

MASTER AGREEMENT FOR PROFESSIONAL SERVICES: MURAL DESIGN, INSTALLATION, AND MAINTENANCE

This MASTER AGREEMENT FOR PROFESSIONAL SERVICES: MURAL DESIGN, INSTALLATION, AND MAINTENANCE (“Agreement”) is made this ____ day of _____, 2021 (“Effective Date”), by and between the City of Meridian, a municipal corporation organized under the laws of the State of Idaho (“City”), and Ben Konkol (“Artist”), whose address is 916 ½ N 12th Street, Boise, ID 83709.

WHEREAS, the City desires to foster a vibrant community; establish a sense of history, place, and local identity; attract visitors to downtown Meridian; and beautify public spaces by facilitating the installation of murals on buildings in Meridian, both privately- and publicly-owned;

WHEREAS, Artist is qualified through experience and demonstrated ability to work with the City, property owners, and other interested parties to create artwork that addresses the context of its placement, reflects community values, and meets or exceeds stakeholder expectations;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed, and in consideration of the mutual promises and covenants herein contained, the Parties agree as follows:

- I. PROCESS.** By this Agreement, City and Artist seek to establish the general terms of tasks undertaken by Artist with regard to consultations, design, installation, maintenance, and repair of murals, and any and all other tasks related to such activities. The City may invite Artist to provide such services pursuant to separate project task orders establishing specific terms and conditions, including compensation amount, scope of work, and timelines.
- II. SCOPE OF SERVICES.** Upon execution of this Agreement and any associated project task order, Artist shall comply in all respects and perform and furnish to City, all services and shall meet all standards enumerated in this Agreement and in the project task order. Artist shall provide services and work in accordance with generally accepted industry standards and practices for the profession or professions that are used in performance of this Agreement and/or the project task order. Services and work provided by Artist shall be performed in a timely manner as specified in the project task order and agreed upon by the parties.
- III. TERM.** This Agreement shall become effective on the Effective Date first written above, and shall be effective through September 30, 2030, unless sooner terminated by the method set forth herein.
- IV. COMPENSATION.**
 - A. Total amount.** The total payment to Artist for specific services provided pursuant to this Agreement shall be separately negotiated and enumerated in the respective project task order(s). The amount designated in the project task order shall constitute full compensation for any and all services, travel, transportation, materials, fabrication,

shipping, equipment, contingency, commission, artist fee, and costs of work to be performed or furnished by Artist.

- B. Method of payment.** Artist shall provide to City one (1) completed W-9 form, and invoices for services and/or materials provided pursuant to the payment schedule set forth in the project task order, which City shall pay within thirty (30) days of receipt. City shall not withhold any federal or state income taxes or Social Security tax from any payment made by City to Artist under the terms and conditions of this Agreement. Payment of all taxes and other assessments on such sums shall be the sole responsibility of Artist.

V. CREATION, INTEGRITY, AND OWNERSHIP OF ARTWORK.

- A. Waiver and relinquishment of rights.** Artist expressly waives any and all right, title, or interest in artwork and other products created pursuant to this Agreement or project task order. Artist understands that this waiver shall include waivers of the exclusive rights of reproduction, adaptation, publication, and display. Artist specifically waives the right to claim any remedy concerning the alteration of any artwork or product created pursuant to this Agreement or project task order. Artist agrees to relinquish any and all rights, title, and interest to artwork or products developed in connection with this Agreement or project task order, and hereby expressly waives any rights Artist has to same, including, but not limited to, the rights afforded artists under the Copyright Act of 1976 and the Visual Arts Rights Act of 1990, Title 17 U.S.C. §§ 101 *et seq.* Artist understands and agrees that the right of attribution and integrity, as specifically set forth in 17 U.S.C. § 106A, are hereby expressly waived. To the extent that the provisions of this Agreement differ with the Copyright Act of 1976 and Visual Arts Rights Act of 1990, the provisions of this Agreement will govern and any such differences in the rights and duties created thereunder are expressly waived. This provision shall survive the termination or expiration of this Agreement.
- B. Photographs of Artwork by Artist.** Artist may photographically reproduce the image of the Artwork and all preliminary studies, sketches, models and maquettes thereof, as Artist may desire for marketing, educational and public information purposes. Where practicable, Artist shall acknowledge on each such photographic reproduction the location of such Artwork, provided that reproductions of preliminary studies, sketches, models and maquettes shall not be identified as or represented to be the finished Artwork.
- C. Photographs of Artwork by City.** City may photographically reproduce the image of the Artwork and all preliminary studies, sketches, models and maquettes thereof that have been delivered to and accepted, as City may desire for educational and public information purposes. Where practicable and to the extent of City's authority, Artist shall be acknowledged on each such photographic reproduction to be the creator of the original subject thereof, provided that photographic reproductions of preliminary studies, sketches, models and maquettes shall not be identified as or represented to be the finished Artwork.

