SUBJECT: **RECOMMENDATION FOR PURCHASE OF METAL ARTWORK FABRICATION FOR TUMBLEWEED PARK – PARK AND RIDE FACILITY BY CHANDLER ARTIST JOAN WATERS**

DESCRIPTION: The purchase and fabrication of Metal Sculpture by Chandler artist Joan Waters, to be integrated into the design phase of the Tumbleweed Park – Park and Ride Facility.

BACKGROUND: The Chandler Arts Commission juried local sculptors for inclusion of an artwork design and installation for the new Park and Ride Facility to be located at the corner of Hamilton and Germann roads. Working with Transit Services and their design team, the Chandler Arts Commission selected Chandler metal sculptor, Joan Waters as a finalist for the project. The artist will work during the design phase of construction to fabricate and install and a metal sculptural element to complement the site and enhance the citizen's experience with their use of the Park and Ride facility. Joan Waters is a metal sculptor and public artist who is currently completing a public art enhancement for the City of Phoenix and it's Coronado Historic District Enhancement. Project.

The Chandler Arts Commission recommends the approval of the purchase of Metal Sculptures to be fabricated by Chandler artist Joan Waters.

FINANCIAL IMPLICATIONS: Total artwork cost to include all expenses and installation is $100,000.00. The expenditure will be funded in part by the Chandler Arts Commission and in part by the Public Works Department, using funds allocated for artwork. The Municipal Arts Fund in the Arts Center budget, line item 423-1100-5219 will provide $60,000.00, and the Public Works Department, Transit Services through its budget, line item 217.3310.0000.6517.7ST240, will provide $40,000.00 toward the cost of the artwork. This is not a general fund expenditure.

PROPOSED MOTION: Move to approve the purchase and fabrication of Metal Sculpture by Chandler artist Joan Waters, to be integrated into the design of the Tumbleweed Park – Park and Ride Facility for an expenditure of $100,000.00.

COMMISSION OF ARTWORK AGREEMENT

Tumbleweed Park - Park and Ride Facility Art Project

This agreement is made and hereby entered into by and between THE CITY OF CHANDLER (hereinafter "City"), acting by and through its Chandler Arts Commission (hereinafter "CAC") and the city staff thereof and ARTIST Joan Waters Design Incorporated, 2111 North Central Drive, Chandler, Arizona 85224 (hereinafter "ARTIST").

In consideration of the promises, covenants, conditions and performances described in this agreement, the parties hereby agree as follows:

1. TERM OF AGREEMENT: This agreement shall be effective on the date that this contract has been signed by both parties, and, unless terminated earlier pursuant to the provisions hereof, shall expire after an eighteen month period.

2. SCOPE OF WORK: The ARTIST shall complete the design, fabrication, and installation of an artwork, as described below (2A. description of artwork) and shall perform all tasks as indicated below. The work shall be substantially complete within seventeen (17) months, after the date of the notice to proceed, and all work shall be finally completed and ready for final payment within eighteen (18) months after the date of the notice to proceed. Artist shall not commence any work until a written "Notice to Proceed" has been issued by City.

   A.) DESCRIPTION OF ARTWORK: The artwork will consist of a metal sculptural element, or series of elements incorporated into the design of the Tumbleweed Park – Park and Ride Facility. The artwork shall consist of but not be limited to metal sculptures that can be installed, mounted or incorporated into preexisting metal structures. These artworks will be reflective of the overall design and motif of the proposed Park and Ride facility. The artist will be required to work closely with the design team for the facility and present final concepts and drawings to Public Works Transportation staff and the Chandler Arts Commission for final approval.

   B.) CONSULTATION WITH A CONSERVATOR: If requested by the CAC, the ARTIST shall, prior to fabrication of the artwork, meet with a professional art conservator, recommended and paid for by the CAC, to review the proposed artwork and ensure that it can be maintained over the period of its lifetime without extraordinary expense.

