

**PROFESSIONAL SERVICES AGREEMENT FOR
MERIDIAN HISTORICAL VIRTUAL TOUR PHOTOS**

This PROFESSIONAL SERVICES AGREEMENT FOR MERIDIAN HISTORICAL VIRTUAL TOUR PHOTOS (“Agreement”) is made this ___ day of January, 2023 (“Effective Date”), by and between the City of Meridian, a municipal corporation organized under the laws of the State of Idaho (“City”), and Hull Film, LLC, a limited liability company organized under the laws of the State of Idaho (“Contractor”). (City and Contractor may hereinafter be collectively referred to as “Parties.”)

WHEREAS, City desires that the public experience the history of Meridian with an immersive virtual tour of historic places and properties, and to that end, solicited proposals for a series of Panoramic 360-degree photos and large format stills to be used in the Meridian Virtual Tour digital app, print brochure, and other uses (“Project”);

WHEREAS, Contractor proposed to produce panoramic, 360-degree photos and large-format still photos, at the historic Eggers Farmstead, located at 820 S. Black Cat Road, also known as Black Cat Farm (“Black Cat Farm”), which proposal is attached here as *Exhibit A* (“Proposal”);

WHEREAS, at its meeting on December 7, 2022, the Meridian Historic Preservation Commission reviewed the Proposal, determined that it will contribute to the immersive virtual tour experience, and recommended that the City enter into an agreement with Contractor for the work described therein;

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.

Contractor shall provide all services and deliverables as described in the Proposal, including producing and delivering to City two (2) panoramic, 360-degree photographs, twenty-four (24) point-of-interest (“POI”) photographs, and four (4) large format still photographs of Black Cat Farm. All photographs will be uploaded and maintained by Contractor through Contractor’s website. All photographs produced by Contractor under this Agreement may hereinafter be referred to as “Deliverables.”

II. COMPENSATION.

A. **Total amount.** The total payment to Contractor for Deliverables and all related services provided under this Agreement shall be one thousand eight hundred dollars (\$1,800.00). This amount shall constitute full compensation for any and all conceptualization, pre-production planning, travel, materials, production time, and use of the final product, as well as all use rights and copyrights.

- B. **Method of payment.** Within seven (7) days of delivery of all Deliverables, Contractor shall provide an invoice for Deliverables, 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 Contractor under the terms and conditions of this Agreement. Payment of all taxes and other assessments on such sums shall be the sole responsibility of Contractor.

III. TIME OF PERFORMANCE.

- A. **Timeline.** Contractor shall deliver Deliverables to City by 5:00 p.m. on Friday, September 1, 2023.
- B. **Time of the essence.** The Parties acknowledge that services provided under this Agreement shall be performed in a timely manner. The Parties acknowledge and agree that time is strictly of the essence with respect to this Agreement, and that the failure to timely perform any of the obligations hereunder shall constitute a breach of, and a default under, this Agreement by the party so failing to perform.

IV. CREATION, INTEGRITY, AND OWNERSHIP OF PROJECT.

- A. **Waiver and relinquishment of rights.** Contractor shall, and hereby does, expressly waive any and all right, title, or interest in the Deliverables and/or Project. Contractor understands that this waiver shall include waivers of the rights of reproduction, adaptation, publication, and display, except as otherwise permitted by this Agreement. Contractor agrees to relinquish any and all rights, title, and interest in the Deliverables developed in connection with this Agreement, and hereby expressly waives any rights Contractor has or may have to the Deliverables or Project, including, but not limited to, the rights afforded Contractors under the Copyright Act of 1976 and the Visual Arts Rights Act of 1990, Title 17 U.S.C. §§ 101 *et seq.* Contractor understands and agrees that the right of attribution and integrity, as specifically set forth in 17 U.S.C. § 106A, are hereby expressly waived except as otherwise provided herein. Under 17 U.S.C. § 201(b), City is the author of the Project and therefore owns all of rights comprised in the copyright. Further, 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.
- B. **Exclusivity.** Contractor warrants and represents that the Deliverables produced pursuant to this Agreement have never heretofore been designed, created, published, or copied and that Contractor is the sole creator and owner of all rights in the Deliverables.
- C. **Ownership.** Upon Contractor's delivery of the Deliverables, the Deliverables shall be owned by City.
- D. **No copyright.** Contractor shall not make any claim to the copyright of the Deliverables or Project.

- E. **Contractor's Copies of Deliverables.** Contractor may retain reduced quality versions of the Deliverables as Contractor may desire for marketing, educational and public information purposes. Where practicable, Contractor shall acknowledge on each such reproduction the URL of the Project, provided that reproductions shall not be identified as or represented to be the finished Project.
- F. **Subcontracting or assignment of obligations.** Contractor shall not subcontract or assign any of Contractor's obligations under this Agreement that require or that may require Contractor's creative talent or expertise. Contractor may subcontract or assign obligations that do not require Contractor's creative talent or expertise, including, but not limited to, such obligations as editing or retouching Deliverables, and other obligations as outlined in Contractor's proposal as set forth in *Exhibit A*. Any and all subcontractors or assignees shall be bound by all the terms and conditions of this Agreement.

