

**RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:**

City Clerk
City of Meridian
33 E. Broadway Avenue
Meridian, ID 83642

PUBLIC ART EASEMENT AGREEMENT: 1203 N. Main Street

This PUBLIC ART EASEMENT AGREEMENT (“Agreement”) is made on 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 Team MC, LLC, a limited liability company organized under the laws of the state of Idaho (“Grantor”). City and Grantor may hereinafter be collectively referred to as “Parties.”

WHEREAS, the Parties desire that public art murals will be incorporated into the Meridian downtown core, and to that end, City will dedicate funds and contract with Ben Konkol for the design, installation, and/or maintenance of a public art mural at 1203 N. Main Street, in Meridian, Ada County parcel no. R6129020215 (“Property”); specifically, on the north-facing exterior wall of the building located thereon;

WHEREAS, Grantor owns the Property, and has agreed to make it available to the City for the installation of a mural (“Mural”) by Ben Konkol (“Artist”), as generally depicted in the *Task Order For Mural Installation* between City and Artist, attached hereto as *Exhibit A* (“Task Order”);

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:

1. GRANT OF EASEMENT. Grantor conveys, grants and warrants to the City, its successors and assigns, an easement for the purpose of installing, maintaining, and exhibiting the Mural on and in the Property. Following Final Acceptance of the Mural as defined in the Task Order, the Mural shall be the property of City.

2. TERM. This Agreement, and the easement granted hereunder, shall be effective until 11:59 p.m. on September 30, 2031 unless extended by mutual agreement of the Parties.

3. RECORDATION. City shall record this Agreement in the land records of Ada County Idaho, and shall submit proof of such recording to Grantor. For recording purposes, the legal description of the Property is:
LOTS 11 TO 15 INC BLK 2
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4. TERMINATION.

- a. **Termination by Grantor.** This Agreement, and the easement granted hereunder, may be terminated by Grantor, at any time, upon thirty (30) days’ written notice to City and

receipt of the City's written consent to terminate, upon Grantor's showing of any of the following:

- (1) That the property is to be sold and the buyer requires removal of the easement as a condition of the purchase and sale; or
- (2) That the property is to be refinanced and the lender requires removal of the easement as a condition of the refinancing; or
- (3) That the property is to be substantially remodeled or altered in a way that precludes continued maintenance of the Mural;
- (4) That Grantor's circumstances have materially changed and the continued existence of the easement or maintenance of the Mural substantially impedes Grantor's reasonable use and enjoyment of the Property.

City shall not unreasonably withhold consent to termination upon Grantor's satisfactory demonstration of any of the foregoing conditions of termination. Grantor expressly agrees and warrants that if Grantor terminates this Agreement, Grantor shall be responsible for removing the Mural and restoring the Property to its prior condition, at Grantor's sole expense. Such removal and restoration shall occur within thirty (30) days of the termination of the easement, unless this period is extended in writing by the City. Grantor further expressly agrees and warrants that if Grantor terminates this Agreement prior to the expiration of the Agreement term set forth herein, Grantor shall donate to City one thousand dollars (\$1,000) for each year remaining of the term, which amount City may utilize toward the installation of a public art mural at a different location.

- b. **Termination by City.** This Agreement, and the easement granted hereunder, may be terminated by City, at any time, upon thirty (30) days' written notice to Grantor, if City determines that Grantor has failed to substantially perform Grantor's obligations under this Agreement, or if City determines that the continued existence of the easement or maintenance of the Artwork is no longer desired or if City is unable to maintain the Artwork due to non-appropriation of funds. City expressly agrees and warrants that if City terminates this Agreement, City shall be responsible for removing or painting over the Mural and restoring the Property to its prior condition, at City's sole election and expense. Grantor shall allow City access to Property necessary to complete such removal or restoration. Such removal or restoration, if City so elects, shall occur within thirty (30) days of the termination of the easement, unless this period is extended in writing by Grantor.
- c. **Expiration of Term.** Upon expiration of the term of this Agreement, as set forth herein or as mutually extended by the Parties by written amendment as set forth herein, City expressly agrees and warrants that City shall be responsible for removing or painting over the Mural within thirty (30) days of the expiration of the easement, unless this period is extended in writing by the Grantor.

5. MAINTENANCE AND REPAIR OF MURAL. During the term of this Agreement, as set forth herein or as mutually extended by the Parties by written amendment as set forth herein, City shall have the sole right and responsibility to determine the need for, and to execute, all necessary maintenance and repair of the Mural. City may determine, in its sole discretion, that the Mural is damaged beyond feasible repair, and may remove or paint over the Mural, with

thirty (30) days' notice to Grantor. Grantor shall notify City if Grantor perceives a need to maintain or repair the Mural.

6. RIGHT OF ENTRY. City or City's contractor shall have the right to enter the Property during normal business hours, and at all other times with advance approval of the Grantor, for any and all of the purposes described in this Agreement. City shall provide Grantor at least forty-eight (48) hours' prior notice of such entry.

