

CITY OF SANTA FE

ART IN PUBLIC PLACES LOAN AGREEMENT

THIS AGREEMENT is made and entered into by and between the City of Santa Fe (the "City") and Don Kennell (the "Lender"). The date of this Agreement shall begin on May 24th, 2019.

1. SCOPE OF SERVICES

The Lender agrees to display free of charge the artwork described in Exhibit A of this agreement (the "Art") on City-owned property for the term of this Agreement. The Art shall be located at the Santa Fe Convention Center at 201 West Marcy Street (the "Site").

2. STANDARD OF PERFORMANCE; LICENSES

A. The City shall give the Art the same care as it gives comparable property of its own. It is understood by the Lender and the City that all publicly displayed art is subject to gradual inherent deterioration and acts of vandalism for which neither party is responsible.

B. Upon installation of the Art on site the Lender and City shall complete a "Condition Report."

C. Evidence of damage while on City property will be reported in writing to the Lender immediately.

D. Restoration or repair is at the discretion of the City and will not be undertaken without the written authorization of the Lender.

E. Lender certifies that the Art is in such condition as to withstand ordinary strains of public display.

3. TRANSPORTATION AND INSTALLATION

A. Lender is responsible for the transportation of the Art to and from the Site including installation and removal of the Art. All costs are the sole responsibility of the Lender.

B. The City is responsible for coordinating the installation of the Art with the receiving City agency.

C. The Lender shall install the Art in a manner acceptable to the City.

4. INSURANCE

A. The City will maintain insurance for fire/theft/vandalism and declares that all consigned Art will be covered by said insurance only while installed on the Site, not for the Term of this Agreement. Reasonable efforts will be made to protect Art from accidental damage or breakage. If damage or loss occurs to the Art, the Lender agrees to accept retail value as established in Exhibit A. The Lender agrees not to seek any further or additional money, over and above the insurance company amount, from the City, including but not limited amounts for actual, incidental, special or punitive damages, loss of revenues, and damages from impairment of contract.

5. TERM AND EFFECTIVE DATE

This Agreement shall be effective when signed by the City and terminate on June 30, 2022, unless sooner pursuant to Article 6 below.

6. TERMINATION AND RETURN OF ART

A. The Art shall remain on City property for the time specified in Article 5 of this Agreement, but may be withdrawn from the Site at any time by the Art in Public Places Committee and this agreement terminates.

B. At the termination of this Agreement, the Lender shall remove the Art and all structures necessary for its display that were provided by the Lender.

C. If the legal ownership of the Art changes during the period of this Agreement, whether by death, sale, insolvency, gift or otherwise, the new owner may, prior to the return of the Art, be required to establish legal right to receive the Art by proof satisfactory to the City. The Art will be returned only to the Lender who is a party to this Agreement unless the City is notified to the contrary.

D. The Lender shall have the right to terminate this Agreement upon written notice.

E. The City's right to return the Art accrues absolutely at the termination of this Agreement. If the City, after making all reasonable efforts, is unable to return the Art within sixty (60) days after termination, then the City shall have the absolute right to remove the Art, place the Art in storage, to charge removal fees, storage fees and insurance costs and to have and enforce a lien for such fees and costs.

F. One (1) year after the termination date of the Agreement, if the Lender has failed to respond to written notice from the City, the City may proceed with abandonment proceedings as outlined in the Abandonment Cultural Properties Act, Sections 18-10-1 through 18-10-5 NMSA 1978.

G. The City shall issue a final "Condition Report" to be signed by the Lender upon removal of the Art as proof of the return of the Art to the Lender in good condition. If the signed report is not returned within fifteen (15) days of issue, the City will consider that the condition of the Art as noted and returned is acceptable to the Lender and any subsequent claims shall not be honored.

H. If the Art is offered as a gift and accepted by the City per the "City of Santa Fe Art Collection and Site Placement Policy", a gift letter will be sent to the donor, at which time this Loan Agreement becomes null and void.

7. COPYRIGHT AND REPRODUCTION RIGHTS

A. The Lender expressly reserves every right available to the Lender, in common law or under the Federal Copyright Act.

B. The City shall not make any commercial use of the design of the Art without the Lender's written consent.

C. The City may publish and distribute photographs of the Art as installed on site for noncommercial purposes.

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

8. CONFLICT OF INTEREST

The Lender warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the Agreement. The Lender further agrees that in the performance of this Agreement no persons having any such interests shall be employed.

9. ASSIGNMENT

The Lender 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 City.

10. RELEASE

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

11. INDEMNIFICATION

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

12. THIRD PARTY BENEFICIARIES

By entering into this Agreement, the parties do not intend to create any right, title, or interest in or for the benefit of any person other than the City and the Lender. No person shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third party beneficiary of this Agreement.

13. APPLICABLE LAW; CHOICE OF LAW; VENUE

Lender 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 Lender 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 parties hereto.

16. SCOPE OF AGREEMENT

This Agreement incorporates all the agreements, covenants and understandings between the parties hereto concerning the services to be performed hereunder, and all such agreements, covenants and understandings have been merged into this Agreement. This Agreement expresses the entire Agreement and understanding between the parties with respect to said services. No prior agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

17. NON-DISCRIMINATION

During the term of this Agreement, the Lender shall not discriminate against any employee or applicant for an employment position to be used in the performance of services by the Lender hereunder, on the basis of ethnicity, race, age, religion, creed, color, national origin, ancestry, sex, gender, sexual orientation, physical or mental disability, medical condition, or citizenship status.

18. SEVERABILITY

In case any one or more of the provisions contained in this Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby.

19. IDENTIFICATION PLAQUE

The City shall be responsible for the selection, fabrication and installation of all associated temporary identification plaques. All identification plaques will credit the artist with the creation of the Art and the Lender with loaning the Art.

20. CONFIDENTIALITY

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without prior written approval of the City.

21. NOTICES

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:

CITY OF SANTA FE
Arts Commission
P.O. Box 909
Santa Fe, NM 87504-0909

LENDER
Don Kennell
1507 4th Street
Santa Fe, NM 87505

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

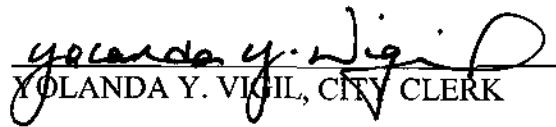
CITY OF SANTA FE:


ERIK J. LITZENBERG, CITY MANAGER

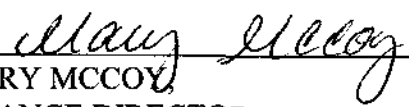
LENDER:
DON KENNELL

DATE: 4/3/15

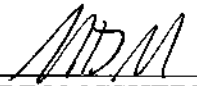
ATTEST:


YOLANDA Y. VIGIL, CITY CLERK

APPROVED:


MARY MCCOY
FINANCE DIRECTOR

APPROVED AS TO FORM:


ERIN MCSHERRY,
CITY ATTORNEY

3/25

Exhibit A

"Glory Days"

72 x 24 x 24"