V. **INDEMNIFICATION, WAIVER, AND INSURANCE.**

- A. **Indemnification.** Contractor shall 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 Contractor or Contractor's servants, agents, employees, guests, and/or business invitees, occurring before City's Final Acceptance of the Project.
- B. **Waiver.** Contractor 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 Contractor's performance of this Agreement, 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 Contractor.** Contractor acknowledges and understands that City shall not provide insurance or benefit coverage of any kind for injury, death, or illness related to Contractor's provision of services under this Agreement. Contractor shall obtain and shall maintain, at Contractor's own expense, insurance in an amount necessary to insure Contractor's insurable interests.

VI. **TERMINATION.**

- A. **Termination for cause.** If City determines that Contractor has failed to comply with any term or condition of this Agreement, violated any of the covenants, agreements, and/or stipulations of this Agreement, falsified any record or document required to be prepared under this Agreement, engaged in fraud, dishonesty, or any other act of misconduct in the performance of this Agreement; or if either Party willfully or negligently defaults in, or fails to fulfill, its material obligations under this Agreement; 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 shall be terminated upon mailing of written notice of such termination by the terminating party.

1. **Default by City.** In the event of termination for non-performance or default by City, City shall compensate Contractor for work actually delivered by Contractor prior to the date of written notice of termination and any verified 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 Contractor.** In the event of termination for non-performance or default by Contractor, all finished and unfinished photographs and/or any and all other work products prepared and submitted or prepared for submission under this Agreement shall, at City's option, become City's property. Notwithstanding this provision, Contractor shall not be relieved of any liability for damages sustained by City attributable to Contractor's default or breach of this Agreement. City may reasonably withhold payments due until such time as the exact amount of damages due to City from Contractor is determined. Contractor shall not be relieved of liability to City for damages sustained by City by virtue of any breach or default of this Agreement by Contractor. This provision shall survive the termination of this Agreement and shall not relieve Contractor of liability to City for damages.

B. **Termination without cause.** City may terminate this Agreement for any reason at any time by providing fourteen (14) days' notice to Contractor.

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.

VII. GENERAL PROVISIONS.

A. **Permission to enter property.** Prior to entering Black Cat Farm or any other privately-owned property for purposes of work described in this Agreement, Contractor shall obtain permission from the owner(s) of such property.

B. **Relationship of Parties.** It is the express intention of Parties that Contractor is an independent contractor and neither Contractor nor any officer, employee, subcontractor, assignee, or agent of Contractor 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 Contractor and City or between Contractor and any official, agent, or employee of City. Both parties acknowledge that Contractor is not an employee of City. Contractor shall retain the right to perform services for others during the term of this

Agreement. Specifically, without limitation, Contractor understands, acknowledges, and agrees:

1. Contractor is free from actual and potential control by City in the provision of services under this Agreement.
2. Contractor is engaged in an independently established trade, occupation, profession, or business.
3. Contractor has the authority to hire subordinates.
4. Contractor 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, Contractor shall comply with any and all applicable federal, state, and local laws.

D. **Non-Discrimination.** Throughout the course of this Agreement, Contractor 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. **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.

F. **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.

G. **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.

H. **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.

I. **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.

J. **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.

K. **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:

Contractor:

Brandon L. Hull
Hull Film, LLC
1303 E. Portobello Ct.
Eagle ID 83616
(208) 866-7874
brandon@hullfilm.com

City:

Cassandra Schiffler, Arts and Culture Coordinator
Parks and Recreation Department
33 E. Broadway Ave.
Meridian ID 83642
(208) 489-0399
cschiffler@meridiancity.org

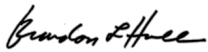
Either party may change its address for the purpose of this provision by giving written notice of such change in the manner herein provided.

L. **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.

M. **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.

CONTRACTOR:



Brandon L. Hull
Manager, Hull Film, LLC

CITY OF MERIDIAN:

BY: _____
Robert Simison, Mayor

Attest: _____
Chris Johnson, City Clerk

EXHIBIT A
CONTRACTOR'S PROPOSAL



HULLFILM

EAGLE, ID. 83616

HULLFILM.COM

208-866-7874

BRANDON@HULLFILM.COM

To: Cassandra Schiffler, Meridian HPC

From: Brandon L. Hull, HULLFILM

Date: 08/29/22

Re: Meridian Historical Virtual Tour

OVERVIEW: To continue the interactive virtual tour consisting of Panoramic 360's and Large-Format Stills highlighting the history of the city of Meridian. The Virtual Tour features compatibility with computers, tablets, and mobile phones.

ABOUT THE TOUR: The next stage of the virtual tour will focus on one location:

1. Black Cat Farm

LOCATION 1: Black Cat Farm

2 x Panoramic 360's

+ up to 24 augmented POI's

4 x Large-Format Stills (To be selected by HPC)

COST AND TIMELINES: The suggested offering above featuring **2 Panoramic 360's** and **4 Large-Format Stills**, along with the full update and delivery of the virtual tour, would cost \$1,800. Once production has commenced, the project will take approximately 60 days to deliver the final working tour.

CONCLUSION: This continues to be a very exciting time in the history of the City of Meridian, with changes occurring in every direction. Having the foresight to capture and preserve the City as it is at this time using cutting-edge technology that can be accessed by the vast majority of citizens, will encourage preservation. The images produced for the tour are history as soon as the photo is taken, and with the assistance of the virtual tour tool, over time it will be possible to shoot the same locations again and see the changes at each. This is a long-term project, built in individual pieces over time.

Thank you for considering this,

Sincerely,

Brandon

Brandon L. Hull
HULLFILM
208-866-7874
brandon@hullfilm.com

HULLFILM 360: <https://hullfilm.com>