

CITY OF SANTA FE
COMMUNITY GALLERY ARTIST AGREEMENT

THIS AGREEMENT is made and entered into by and between the City of Santa Fe, through its Community Gallery ("Gallery" or the "City"), and Richard Fenker (the "Artist"). The date of this Agreement shall be the date when it is executed by the City of Santa Fe and the Artist, whichever occurs last.

1. SCOPE OF SERVICES

The Artist agrees to consign the physical manifestation of the artistic effort of the Artist (the "Art" with a more particular description attached hereto as **Exhibit A**) between October 5, 2018, and January 17, 2019. The Art shall be located at the City of Santa Fe Community Gallery - 201 West Marcy Street, Santa Fe, NM 87501 (the "Site").

2. COMMISSION/PAYMENT TERMS

A. The retail sales price for each consigned artwork (the "Retail Price") will be established mutually by the Artist in consultation with the Gallery and is recorded in **Exhibit A**. Factors influencing the Retail Price include history of prior sale by the Artist, market demand, and the Gallery's knowledge of its inventory.

B. The Gallery is entitled to retain forty percent (40%) of the Retail Price of each sale as a commission to the Gallery, which shall include gross receipts tax.

C. Prior to any transfer of sale proceeds from the Gallery to the Artist, the Artist shall present the Gallery with evidence of a City of Santa Fe business license, as required by §§18-1 et seq. of the Santa Fe City Code. Within sixty (60) days of either the receipt of full payment from the Buyer or the Artist's presentation of evidence of a business license, whichever is later, the Gallery shall convey sixty percent (60%) of the Retail Price to the Artist, which includes gross receipts tax. The Artist is required to timely and properly transmit the applicable gross receipts tax to the N.M. Taxation and Revenue Department in accordance with state law.

D. During the Term of this Agreement, the Art is for sale by the Gallery and the Gallery is entitled to a commission on any sales of the Art, even if conducted outside of the Gallery exhibition.

3. TRANSPORTATION AND INSTALLATION

A. The Artist is responsible for the transportation of the Art to and from the Site. In addition, the Artist is responsible for any installation required by the Gallery and for the Art's removal from the Site. Any transportation or installation costs are the sole responsibility of the Artist.

B. The Artist shall install the Art in a manner acceptable to the Gallery and such acceptance shall not unreasonably be withheld.

C. The Gallery shall be responsible for the selection, fabrication and installation of all associated temporary identification labels. All identification labels will credit the Artist with the creation of the Art. If the Artist is represented by a private third-party gallery, the Gallery will display on the name of the third-party gallery on its label.

4. ARTIST WARRANTY

The Artist represents and warrants that:

A. The Art is solely the result of the artistic effort of the Artist.

B. Except as otherwise disclosed in writing to the Gallery, the Art is unique and original and does not infringe upon any copyright or the rights of any person.

5. TERM AND EFFECTIVE DATE

This Agreement shall be effective when signed by the City of Santa Fe and the Artist, whichever occurs last, and terminate on January 17, 2019 (the "Term"), unless terminated sooner pursuant to § 6.

6. TERMINATION AND RETURN OF ART

A. Upon written request by the Artist, the Art may be withdrawn from the Site in accordance with Gallery procedures and during business hours. Upon such removal of the Art, this Agreement shall immediately terminate. Furthermore, subject to twenty-four (24) hours written (including email) notice to the Artist, the Gallery may terminate this Agreement with or without cause.

B. Artist will pick up Art on the pickup date as designated by the Gallery, no exceptions. If the Artist is unavailable to pick up the Art, they must arrange for someone to pick up the Art in their stead and notify the Gallery within 24 hours of the pickup date who that person will be.

C. Art cannot be retrieved before or after the designated pickup date except under rare extenuating circumstances in which arrangements are made with the Gallery thirty (30) days in advance. Artists are encouraged to make other arrangements for pickup in their absence on the designated pickup date. Late pickups will be charged \$10 per day.

