

RESOLUTION NO. 2016-07

**A RESOLUTION AUTHORIZING THE EXECUTION BY
THE CHAIRMAN OF THE DISTRICT OF AN
AGREEMENT BETWEEN THE DISTRICT AND THE
ARTIST CONSULTING FIRM OF CECILIA LUEZA, FOR
ARTIST CONSULTING SERVICES FOR THE
DOWNTOWN COMMUNITY IMPROVEMENT DISTRICT
GATEWAY PROJECT**

WHEREAS, the Downtown Community Improvement District (the "District"), which was formed on February 7, 2011, by Ordinance No. 20866 (the "Ordinance") of the City Council of the City of Columbia, Missouri, is a political subdivision of the State of Missouri and is transacting business and exercising powers granted pursuant to the Community Improvement District Act, Sections 67.1401 through 67.1571, RSMo., as amended ("the Act"); and

WHEREAS, 67.1461.1 of the Act grants the board of directors (the "Board of Directors") of the District the authority to possess and exercise all of the District's legislative and executive powers; and

WHEREAS, Cecilia Lueza ("Lueza") submitted the proposal/agreement to consult for the Gateway Project (the "Gateway Project") attached hereto as Exhibit A; and

WHEREAS, the Board of Directors determined that Lueza has best satisfied the criteria for selection of services under the District's competitive bidding policies and as set forth in the request for qualifications produced by the District with respect to the Lueza Agreement, including that Lueza has the specialized experience and technical competence with respect to the consulting services sought, the capacity and capability to perform the services in the time required, a history and record of past performance that is acceptable, and familiarity with governmental entities such as a community improvement district; and

WHEREAS, the Board of Directors desires to engage Lueza to perform the consulting services for the District as described in the Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE DOWNTOWN COMMUNITY IMPROVEMENT DISTRICT AS FOLLOWS:

1. The Board of Directors hereby approves the Lueza Agreement and the Chairman of the District is authorized to execute, and the Secretary is authorized to attest on behalf of the District, an agreement in substantially the form as the Lueza Agreement attached hereto as Exhibit A.

2. This resolution shall be in full force and effect from and after its passage by the Board of Directors.

Passed this 10th day of November, 2015.

_____, Chairman of the Board of
Directors

(SEAL)

Attest:

_____, Secretary of the Board of Directors

**EXHIBIT A
TO RESOLUTION NO. 2016-07**

Lueza Agreement

CONTRACT FOR ARTIST SERVICES
FOR DESIGN AND FABRICATION OF ARTWORK FOR
THE ACTIVE RECREATION AND SHARP END LIGHT HUB
COLUMBIA, MISSOURI

THIS CONTRACT, entered into this 7th day of December, 2015, by and between, Downtown Community Improvement District dba The District, (hereinafter the "Owner") with offices at 11 S. Tenth Street, Columbia Missouri 6520, and Cecilia Lueza (hereinafter, "Artist") with offices at 2620 SW 12 Street, Miami Florida 33135.

WITNESSETH:

WHEREAS, the Agency requires the services of an artist to create a work of art (hereinafter the "Artwork" in a public space located at following locations: (1) the intersection of 4th Street and Walnut Street for the Sharp End Neighborhood Light Hub and (2) at the intersection of 4th Street and Cherry Street for the Active Recreation Light Hub (hereinafter the "Site"); and

WHEREAS, the Artist is a professional artist whose work and qualifications make the Artist uniquely qualified to create the Artwork;

WHEREAS, the Owner has selected the Artist based upon the Artist's work and qualifications; and

WHEREAS, the Artist and the Owner wish to perform under the terms and conditions of this Agreement;

WHEREAS, the Artist is able and desirous of performing such services.

NOW, THEREFORE, the parties hereto do mutually agree as follows:

1. SCOPE OF SERVICES. The Artist agrees to design, fabricate and install a piece of art in accordance with the design and specifications furnished to the Owner which is attached hereto as Exhibit "A" (the "Artwork").

2. PERFORMANCE OF SERVICES. The services of the Artist will begin upon receipt of written notice to proceed by the Owner or the Owner's designated representative and shall proceed to completion.

3. TIME FOR PERFORMANCE. The anticipated delivery and installation date for the artwork is April 30, 2016 but in no event later than May 31, 2016. The project shall be completed on or before May 31, 2016.