   C.) ARTIST PARTICIPATION: If requested by the CAC, the ARTIST shall, during the fabrication or installation of the artwork, participate in a maximum of two educational/ community events in addition to one dedication ceremony as scheduled or requested by the CAC or its staff.

D.) TRAVEL: The ARTIST will travel to Chandler, Arizona or any location (local or foreign) as many times as deemed necessary by the CAC within reason, in order to complete the project in a timely manner, meeting with representatives of the community, the CAC and staff, the Chandler Public Works Department Transit Staff, designers, fabricators, installers and sub-contractors to complete the Scope of Work.

E.) ARTWORK DOCUMENTATION AND MAINTENANCE INSTRUCTIONS: The artwork shall be accompanied by the following documentation, to be delivered to the CAC and its staff no later than fourteen days after the completion of the artwork:

1.) An ARTIST's Public Report, details pertaining to the ARTIST and his works that the CITY may use for public information purposes; plus
2.) An ARTIST's Artwork Maintenance Record, that describes in detail the maintenance issues necessary for the proper conservation and or replication of the artwork images; plus
3.) Two professional, artist approved, quality 4" x 5" color transparencies or digital images (minimum of 350 dpi) of two of the completed artwork images in their entirety.

F.) ACKNOWLEDGEMENT: The ARTIST shall acknowledge the CAC's role in funding the artwork in all public presentations and written, printed or electronic publication of information regarding the artwork.

3. PUBLIC INFORMATION: The CITY and the CAC will be solely responsible for coordinating public information materials and activities related to the dedication and or promotion of the artwork.

4. COMPENSATION: The total compensation due hereunder includes the following:

A.) As compensation for the artwork images and the ARTIST's performance of the services specified in Section 3, the City shall make payments to the ARTIST in an amount of up to $100,000.00 (One hundred thousand dollars and no cents.)
B.) Total compensation shall not exceed $100,000.00 (One hundred thousand dollars and no cents)

5. SCHEDULE FOR PARTIAL PAYMENTS OF COMPENSATION: Compensation shall be provided to the ARTIST according to the following schedule.

A.) First Payment: 35% of the compensation due under Section 4.A in the amount of $35,000.00 (Thirty-five thousand dollars and no cents) upon delivery and

acceptance by the Chandler Arts Commission staff of a work schedule, documentation of insurance coverage, revised and updated technical specifications, and signing of contract.

B.) Second Payment: 35% of the compensation due under Section 4.A in the amount of $35,000.00 (Thirty-five thousand dollars and no cents) upon design delivery and approval by the Chandler Arts Commission staff of technical specifications and image choices, and documentation that the ARTIST has become obligated to pay for materials, supplies and/or subcontractors' services required for fabrication and design of the artworks. If necessary, such documentation shall include names, addresses and telephone numbers of each subcontractor and supplier whose work and/or materials is estimated to cost more than $1,000.00 (one thousand dollars and no cents), and copies of any agreements made between the ARTIST and any subcontractors or suppliers, which agreement shall include a written description of the work to be done or materials to be purchased, and the total payable under such subcontract.

C.) Third Payment: 15% of the compensation due under Section 4.A in the amount of $15,000.00 (fifteen thousand dollars and no cents) upon completion of the artwork and review and approval by the CAC staff.

D.) Final Payment: Balance of 15% of the compensation due under Section 4.A in the amount of $15,000.00 (fifteen thousand dollars and no cents) upon completion of one hundred percent (100%) of the work, and completed installation, and the Chandler Arts Commission's acceptance of the artwork and all other deliverables as specified herein.

6. PROCESS FOR PAYMENT OF COMPENSATION: To be eligible for any payment of compensation the ARTIST must submit to the CAC staff an invoice for payment in the manner and on the form specified by the CITY, together with evidence, to the reasonable satisfaction of the CAC staff, that the ARTIST has completed the performance/payment stage that would warrant the payment requested. Upon receipt and approval of such invoice, the CAC staff shall arrange for the immediate processing of such documentation, the appropriate payment to the ARTIST.