D. Upon either the expiration of the Term or other termination of this Agreement, the Artist shall remove the Art and all structures necessary for its display within twenty-four (24) hours. Furthermore, the Gallery has the immediate right to remove the Art from the Gallery and safely store it until the Artist removes it from storage. If the Artist does not retrieve the Art within thirty (30) days after the termination of this Agreement, then the Gallery shall have the absolute right to: place the Art in long-term storage; charge removal fees, storage fees, and insurance costs; and, place a lien against the Art for such fees and costs.

E. If the legal ownership of the Art changes during the Term of this Agreement, whether by death, sale, insolvency, gift or otherwise, then the new owner may be required to demonstrate legal right to receive the Art by proof satisfactory to the Gallery. Otherwise, the Art will be returned only to the Artist.

F. If the Artist has failed to respond to written notice from the Gallery for three (3) months after the termination of this Agreement, then the Gallery may proceed with abandonment proceedings as outlined in the Abandonment Cultural Properties Act, §§ 18-10-1 through 18-10-5 NMSA 1978.

G. The Gallery shall issue an "Initial Condition Report" (attached hereto as **Exhibit B**) to be signed by the Artist when the Art is delivered to the Site. In addition, the Gallery shall issue a "Final Condition Report" (attached hereto as **Exhibit C**) to be signed by the Artist when the Art is removed from the Site.

7. COPYRIGHT AND REPRODUCTION RIGHTS

A. The Artist shall retain ownership of the Art consigned to the Gallery.

B. The Artist expressly reserves every right to the Art available at common law or under the Federal Copyright Act.

C. However, the Gallery may publish and distribute photographs of the Art for commercial and noncommercial purposes and otherwise display the Art in a manner consistent with this Agreement.

D. The City is not responsible for third party copyright infringements. The Contractor is responsible for any and all necessary copyright registrations.

8. INSURANCE

The Gallery will maintain insurance for fire/theft/vandalism and declares that all consigned artwork will be covered by said insurance only while the Art is in Gallery's possession, not for the Term of this Agreement. Reasonable efforts will be made to protect consigned artwork from accidental damage or breakage. If damage amounting to a total loss occurs to the Art, the Artist agrees to accept seventy percent (70%) of the Retail Price as compensation. The Artist agrees not to seek any further or additional money from the Gallery/City, including but not limited to amounts for actual, incidental, special or punitive damages, loss of revenues, and damages from impairment of contract.

9. WAIVER

Accept as provided in § 8, I, the undersigned Artist, my heirs and assigns, hereby waive all claims for injuries, damages or losses to my artwork which may be caused directly or indirectly, by any act, omission or negligence arising from or related to the activities of the City of Santa Fe. I hereby release and hold harmless the City of Santa Fe and their officers, agents, and employees from any and all claims, including bodily injury, death or property damage which may occur due to my consignment of my artwork. I, the undersigned, my heirs and assign, hereby covenant and agree to indemnify and hold harmless the City of Santa Fe, their officers, agents and employees from any and all costs, charges, claims, demands, losses damages, causes of action, suits and liabilities of any kind, including the expenses of litigation, court costs and attorney's fees, for injuries to, or death or illness of any person, or for damage to any property, arising out of or in connection with my consignment of my artwork

10. ASSIGNMENT

The Artist shall not assign or transfer any rights, privileges, obligations, or other interest under this Agreement, including any claims for money due, without the prior written consent of the Gallery.

11. RELEASE

Upon entering into this Agreement, the Artist releases the City, its officers and employees, from all liabilities, claims, and obligations whatsoever arising from or under this Agreement. The Artist agrees not to purport to bind the City to any obligation not assumed herein by the City unless the Artist has express written authority to do so, and then only within the strict limits of that authority.

12. INDEMNIFICATION

A. The Artist shall indemnify, hold harmless and defend the Gallery/City from all losses, damages, claims or judgments on account of any suit, judgment, execution, claim, action, or demand whatsoever arising from Artist's performance under this Agreement as well as the performance of Artist's employees, agents, representatives and subcontractors, including payments of all attorney's fees and costs.

B. The City does not agree to defend or hold the Artist harmless for any claims that may be brought against the Artist for injuries or damages caused by the "Art".