4. COMPENSATION. The Artist shall receive compensation in the amount of \$24,000.00 to be paid as follows:

(a) \$2,400.00 (10%) upon execution of this Contract.

(b) \$9,600.00 (40%) upon the final approved Artwork design and the purchase of construction materials, hiring of laborers, and rental of equipment for fabrication of the Artwork.

(c) \$9,600.00 (40%) upon completion of the Artwork.

(d) \$2,400.00 (10%) upon installation and acceptance of the Artwork by the Owner.

5. COPYRIGHT. The Artist retains all rights under the Copyright Act of 1976, 17 U.S.C., Sections 101, et. seq., and all other rights in and to the Artwork, except ownership and possession and except as such rights are limited by this Section 5 and by Section 6.

(a) This Section 5 does not prevent the Owner from giving its permission for the Artwork to be reproduced in other publications that are offered for sale, provided that the Owner receives no payment for such permission. The Owner is not responsible for any third party infringement of Artist's copyright and is not responsible for protecting the intellectual property rights of the Artist.

6. REPRODUCTION RIGHTS.

(a) Since it is the intention of the parties that the Artwork as accepted by the Owner shall be unique, the Artist hereby agrees not to make an exact duplicate or three dimensional reproduction of the final Artwork or permit others to do so except by written permission of the Owner.

(b) The Artist hereby grants to the Owner and its assigns an irrevocable license to make photographs, drawings, and other two dimensional reproductions of the Artwork for noncommercial purposes without prior consent of the Artist, including but not limited to reproductions used in advertising, art books or art videos, brochures, history books or history videos, media publicity, and the Owner's portfolio of public art, catalogues or other similar publications, provided that these rights are exercised in a reasonable manner.

7. ARTIST CREDIT.

The Owner shall provide and install a plaque on or near the Artwork containing a credit to the Artist.

8. GUARANTEE. The Artist does hereby guarantee that said Artwork shall be free from any and all defects of any kind and nature in material, workmanship, fabrication and installation, and the Artist shall provide the necessary materials and labor for, and shall bear any expenses in connection with repair of such defects of which the Artist is given written notice by the Owner within two years from the date of the Owner's final acceptance of the Artwork. The Artist will not be responsible for damage resulting from fire, vandalism or acts of God.

9. ORIGINAL WORK. The Artist warrants that the Artwork designed for the Owner under this Contract is a unique or original project of the Artist's creative efforts; that it is an

edition of one, unless otherwise stated; and that it has not been nor will be for sale or installed elsewhere.

10. LIABILITY. The Artist shall save and hold harmless the Owner and its agents with respect to any damages which may be alleged to have arisen from any acts or omissions of the Artist, or agents or employees of Artist, alleged to have been done during the term of this Contract, and further waives any rights against the Owner for any and all injuries or damages alleged to have arisen during the term of this Contract.

11. INSURANCE. The Artist, at the time the work is installed on site until completion thereof, at the Artist's sole cost and expense, shall obtain, furnish and maintain in full force and effect a liability insurance policy to protect the Owner against any and all claims for personal and property injury, including death arising from the work, with the limits as approved by the Owner, issued by an insurance company licensed by, and qualified to do business in, the State of Missouri.

12. RISK OF LOSS. The Artist shall bear the risk of loss or damage to the Artwork until the Owner's final acceptance of the Artwork. The Artist shall take such measures as are reasonably necessary to protect the Artwork from loss of damage prior to the Owner's final acceptance of the Artwork.

13. ACCEPTANCE OF ARTWORK. The Artist shall notify the Owner in writing when Artist has completed the design, fabrication, and installation of the Artwork in accordance with the design and specifications set forth in attached Exhibit "A." Within 15 business days of receiving notice of the completion of the Artwork the Owner shall notify the Artist of its final acceptance or rejection of the Artwork. The effective date of the Owner's final acceptance shall be the date of the Owner's written notice of its final acceptance.

14. COMPLIANCE WITH LAWS. The Artist shall comply with all applicable laws, ordinances, and codes of the State of Missouri and the City of Columbia. The Owner shall provide to the Artist a list of applicable required permits and approvals, and other existing relevant data uniquely known to the Owner, if any, which is needed by Artist to perform under this Contract.

15. CHANGES. All changes to this Contract shall require a written agreement signed by all parties prior to any change.

16. TERMINATION. The Owner may, by written notice to the Artist, terminate this Contract in whole or in part at any time, either for the Owner's convenience or because of the failure of the Artist to fulfill the Artist's contractual obligations.