- D. Ownership.** Upon City's final acceptance of artwork or other products created pursuant to this Agreement, such artwork or products shall be owned by City, and City may maintain, repair, or fully or partially remove them, at City's sole election and discretion.
- E. Subcontracting or assignment of obligations.** Artist shall not subcontract or assign any of Artist's obligations under this Agreement that require or that may require Artist's artistic talent or expertise. Artist may subcontract or assign obligations that do not require Artist's artistic talent or expertise. Any and all subcontractors or assignees shall be bound by all the terms and conditions of this Agreement.

VI. INDEMNIFICATION, WAIVER, AND INSURANCE.

- A. Indemnification.** Artist shall, and hereby does, indemnify, save, and hold harmless the City and any and all of its employees, agents, volunteers, and/or elected officials from any and all losses, claims, and judgments for damages or injury to persons or property, and from any and all losses and expenses caused or incurred by Artist or Artist's servants, agents, employees, guests, and/or business invitees, occurring as a result of this Agreement or project task order.
- B. Waiver.** Artist hereby waives any and all claims and recourse against City, including the right of contribution for loss and damage to persons or property arising from, growing out of, or in any way connected with or incident to Artist's performance of this Agreement or project task order, whether such loss or damage may be attributable to known or unknown conditions, except for liability arising out of concurrent or sole negligence of City or its officers, agents or employees
- C. Insurance to be obtained by Artist.** Upon execution of a project task order, Artist shall obtain and shall maintain, at Artist's own expense, through completion of the task order, each and all of the following:
1. **General liability insurance.** General liability insurance with a limit of not less than one million dollars (\$1,000,000.00) per each occurrence, combined single limit bodily injury and property damage, covering the actions and omissions of Artist and Artist's employees, agents, and/or workers, including coverage for owned, non-owned, and hired vehicles, as applicable.
 2. **Workers' compensation insurance.** Artist shall obtain and shall maintain, at Artist's own expense, from the Effective Date of this Agreement through City's Final Acceptance of the Artwork, and throughout the course of this Agreement, workers' compensation insurance, in an amount required by Idaho law, to cover any and all persons employed by Artist.
 3. **Insurance of Artwork.** Before commencing fabrication of Artwork and/or components or materials thereof, Artist shall procure and maintain, at Artist's own expense, insurance on same in an all-risk form with limits to be established by the

project task order, with any loss payable to City. Artist agrees to bear all risks of loss of and/or damage to the Artwork until City's Final Acceptance of Artwork.

- D. Proof of insurance.** Artist shall provide to City, within seven (7) days of the effective date of a project task order, written proof that Artist has obtained all insurance required hereunder. If any change is made to any insurance policy or coverage required under and/or obtained pursuant to this Agreement, Artist or Artist's insurance agent shall notify City immediately.
- E. Insurance to be obtained by Artist's subcontractors.** Artist shall require any and all subcontractors employed or utilized in the course and scope of the obligations described in this Agreement to obtain and maintain general liability insurance and workers' compensation insurance in the amounts described herein. Artist shall provide to City, within twenty-four (24) hours of hiring or engaging any subcontractor, written proof that her subcontractors have obtained all insurance required hereunder.
- F. No cancellation without notice.** On all insurance policies required under this agreement, such policies shall provide that they may not be cancelled or reduced in coverage except upon thirty (30) days advance written notice to all Parties. Any cancellation of insurance without appropriate replacement in the amounts and terms set forth herein may constitute grounds for termination of the contract.

VII. TERMINATION.

- A. Termination for cause.** If City determines that Artist has failed to comply with any term or condition of this Agreement or project task order, violated any of the covenants, agreements, and/or stipulations of this Agreement or project task order, falsified any record or document required to be prepared under this Agreement or project task order, engaged in fraud, dishonesty, or any other act of misconduct in the performance of this Agreement or project task order; or if either Party willfully or negligently defaults in, or fails to fulfill, its material obligations under this Agreement or project task order; the other Party shall have the right to terminate the Agreement by giving written notice to the defaulting party of its intent to terminate, and shall specify the grounds for termination. The defaulting party shall have thirty (30) days after receipt of such notice to cure the default. If the default is not cured within such period, this Agreement and the project task order shall be terminated upon mailing of written notice of same by the terminating party.
 - 1. **Default by City.** In the event of termination for non-performance or default by City after City's issuance of notice to proceed on a project task order, City shall compensate Artist for work actually completed by Artist prior to the date of written notice of termination and any additional services and materials actually performed or supplied prior to the date of written notice of termination, less payments of compensation previously made, not to exceed the total amount of compensation allowed hereunder.
 - 2. **Default by Artist.** In the event of termination for non-performance or default by Artist after City's issuance of notice to proceed on a project task order, all finished and

unfinished drawings, photographs, plans, timelines, and/or any and all other work products prepared and submitted or prepared for submission under this Agreement or project task order, and all rights, title, and interest thereto, including those described in section V.A. of this Agreement, shall, at City's option, become City's property, and the right to fabricate and/or install the artwork or other products shall pass to City.