7. PROCESS FOR PAYMENT OF TAXES: ARTIST is responsible for payment of all applicable federal, state and local taxes.

8. ARTIST IS INDEPENDENT CONTRACTOR: The ARTIST is an independent contractor and shall furnish all supervision, materials, labor, equipment, supplies, and all other incidentals, except as specifically provided herein.

9. NO CLAIM BY ARTIST'S EMPLOYEES, CONTRACTORS OR OTHER PARTIES ALLOWED: No employee of the ARTIST or other person engaged to perform any work or service required of or by the ARTIST under this Agreement shall be considered an employee of the CITY. No claim of any such employee or other

person, whether for industrial insurance, unemployment compensation, or any other benefit or cause or entitlement whatsoever, shall be an obligation of the CITY.

10. NO ASSIGNMENT OF WORK WITHOUT AUTHORIZATION: The work and services required of the ARTIST by this Agreement are personal and shall not be assigned, delegated, or transferred without the express, written approval of the CAC staff. (This provision shall not prohibit the ARTIST from employing qualified personnel for work under the ARTIST's direct supervision regarding the artwork.)

11. CITY AUTHORIZED TO REVIEW WORK IN PROGRESS: Upon reasonable prior notice to the ARTIST, the CITY and its officers, employees, and agents shall have the right to make reasonable inspections and reviews of the ARTIST's progress with respect to the artwork.

12. COPYRIGHT: The ARTIST shall retain the copyright and all other rights in and to the artwork, provided that the CITY is hereby granted an irrevocable license to graphically reproduce (through photography, video, print, film or otherwise) the image of the artwork, including but not limited to, the artwork proposal and all preliminary studies, models and maquettes thereof that have been delivered to and accepted by the CAC staff, and to authorize third parties to graphically reproduce (through photography, video, print, film or otherwise) any and all of the same, as are desired by the CITY, for municipal (e.g., education, public information, promotion, etc.) purposes. On each municipal reproduction the ARTIST shall be acknowledged, using designations provided by the ARTIST, to be the creator of the original artwork thereof, provided that reproductions of any preliminary studies, models and maquettes shall not be identified as or represented to be the finished artwork. The rights granted by this provision shall survive the expiration or earlier termination of this Agreement.

13. CITY RECORDS REGARDING ARTWORK: The CITY shall maintain on file for a length of time consistent with statutory requirements a record of this Agreement and of the location and disposition of the artwork.

14. ARTIST'S IDENTIFICATION LABEL: The CITY shall prepare, at its own expense, an identification label indicating the ARTIST's name, the artwork's title, funding source, year of completion, and information text about the artwork. This label shall be of material deemed appropriate by the CAC staff and shall be placed adjacent or near to the artwork whenever the artwork is publicly displayed by the CITY.

15. ARTWORK CHANGES

    A.) Material Changes prior to Acceptance: Material changes may be made to the artwork by the ARTIST prior to the CITY's acceptance of the artwork (such as changes in the artwork's material, color, size, relative scale as compared to the preliminary design therefore that was most recently accepted or approved by the CITY, etc.) but only after the ARTIST has given written notice of such desired

changes to the CAC staff and has received the written approval of the CAC for each such change.

B.) Material Changes After Acceptance:

1.) If any such material change occurs to the artwork after it has been finally accepted by the CITY (whether such change is an intentional act of a third party, an accident, or an act of nature), including but not limited to a change to the exterior surface of the artwork or the interrelationship or relative locations of parts of the artwork, the CITY reserves the right to determine, after consultation with an independent, professional art conservator, if, when and how any repair and restoration to the artwork can be made, and the nature, scope and anticipated cost of any such repair or restoration. The CITY reserves the right to contract with a conservator, rather than the ARTIST, to implement any such restorations or repairs.
2.) In the event the CITY determines such restoration or repair should be undertaken, the CITY will provide written notice to the ARTIST. The ARTIST shall have thirty (30) days to respond to such recommendations after the date of such notice.
3.) Within thirty (30) days after the receipt of the CITY's notice to restore or repair the artwork, the ARTIST shall respond in writing specifying, in detail, any objections (if any) to such proposed repair or restoration work and the reasons for such objection(s). The failure of the ARTIST to provide such notice to the CITY within thirty (30) days after the ARTIST's receipt of the CITY's notice of artwork change(s) shall constitute the ARTIST's waiver of all objections to the repair or restoration of the artwork (including means and methods) described in such CITY notice.
4.) The CITY may repair or provide restoration of the artwork after reviewing any comments made by the ARTIST, in its sole, reasonable discretion.