13. APPLICABLE LAW; CHOICE OF LAW; VENUE

Artist shall abide by all applicable federal and state laws and regulations, and all ordinances, rules and regulations of the City of Santa Fe. In any action, suit or legal dispute arising from this Agreement, the Artist agrees that the laws of the State of New Mexico shall govern. The parties agree that any action or suit arising from this Agreement shall be commenced in a federal or state court of competent jurisdiction in New Mexico. Any action or suit commenced in the courts of the State of New Mexico shall be brought in the First Judicial District Court.

14. NEW MEXICO TORT CLAIMS ACT

By entering into this Agreement, neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Sections 41-4-1, et. Seq. NMSA 1978, as amended. The City and its public employees, as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

15. AMENDMENT

This agreement shall not be altered, changed or modified except by an amendment in writing executed by the both parties.

16. SAVINGS

If any portion or section of this Agreement is determined to be illegal or otherwise unenforceable, then that portion or section shall be severed from this Agreement and the remainder of the Agreement shall remain in full force and effect.

17. NOTICES

Accept as provided in § 6 of this Agreement, any notices required to be given under this Agreement shall be in writing and served by personal delivery or by mail, postage prepaid, to the parties at the following addresses:

GALLERY:

City of Santa Fe Arts Commission
PO Box 909
Santa Fe, NM 87504-0909

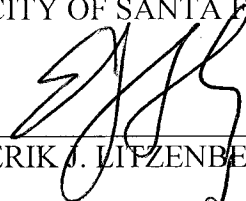
ARTIST:

Richard Fenker
865A Camino Los Abuelos
Lamy, NM 87540

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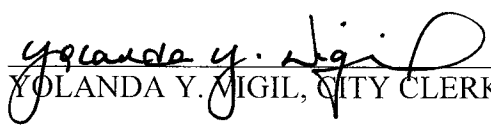
IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth below.

CITY OF SANTA FE:


ERIK J. LITZENBERG, CITY MANAGER

DATE: 10/9/10

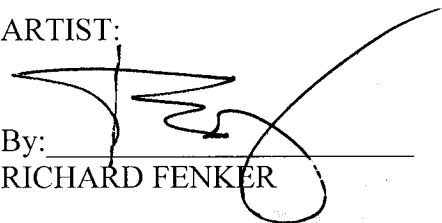
ATTEST:


YOLANDA Y. MIGIL, CITY CLERK *aw*

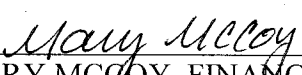
APPROVED AS TO FORM:

 9/10
ERIN MCSHERRY, CITY ATTORNEY

ARTIST:


By: _____
RICHARD FENKER

APPROVED:

 10/5
MARY MCCOY, FINANCE DIRECTOR

BU 51104.470700
52104.510600

EXHIBIT A

DESCRIPTION OF CONSIGNED ARTWORK

Artist Name: Richard Fenker

Title: Big Leap

Dimensions: 10" x 20"

Price: \$150.00

Media: Photograph on watercolor paper

CONSIGNEE:

RICHARD FENKER

By:

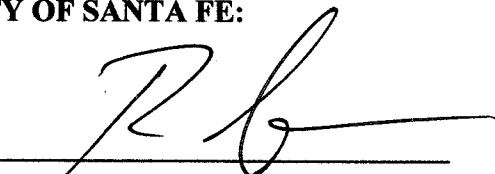


Date:

10/16/2018

CITY OF SANTA FE:

By:



COMMUNITY GALLERY MANAGER

Date:

10-16-18

EXHIBIT B
CONDITION REPORT

- 1) Item(s) received in good condition by Rod Lambert, Gallery Manager

10-16-18
date

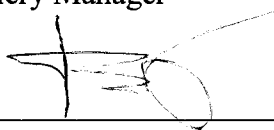
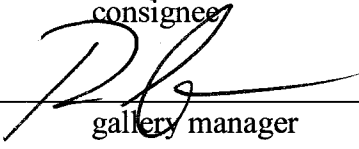

consignee

gallery manager

EXHIBIT C
CONDITION REPORT

1) Item(s) received in good condition by Artist, Consignee

1-20-19
date

[Signature]
consignee
[Signature]
gallery manager

Richard Fente - (copy)