(a) If termination is for the convenience of the Owner, the Artist shall be entitled to the full \$24,000.00 less an amount equal to expenses anticipated to be incurred by the Artist at the time of execution of this Contract but not yet incurred at the time of such termination per the budget attached hereto as (Exhibit "B").

(b) Except as set forth in section 17 below, if termination of this Contract is due to the failure of the Artist to fulfill the Artist's contract obligations, the Artist shall remit to the Owner all payments made to the Artist pursuant to this Contract prior to termination.

17. DEATH OR INCAPACITY. If the Artist becomes unable to fully perform the Artist's responsibility under this Contract due to death or incapacity, such death or incapacity will not be deemed a breach of this Contract or a default on the part of the Artist. However, nothing in this Section 18 shall obligate the Owner to accept the Artwork.

(a) In the event of incapacity, the Artist shall assign the Artist's obligations under this Contract to another artist, provided that the Owner in its sole discretion approves of the new artist. If the parties cannot agree on another artist to complete the Artwork, the Owner may elect to terminate this Contract.

(b) In the event of death, the Owner will work with the designated heir(s) or successors of the Artist to assign the Artist's obligations under this Contract to another artist, provided that the Owner in its sole discretion approves of the new artist. If the parties cannot agree on another artist to complete the Artwork, the Owner may elect to terminate this Contract.

(c) If the Owner elects to terminate this Contract pursuant to this Section 17, all materials purchased for the project or installed on site shall be the property of the Owner. The Artist or the administrator of the Artist's estate shall provide the Owner with comprehensive models and plans that will enable the Owner to complete the Artwork. The Artist shall not be entitled to further compensation and shall not be required to refund to the Owner funds previously paid to the Artist. If the Artwork is completed the Artist and the Artist's heirs and assigns shall retain all rights under Article 6 and the Artwork and any reproductions thereof shall contain a credit to the Artist and a copyright notice, provided that Artist or Artists heirs and/or assigns provide the Owner with accurate copyright information.


In the alternative, Artist or Artist's heirs/successors/assigns may elect to pay to the Owner a sum equal to all payments made pursuant to this Contract and retain ownership of all materials purchased and work done to date, and may sell or otherwise dispose of the Artwork and any product or material relating thereto at the discretion of Artist or Artist's heirs/successors/assigns.


18. REMOVAL OR DISASSEMBLAGE. The Artist understands that the Artwork is owned by the Owner. As such, at some time in the future, the Owner may move the Artwork to another location or may disassemble it. If that happens, the Owner assumes full responsibility for the moving and reserves the right to reinstall the Artwork at a different site, or to dispose of the Artwork as the Owner deems appropriate. Such a determination is the sole right of the Owner. However, the Owner will attempt to contact the Artist or the Artists heirs/successors/ assigns to obtain the views of the Artists or the Artists heirs/successors/assigns regarding relocation or disposition of the Artwork.

19. DISPUTES. This Contract is governed by the laws of the State of Missouri, and all actions shall be brought in an applicable court in Boone County, Missouri.

20. ENTIRE AGREEMENT. This Contract contains the entire offer and agreement between the parties hereto, and they shall not be bound by any terms, conditions, statements, warranties or representations, oral or written, not herein contained.

ATTEST:


Witness *RICK MUNNE*

By:  _____


Artist

APPROVED AS TO FORM AND LEGALITY:

EXHIBIT "A"

SCOPE OF SERVICES

Artist agrees to provide the following services:

- a) Preliminary Design: Development of preliminary design concepts of the globes of the Sharp End Neighborhood Light Hub and the Active Recreation Light Hub.
- b) Final Design: Development of final design concept of the globe elements of the Sharp End Neighborhood Light Hub and the Active Recreation Light Hub.
- c) Fabrication: Produce and fabricate one large globe of the final design (maximum diameter 3'-0") and two small globes (maximum diameter 1'-6") for the Sharp End Neighborhood Light Hub and the Active Recreation Light Hub each.
- d) Collaboration: Participate in a maximum of five (5) telephone conference calls with the District, program manager and design professionals in the development of the preliminary and final design of the Light Hubs.
- e) Construction Administration: Assist the general contractor in the installation of the globe artwork of the Hub Stories Phase I development plans, if requested by contractor.