C.) The CITY reserves the right to manage its buildings, facilities and public sites for public purposes, and in doing so, may determine that it is necessary to relocate or remove the artwork and/or modify the site in/on which it is located. The CITY will not relocate or remove the artwork and/ or substantially modify the site in/on which it is located without notifying the ARTIST of the proposed change and attempting to reach agreement with the ARTIST regarding future appearance or location of the artwork. If the parties cannot reach agreement, the CITY may relocate or remove the artwork and or modify the position, placement or site in or on which it is located in its sole, reasonable discretion.

D.) In the event the CAC decides to deaccession the artwork, the ARTIST shall have the first right of refusal to purchase his or her work, providing it is not integrated into a larger piece or a structure, and/or can be removed without destruction of the artwork.

E.) If a modification of the artwork occurs, without the ARTIST's written permission and the ARTIST gives written notice to the CAC requesting that his/her name and the artwork be disassociated, the artwork will no longer be designated as the work of the ARTIST.

F.) Except as provided herein, the CITY will not modify the artwork without written authorization from the ARTIST regarding the proposed modification. The ARTIST will not unreasonably withhold such authorization. For purposes of this Agreement, no modification of the artwork that results from the passage of time or the inherent nature of the materials used in the artwork shall constitute a modification for which the ARTIST may claim relief or any remedy from the CITY. In addition, no modification of the artwork that is a result of conservation or of its public presentation (including but not limited to lighting and placement) shall constitute a modification that is prejudicial to the ARTIST's honor or reputation or for which the ARTIST may claim relief or any remedy from the CITY unless such modification is the direct result of gross negligence.

G.) The action of the CITY in the exercise of its governmental powers (including but not limited to the issue of any permit for the redevelopment of land or any structure thereon other than action by the CITY on the specific site of the artwork) shall not constitute a modification of the artwork for which the ARTIST may claim damages or any other form of relief from the CITY.

16. RISK OF LOSS: The ARTIST shall take such measures as are reasonably necessary to protect the artwork from loss or damage until the ARTIST has completed delivery to the CITY of all materials specified herein and ownership is transferred to the CITY, which shall occur when delivery and/or installation is complete and acceptance of the artwork has been approved by the Chandler Arts Commission. The ARTIST shall obtain property insurance for loss of the materials paid for by the CITY while in the ARTIST's possession and control. The risk of loss or damage shall be borne by the ARTIST prior to final acceptance during such periods of time as the partially or wholly completed artwork is in the custody, control or supervision of ARTIST's staff or agents for the purpose of storing, transporting, installing or performing any ancillary services to the artwork. If the artwork is being stored by the CITY on CITY property prior to its installation, the CITY shall be liable for any damages to the artwork, while in its custody.

17. INDEMNIFICATION: From the date of this contract, during the creation of the artwork, and prior to one year following the artwork's installation, **The ARTIST agrees to indemnify, defend, and save harmless the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees, individually and collectively;** from all losses, claims, suits, actions, payments and judgments, demands, expenses, attorney's fees, defense costs, or actions of any kind and nature resulting from personal injury to any person, including the ARTIST him/herself, employees of the ARTIST or of any subcontractor employed by the ARTIST (including bodily injury and death) or damages to any property, arising or alleged to have arisen out of the performance of the ARTIST for the work to be

performed hereunder, except any such injury or damages arising out of the sole negligence of the CITY, its officers, agents or employees. IT IS THE INTENTION OF THE PARTIES to this contract that the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees, individually and collectively, are to be indemnified against their own negligence unless and except their negligence is found to be the sole cause of the injury to persons or damages to property. The amount and type of insurance coverage requirements set forth in the contract will in no way be construed as limiting the scope of indemnity in this paragraph.