7. BINDING EFFECT. The easement granted in this agreement shall run with the land and shall be binding upon, and inure to the benefit, of the Grantor and the City, and their respective representatives successors or assigns, and/or any person or entity acquiring any right, title, or interest in the Property.

8. CONTRACTUAL RELATIONSHIPS; ASSIGNMENT. This Agreement does not designate either Party as the agent or representative of the other for any purpose whatsoever. The Parties are not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of the other or to bind the other in any manner whatsoever. Neither Party shall assign this agreement without the prior written consent of the other.

9. NOTICE. Any and all notice required to be provided by 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:

<u>Grantor:</u>	<u>City:</u>
Team MC, LLC	City of Meridian
Attn: Paul McKenna, Member	Attn: City Clerk
429 E. Mango Drive	33 E. Broadway Avenue
Eagle ID 83616	Meridian ID 83642

Either Party may change its address for the purpose of this section by delivering to the other Party written notification of such change, establishing a new address for noticing purposes, in accordance with the requirements of this section.

10. NON-APPROPRIATION. Grantor acknowledges that City is a governmental entity, and the validity of this Agreement is based upon the availability of public funding under the authority of its statutory mandate.

11. APPLICABLE LAW. This Agreement shall be governed by and construed in accordance with the statutes and constitution of the State of Idaho, including, without limitation, Article VIII, Section 3, of the Idaho Constitution.

12. AMENDMENTS. No modification or amendment of the provisions of this agreement shall be effective unless in writing and signed by authorized representatives of the parties.

13. TIME IS OF THE ESSENCE. The Parties acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, and provision hereof, and that the failure to timely perform any of the obligations hereunder shall constitute a breach and default hereunder by the Party so failing to perform.

14. BINDING UPON SUCCESSORS. Except as otherwise specifically provided herein, this Agreement shall be binding upon any and all owners of the Property, any and all subsequent owners thereof, and each and every other person acquiring an interest in the Property. Nothing herein shall, or shall be construed to, in any way prevent the sale or alienation of the Property, or any portion thereof, except that any sale or alienation shall occur subject to the provisions of this Agreement, and any successive owner or owners shall be both benefited and bound by the conditions and restrictions herein expressed.

15. SEVERABILITY. If any provision of this Agreement is held invalid by a court of competent jurisdiction, such provision shall be deemed to be excised herefrom and the invalidity thereof shall not affect any other provision or provisions contained herein.

16. ATTORNEY FEES. Should any litigation be commenced between the parties hereto concerning this Agreement, the prevailing party shall be entitled, in addition to any other relief as may be granted, to court costs and reasonable attorney fees as determined by such court. This provision shall be deemed to be a separate contract between the Parties and shall survive, *inter alia*, any default, termination, or forfeiture of this Agreement.

17. FINAL AGREEMENT. This Agreement sets forth all promises, inducements, agreements, conditions, and understandings between City and Grantor relative to the subject matter hereof, and there are no promises, agreements, conditions, or understandings, either oral or written, express or implied, between City and Grantor, other than as are stated herein. Except as otherwise specifically provided herein, no subsequent alteration, amendment, change, or addition to this Agreement shall be binding upon the Parties unless set forth in writing and duly executed by both Parties or their successors in interest.

18. NON-WAIVER. Failure of either Party to promptly enforce the strict performance of any term of this Agreement shall not constitute a waiver or relinquishment of any Party's right to thereafter enforce such term, and any right or remedy hereunder may be asserted at any time after either party becomes entitled to the benefit thereof, notwithstanding delay in enforcement. 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.

19. COMPLIANCE WITH LAWS. Throughout the course of this Agreement, the Parties shall comply with all applicable laws, ordinances, and codes of Federal, State, and local governments. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Idaho, and the ordinances of the City of Meridian.

20. ADVICE OF ATTORNEY. Each party warrants and represents that in executing this Agreement, it has received independent legal advice from its attorney or the opportunity to seek such advice.

21. APPROVAL REQUIRED. This Agreement shall not become effective or binding until approved by the City Council of the City of Meridian.

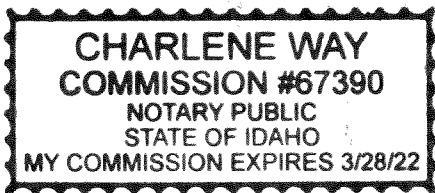
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the Effective Date first written above.

GRANTOR:

Krista McKenna
Krista McKenna, Member
Team MC, LLC

STATE OF IDAHO)
County of Ada) ss:

I HEREBY CERTIFY that on this 31st day of August, 2021, before the undersigned, a Notary Public in the State of Idaho, personally appeared Krista McKenna, proven to me to be the person who executed the said instrument, and acknowledged to me that he executed the same.
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.