Notwithstanding this provision, Artist shall not be relieved of any liability for damages sustained by City attributable to Artist's default or breach of this Agreement or project task order. City may reasonably withhold payments due until such time as the exact amount of damages due to City from Artist is determined. Artist shall not be relieved of liability to City for damages sustained by City by virtue of any breach or default of this Agreement or project task order by Artist. This provision shall survive the termination of this Agreement or project task order and shall not relieve Artist of liability to City for damages.

- B. Termination without cause.** City may terminate this Agreement or project task order for any reason, at any time, by providing fourteen (14) days' notice to Artist.
- C. Non-waiver of breach.** A waiver of any breach or default of any provision of this Agreement shall not be construed as a waiver of a breach of the same or any other provision hereof.

VIII. GENERAL PROVISIONS.

- A. Permitting and inspection.** In the provision of all services pursuant to this Agreement or any related project task order, Artist shall obtain any and all necessary permits or approvals from the various departments of the City of Meridian and other government agencies.
- B. Relationship of Parties.** It is the express intention of Parties that Artist is an independent contractor and neither Artist nor any officer, employee, subcontractor, assignee, or agent of Artist shall be deemed an employee, agent, joint venturer, or partner of City in any manner or for any purpose. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between Artist and City or between Artist and any official, agent, or employee of City. Both parties acknowledge that Artist is not an employee of City. Artist shall retain the right to perform services for others during the term of this Agreement. Specifically, without limitation, Artist understands, acknowledges, and agrees:
 - 1. Artist is free from actual and potential control by City in the provision of services under this Agreement.
 - 2. Artist is engaged in an independently established trade, occupation, profession, or business.
 - 3. Artist has the authority to hire subordinates.
 - 4. Artist owns and/or will provide all major items of equipment necessary to perform services under this Agreement.
- C. Compliance with law.** Throughout the course of this Agreement, Artist shall comply with any and all applicable federal, state, and local laws.

- D. Non-Discrimination.** Throughout the course of this Agreement, Artist shall not discriminate against any person as to race, creed, religion, sex, age, national origin, sexual orientation or any physical, mental, or sensory handicap.
- E. Audits and Inspections:** At any time during normal business hours and as often as City may deem necessary, there shall be made available to City for examination all of Artist's records with respect to all matters covered by this Agreement. Artist shall permit City to audit, examine, and copy, and to make audits of all records and data relating to all matters covered by this Agreement.
- F. Entire Agreement.** This Agreement constitutes the entire understanding between the Parties. This Agreement supersedes any and all statements, promises, or inducements made by either party, or agents of either party, whether oral or written, whether previous to the execution hereof or contemporaneous herewith. The terms of this Agreement may not be enlarged, modified or altered except upon written agreement signed by both parties hereto.
- G. Costs and attorneys' fees.** If either party brings any action or proceedings to enforce, protect or establish any right or remedy under the terms and conditions of this Agreement, the prevailing party shall be entitled to recover reasonable costs and attorneys' fees, as determined by a court of competent jurisdiction, in addition to any other relief awarded.
- H. Agreement governed by Idaho law.** The laws of the State of Idaho shall govern the validity, interpretation, performance and enforcement of this Agreement. Venue shall be in the courts of Ada County, Idaho.
- I. Cumulative Rights and Remedies.** All rights and remedies herein enumerated shall be cumulative and none shall exclude any other right or remedy allowed by law. Likewise, the exercise of any remedy provided for herein or allowed by law shall not be to the exclusion of any other remedy.
- J. Interpretation.** Words of gender used in this Agreement shall be held and construed to include any other gender, and words in the singular shall be held to include the plural and vice versa unless the context otherwise requires. The Agreement and the captions of the various sections of this Agreement are for convenience and ease of reference only, and do not define, limit, augment or describe the scope, context or intent of this Agreement or any part or parts of this Agreement.
- K. Severability.** If any provision of this Agreement is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Agreement shall not be affected.
- L. Successors and Assigns.** All of the terms, provisions, covenants and conditions of this Agreement shall inure to the benefit of, and shall be binding upon, each party and their successors, assigns, legal representatives, heirs, executors, and administrators.

M. Notice. Any and all notice required to be provided by either of the Parties hereto, unless otherwise stated in this Agreement, shall be in writing and shall be deemed communicated upon mailing by United States Mail, addressed as follows:

Artist:

Ben Konkol
916 ½ N 12th Street
Boise, ID 83702

City:

City Clerk
City of Meridian
33 E. Broadway Ave.
Meridian ID 83642

Either party may change its address for the purpose of this provision by giving written notice of such change in the manner herein provided.

N. Exhibits. All exhibits to this Agreement are incorporated by reference and made a part of hereof as if the exhibits were set forth in their entirety herein.

O. City Council approval required. The validity of this Agreement shall be expressly conditioned upon City Council action approving the Agreement. Execution of this Agreement by the persons referenced below prior to such ratification or approval shall not be construed as proof of validity in the absence of Meridian City Council approval.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the Effective Date first written above.

ARTIST:

Ben Konkol
Ben Konkol

CITY OF MERIDIAN:

Robert E. Simison, Mayor

Attest: _____
Chris Johnson, City Clerk