18. INSURANCE: Prior to undertaking any work in this agreement, the ARTIST, at no expense to the CITY, shall obtain and file with the CAC staff and the CITY's Risk Management Officers, acceptable evidence of a policy or policies of insurance as enumerated below. Acceptable evidence of insurance coverage includes Declaration pages, the policy, and all forms and endorsements to the policy.

A.) A policy of commercial general liability insurance, written on an occurrence form, including all the coverages as shown with the following minimal coverage:

1.) Premises/ Operations Liability
2.) Products/Completed Operations
3.) Personal/Advertising Injury
4.) Contractural Liability
5.) Bodily Injury and Property Damage
6.) $1,000,000.00 per occurrence
7.) $2,000,000.00 annual aggregate
8.) Any deductible or self-insured retention must be disclosed and is subject to approval by the CITY's Risk Manager

B.) A policy of personal automobile liability, including coverage for owned, non-owned, leased or hired vehicles used in the transporting or installing of the artworks, providing the minimum coverage:

1.) Liability - $500,000.00 per accident

C.) If any such policy is written on a claims-made form, the following additional requirements shall apply:

1.) The retroactive date shall be prior to or coincident with the date of this contract; and
2.) The policy shall state that coverage is claims made and state the retroactive date; and
3.) Claims-made form coverage shall be maintained by the ARTIST for a minimum of three years following the expiration or termination of this Agreement; and
4.) The ARTIST shall annually provide the CITY with proof of renewal, provided that if renewal of the claims-made form of coverage becomes

unavailable, or economically prohibitive, the ARTIST shall purchase an extended reporting period ("tail") or execute another form of guarantee acceptable to the CITY to assure financial responsibility for liability for services performed.

5.) The ARTIST's obligations under this Subsection 19C with respect to claims-made forms of insurance shall survive the expiration or earlier termination of this Agreement.

6.) The coverages provided by this policy to the CITY or any other named insured shall not be terminated, reduced or otherwise materially changed without providing at least forty-five (45) days prior written notice to the City of Chandler.

D.) The above policy or policies, endorsements thereto, and subsequent renewals:

1.) Shall be subject to approval by the CITY's Risk Manager as to company (must be rated A-:VII or higher in the A.M. Best Key Rating Guide and licensed to do business in the State of Arizona or issued as a surplus line by an Arizona broker or agent), form and coverage and primary to all other insurance the CITY may secure; and

2.) Must protect the CITY within the policy limits from any and all claims and risks in connection with any activity performed by the ARTIST by virtue of this Agreement; and

3.) Must be maintained in full force and effect throughout the entire term of this Agreement; and

4.) Must name the City of Chandler as an additional insured (excluding professional liability) in any of the following manners:

a.) An additional insured endorsement issued on an Insurance Services Office (ISO) form bcg20101001 naming "The City of Chandler, its officers, elected officials, employees, agents and volunteers" as additional insured, under which the endorsement is signed by an authorized representative of the insurance company and include the policy number and name of the insured on the face of the endorsement; or

b.) A blanket policy or endorsement clause adding as additional insureds anyone for whom the ARTIST is required to provide insurance under a contract or permit.

E. Failure of the ARTIST to comply with any of these terms of the above insurance provisions shall be considered a material breach of this Agreement and cause for its immediate termination.

19. ARTIST'S WARRANTIES

A. Warranty Against Defects: The ARTIST warrants that the artwork is designed to last for thirty years and guarantees the artwork against any faulty material or

workmanship and, at the CITY'S option, shall remedy and/or pay for any loss or damage resulting therefrom that occurs or appears within a period of one (1) year after the date the CITY accepts the artwork. The CITY shall give written notice with reasonable promptness to the ARTIST regarding observed defects in the artwork. Nothing contained herein nor any action whatsoever by the CITY shall constitute an acceptance of work not done in accordance with the provisions of this Agreement or relieve the ARTIST of liability or responsibility for faulty material or workmanship.