Charlene Way
Notary Public for Idaho

Residing at Meridian, Idaho

My Commission Expires: 3-28-2022

CITY OF MERIDIAN:

BY: _____
Robert E. Simison, Mayor

Attest: _____
Chris Johnson, City Clerk

STATE OF IDAHO)
: ss
County of Ada)

I HEREBY CERTIFY that on this _____ day of _____, 2021 before the undersigned, personally appeared ROBERT E. SIMISON and CHRIS JOHNSON, known or identified to me to be the Mayor and City Clerk, respectively, of the City of Meridian, who executed the instrument on behalf of the City of Meridian, and acknowledged to me that the City of Meridian executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Public for Idaho

Residing at _____, Idaho

My Commission Expires: _____

EXHIBIT A
TASK ORDER

TASK ORDER FOR MURAL INSTALLATION

This TASK ORDER FOR MURAL INSTALLATION (“Task Order”) is made this 20th day of July, 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, on January 19, 2021, Artist and City entered into a *Master Agreement for Professional Services: Mural Design, Installation, and Maintenance* (“Master Agreement”), which establishes terms and conditions under which City may invite Artist to provide services including consultations, design, installation, maintenance, and repair of murals, pursuant to separate project task order(s) setting forth specific conditions, compensation amount, and scope of work; and

WHEREAS, City and Team MC, LLC (“Owner”) have entered into a *Public Art Easement Agreement*, by which Agreement Owner agreed to allow City to engage an Artist for the purpose of designing a public art mural for potential installation at 1203 N Main Street, in Meridian, Ada County parcel no. R6129020215 (“Property”); specifically, on the north-facing exterior wall of the building located at Property;

WHEREAS, Artist has created a mural design that will establish a sense of place and local identity in downtown Meridian, and beautify public spaces, and Owner wishes to invite Artist to install the mural, as designed, on the north-facing exterior wall of the building located at Property, pursuant to the *Public Art Easement Agreement* entered into by Owners and City;

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. SCOPE OF SERVICES. Artist shall install, on the north-facing exterior wall of the building located at Property, a large-scale, painted mural installation as depicted in *Exhibit A* hereto (“Mural”). Artwork design, fabrication, and installation, and Site Restoration shall comply in all respects with the RFP, with this agreement, with any applicable established industry standards, engineering standards, and with all established policies and ordinances of the City of Meridian.

II. COMPENSATION.

A. Total amount. The total payment to Artist for services rendered under this Agreement shall be two thousand dollars (\$2,000.00). This amount 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 under this Task Order.

B. Method of payment. Artist shall provide to City invoices for services and deliverables provided pursuant to the payment schedule set forth herein, 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 Task Order. Payment of all taxes and other assessments on such sums shall be the

sole responsibility of Artist.

C. Payment schedule. Artist shall be paid pursuant to the following benchmarks:

1. **Timeline:** \$1,000.00 shall be due to Artist within thirty (30) days of Artist’s delivery of a detailed timeline for installation of the Mural, describing the estimated date of completion of each phase of the installation process.
2. **Final Completion:** \$1,000.00 shall be due to Artist within thirty (30) days of upon Final Completion, which shall be defined as:
 - a. Complete installation of the completed Mural, as confirmed by City and Owner;
 - b. Final inspection and written approval of the installation of the Mural by City and Owner;
 - c. Artist’s submission to City of a recommended maintenance plan for the Mural; and
 - d. Execution of a mutually agreed-upon acceptance agreement, to be prepared by the City Attorney’s Office, to include affirmation of Artist’s indemnification of City and express waiver of Artist’s right, title, or interest in the Mural.

III. TIME OF PERFORMANCE.

A. Timeline. In the provision of services and deliverables under this Task Order, Artist shall meet the following deadlines:

1. **By 5:00 p.m. by August 12, 2021:** Artist shall deliver to City a detailed timeline for installation of the Mural.
2. **By 5:00 p.m. by September 30, 2021:** Artist shall deliver to City:
 - a. Completely installed Mural, as defined herein and as approved in writing by City and Owner;
 - b. Written recommended maintenance plan for the Mural; and
 - c. Signed acceptance agreement.

B. Time of the essence. The Parties acknowledge that services provided under this Task Order shall be performed in a timely manner. The Parties acknowledge and agree that time is strictly of the essence with respect to this Task Order, and that the failure to timely perform any of the obligations hereunder shall constitute a breach of, and a default under, this Task Order by the party so failing to perform.

III. GENERAL PROVISIONS.

A. Master Agreement applies. All provisions of the Master Agreement are incorporated by reference and made a part of hereof as if set forth in their entirety herein.

B. Owner’s and City’s designated representatives. Stakeholders have vested in the following representatives the authority to provide to Artist input and approval under this Agreement. Any Stakeholder may change its authorized representative and/or address for the purpose of this paragraph by giving written notice of such change to Artist and to City.

1. Owner:

Paul McKenna, Member
Team MC, LLC
meridiancycles@gmail.com

- 2. **City:**
Audrey Belnap, Arts and Culture Coordinator
City of Meridian
abelnap@meridiancity.org

C. City Council approval required. The validity of this Task Order shall be expressly conditioned upon City Council action approving same. Execution of this Task Order 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 Task Order on the Effective Date first written above.

ARTIST:

Ben Konkol
Ben Konkol

CITY OF MERIDIAN:

Robert E. Simison
Robert E. Simison, Mayor 7-20-2021

Attest: Chris Johnson
Chris Johnson, City Clerk



EXHIBIT A MURAL DESIGN CONCEPT