B. Warranty of Title: The ARTIST warrants and guarantees that, upon the CITY's acceptance of the artwork from the ARTIST, the CITY shall acquire good title to the artwork, and that the artwork shall be free from any and all claims, liens, and charges by person or entity, including but not limited to any employee or supplier.

20. ADDRESSES FOR NOTICES AND OTHER DELIVERABLES; WAIVER OF ARTIST'S RIGHTS UPON FAILURE TO PROVIDE CURRENT ADDRESS TO THE CITY: All notices, forms, reports, maintenance suggestions, and other textual materials required by this Agreement shall be in writing, and all such material, together with any other material to be delivered hereunder, shall be delivered or mailed to the respective addresses of the parties hereto. The ARTIST's failure to keep the CITY reasonably informed regarding the ARTIST's current address shall be deemed a waiver of the ARTIST's rights and opportunities under Sections 14 and 16.

All notices, requests, demands and other communications that are required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given upon receipt when addressed as follows:

If CAC, to Chandler Arts Commission, 80 South San Marcos Place, Chandler, Arizona 85225, Phone: (480) 917-6859 or (480) 917-6999 Fax: (480) 857-1109.

If the ARTIST, to Joan Waters Design Incorporated, 2111 North Central Drive, Chandler, AZ 85224, Phone (480) 284-7177.

Or to such other address as may be specified hereafter by either party for itself, by notice to the other party.

21. COLLECTION MANAGEMENT: The CITY reserves the right to manage its collection of art, including the artwork, consistent with all applicable laws, the CITY's Charter, ordinances, and municipal policies, including but not limited to the Municipal Arts Plan.

22. CREDIT: The ARTIST shall credit "The City of Chandler Arts Commission" and the appropriate funding sources on any and all publicity materials generated for this artwork using language determined by the CITY and will also acknowledge The City

of Chandler and the Chandler Arts Commission at all public presentations and in all written or electronic publication of the work.

23. DEFINITION OF "CAC" AND "STAFF": The term "CAC" means the Chandler Arts Commission and any administrative entity that succeeds to the functions of such commission; the term "Staff" means the CAC's acting staff.

24. AUDIT: The ARTIST shall permit the CITY and/or any other governmental agency that is involved in the funding of this project (hereinafter referred to as "Agency"), from time to time as the CITY Auditor or the Staff of the CAC or the Agency deems necessary (including up to six years after the final payment or release of withheld amounts has been made under this Agreement), to inspect and audit at any and all reasonable times in Maricopa County, Arizona, or at such other reasonable location the CITY Auditor and/or Agency selects, all pertinent books and records of the ARTIST and any subconsultants or other person or entity that has performed work in connection with or related to the ARTIST's services under this Agreement to verify, among other things, that the compensation or other consideration provided to the ARTIST has been appropriate, and that the contracted-for services were provided in a timely manner; and shall supply the CITY with, or shall permit the CITY and/or Agency to make a copy of any books and records and any portion thereof, upon the CITY Auditor's, the CAC staff or Agency's request. The ARTIST shall insure that such inspection, audit and copying right of the CITY and Agency is a condition of any subcontract, agreement or other arrangement under which any other person or entity is permitted to perform work in connection with or related to the ARTIST's services under this Agreement. All audit findings will be governed by the Federal Acquisition Regulation (FAR), subpart 31, which is hereby incorporated in and made a part of this agreement.

25. COMPLIANCE WITH LAWS AND REGULATIONS

A.) General Requirement: The ARTIST, at his/her sole cost and expense, shall perform and comply with all applicable laws of, including but not limited to, the United States and the State of Arizona; the Federal Occupation Safety and Health Act of 1970 (OSHA); the Charter, Municipal Code, and ordinances of the City of Chandler, Arizona; and rules, regulations, orders, and directives of their administrative agencies and the officers thereof.

B.) Licenses and Similar Authorizations: The ARTIST, at no expense to the CITY, shall secure and maintain in full force and effect during the term of this Agreement all required licenses, permits, and similar legal authorizations, and comply with all requirements thereof.

C.) Taxes: Except as provided in Section 8 hereof, the ARTIST shall pay, before delinquency, all taxes, levies, and assessments arising from its activities and undertakings under this Agreement; taxes levied on its property, equipment and improvements; and taxes on the ARTIST's interest in this Agreement.

D.) Americans with Disabilities Act: The ARTIST shall comply with all applicable provisions of the American's with Disabilities Act of 1990 (ADA) in performing the ARTIST's obligations under this Agreement. If the ARTIST is providing services, programs, or activities to CITY employees or members of the public as part of this Agreement, the ARTIST shall not deny participation or the benefits of such services, programs, or activities to people with disabilities on the basis of such disability. Failure to comply with the provisions of ADA shall be a material breach of and grounds for the immediate termination of this agreement.

26. NONDISCRIMINATION AND AFFIRMATIVE ACTION

A.) General: Notwithstanding any other provisions in the solicitation documents, this Agreement does not require any specific utilization levels of minorities or women in the ARTIST's workforce, except as may be specified in any federal regulations or statutes included or referenced in this Agreement. The CITY encourages the ARTIST to employ a workforce reflective of the region's diversity. The ARTIST shall adhere to all nondiscrimination requirements set forth in Federal and State laws and regulations and in Chandler Municipal Code provisions.

B.) Any violation of the mandatory requirements of the provisions of this section 27 shall be a material breach of Agreement for which the ARTIST may be subject to damages and sanctions provided for by Agreement and by applicable law.

27. CONTRACTURAL RELATIONSHIP: This Agreement does not constitute the ARTIST as the agent or legal representative of the CITY for any purpose whatsoever, and the ARTIST is not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of the CITY or to bind the CITY in any manner or thing whatsoever.

28. INVOLVEMENT OF FORMER CITY EMPLOYEES: The ARTIST agrees to inform the CITY of any former CITY officer or employee who terminated CITY office or employment in the twelve (12) months prior to the proposed commencement date of such former city employee's work for ARTIST and who will be working on or subcontracting for any of the work under this Agreement. The ARTIST further agrees that no work under this Agreement will be done by a former CITY officer or employee who terminated CITY office or employment in the twelve (12) months prior to the proposed commencement date of such former CITY employee's work for the ARTIST if that officer or employee was involved in, participated in or acted on any matter related to this Agreement.

29. NO CONFL ICT OF INTEREST:

A.) The ARTIST confirms that the ARTIST does not have a business interest or close family relationship with any CITY officer or employee who was, is, or will be involved in the ARTIST's selection, negotiation, drafting, signing, administration, or evaluating the ARTIST's performance. As used in this section, the term "ARTIST" shall include any employee of the ARTIST who was, is or will be involved in the negotiation, drafting, signing, administration, or performance of the Agreement. As used in this section, the term "close family relationship" refers to the following: spouse or domestic partner; any dependent parent, parent in law, child, son-in-law, or daughter-in-law; or any parent, parent-in-law, sibling, uncle, aunt, cousin, niece or nephew residing in the household of a CITY officer or employee described above.

B.) ARTIST stipulates that its officers and employees do not now have a conflict of interest and it further agrees for itself, its officers and its employees that it will not contract for or accept employment for the performance of any work or services with any individual business, corporation or government unit that would create a conflict of interest in the performance of its obligations pursuant to this contract. Pursuant to A.R.S. Section 38-511, the CITY may cancel this contract within three (3) years after its execution without penalty or further obligation by the CITY if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the City of Chandler is, at any time while the contract is in effect, an employee of the other party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract.

30. EXEC UTORY AGREEMENT: This Agreement will not be considered valid until signed by both parties.

31. BINDING EFFECT: The provisions, covenants and conditions in this Agreement apply to bind the parties, their legal heirs, representatives, successors, and assigns.

32. APPLICABLE LAW VENUE: This Agreement shall be construed and interpreted in accordance with the laws of the State of Arizona. The venue of any action brought hereunder shall be in the Superior Court for Maricopa County.

33. REMEDIES CUMULATIVE: Rights under this Agreement are cumulative; the failure to exercise on any occasion any right shall not operate to forfeit such right on another occasion. The use of one remedy shall not be taken to exclude or waive the right to use another.

34. CAPTIONS: The titles of sections are for convenience only and do not define or limit the contents.

35. INVALIDITY OF PARTICULAR PROVISIONS: A judicial determination that any term, provision, condition, or other portion of this Agreement or its application is inoperative, invalid or unenforceable shall not affect the remaining terms, provisions, conditions or other portions of this agreement, nor shall such a determination affect the application of such term, provision, condition or portion to persons or in circumstances other than those directly involved in the determination in which it is held to be inoperative, invalid or unenforceable and as to such other persons or in such other circumstances it shall continue in full force and effect.

36. NO WAIVER: No waiver of full performance by either party shall be construed or operate as a waiver of any subsequent default or breach of any of the terms, covenants or conditions of this Agreement. The payment of compensation to the ARTIST shall not be deemed a waiver of any right or the acceptance of defective performance or manufacture.

37. EXTRA WORK: The CITY may desire to have the ARTIST perform work or render services in connection with this project other than that expressly provided for in the Scope of Work Section of this Agreement. This will be considered extra work, supplemental to this Agreement and shall not proceed unless authorized by an amendment. Any costs incurred due to the performance of extra work prior to execution of an amendment will not be reimbursed under this Agreement or an amendment.

38. DISPUTES: Any disputes concerning the ARTIST's performance of this Agreement that are not resolved by agreement between ARTIST and the CAC staff, shall be referred to CITY personnel and the ARTIST's designated representative. If such persons do not agree upon a decision within a reasonable period of time, the parties may pursue other legal means to resolve such disputes.

39. TERMINATION

A.) For Cause: Either party may terminate this Agreement in the event the other fails to perform its obligations as described in this Agreement, and such failure has not been corrected to the reasonable satisfaction of the other in a timely manner after notice of breach has been provided in writing to such other party.

B.) For Reasons Beyond Control of Parties: Either party may terminate this Agreement without recourse by the other where performance is rendered impossible or impractical for reasons beyond such party's reasonable control such as but not limited to acts of nature and war or warlike operations.

C.) For Public Convenience: The CITY may terminate this Agreement in whole or in part whenever the CITY determines that such termination is in the best interests of the public or for lack of continuing appropriations.

D.) Notice: Notice of termination pursuant to Subsections 40.A or 40.B above, hereof shall be given by the party in writing terminating this Agreement to the

other not less than ten (10) working days prior to the effective date of termination.

E.) Default: In the event this Agreement is terminated by reason of the ARTIST's default, the ARTIST shall immediately refund to the CITY the amount of any interim payment made to the ARTIST.

40. MODIFICATION OR AMENDMENT: No modification or amendment of any of the terms hereof shall be effective unless the same is in writing and is signed by an authorized representative of each of the parties hereto. The parties hereto expressly reserve the right to modify this Agreement from time to time by mutual agreement.

41. ENTIRE AGREEMENT: This Agreement, including any exhibits and addenda attached hereto and forming a part hereof (if any), is all of the covenants, promises, agreements, and conditions between the parties. No verbal agreements or conversations between any officer, agent, associate or employee of the CITY and any officer, agency, employee or associate of the ARTIST prior to execution of this Agreement shall affect or modify any of the terms or obligations contained in this Agreement. Any such verbal agreements shall be considered unofficial information and in no way binding on either party.

IN WITNESS HEREOF the parties hereto have executed this Agreement on the day and year first above written by having their signatures affixed below:

CITY OF CHANDLER	ARTIST
_____	_____
Mayor	Joan Waters Design Incorporated, ARTIST

ATTEST:

_____

City Clerk

Approved As To Form:

_____

City Attorney