

ARTIST SERVICES AGREEMENT



ARTIST SERVICES AGREEMENT

THIS **AGREEMENT** is made and entered into in duplicate this ____ day of _____, 2020, by and between SUMMIT COUNTY, a political subdivision of the State of Utah, whose address is 60 N. Main Street, P.O. Box 128, Coalville, Utah 84017 ("**County**"), and _____, a _____, whose address is _____ ("**Artist**"). The County and Artist each is a "**Party**" and collectively they are referred to as the "**Parties**".

WITNESSETH:

WHEREAS, the County desires to have certain services and tasks performed as set forth below requiring specialized skills and other supportive capabilities;

WHEREAS, sufficient County resources are not available to provide such services; and

WHEREAS, the Artist represents that the Artist is qualified and possesses sufficient skills and the necessary capabilities, including technical and professional expertise, where required, to perform the services and/or tasks set forth in this Agreement.

NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performance contained herein, the Parties hereto agree as follows:

1. **DEFINITIONS.**

- A. **Artwork**: means _____ more fully described in the "Scope of Services" attached hereto as **Addendum A** and incorporated herein to this Agreement.
- B. **Site or Sites**: means _____ located as outlined on the Site Plan, attached hereto as **Addendum D**, if applicable and attached.

2. **SCOPE OF SERVICES, COMPENSATION AND METHOD OF PAYMENT.**

- A. Artist shall perform such services and accomplish such tasks, including the furnishing of all materials, permits, and equipment as necessary for the design, fabrication, transportation, and installation of the Artwork and necessary for full performance thereof, as are identified and

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designated as Artist responsibilities throughout this Agreement and as set forth in the "Scope of Services" attached hereto as **Addendum A** and incorporated herein (the "Project").

- B. For the performance of said services, Artist shall receive a sum not to exceed _____ (**\$38,000**), which shall be payment in full for design, materials, labor, installation, travel, taxes and all other expenses needed to perform the services and complete the Project. Said fees shall be calculated pursuant to the Fee Schedule, attached hereto and incorporated herein as **Addendum B**.
- C. No payment shall be made for any service rendered by the Artist except for services identified and set forth in this Agreement.
- D. For all "extra" work the County requires, the County shall pay the Artist for the work performed under this Agreement according to schedule for "extra" work as outlined in **Addendum B** or if no "extra" work schedule is outlined, as subsequently agreed to by both Parties in writing.
- E. The Artist shall submit to the County Manager or his designee on forms approved by the County Manager, invoices for services rendered during the pay period and as set forth in **Addendum B**. The County shall make payments within thirty (30) days thereafter. Requests for more rapid payment will be considered if a discount is offered for early payment. Interest shall accrue at a rate of six percent (6%) per annum for services remaining unpaid for sixty (60) days or more.
- F. The Artist reserves the right to suspend or terminate work and this Agreement if any unpaid account exceeds sixty (60) days.
- G. The County has designated _____ as County's Representative, who shall have authority to act in the County's behalf with respect to this Agreement. Where required in this Agreement, Artist shall report to the County's Representative.
- H. Official Acceptance: Final payment to the Artist as outlined in **Addendum B** may not occur until the County has accepted the Artwork. Such acceptance may occur only after the Artist has complied with all of Artist's obligations hereunder. The County shall so signify and take official ownership by sending a letter of acceptance of the Artwork to the Artist.

3. **TERM.**

No work shall occur prior to the issuance of a Notice to Proceed which cannot occur until execution of this Agreement, which execution date shall be commencement of the term and the term shall terminate on _____ or earlier, unless extended by mutual written agreement of the Parties.

4. **ARTIST'S OBLIGATIONS.**

- A. Warranties. Artist warrants that the Artwork is the original product of the Artist's creative efforts. Artist also warrants that the Artwork is unique and that the Artwork or a duplicate thereof has not been accepted for sale elsewhere, unless as stipulated to the County at the time

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this Agreement is signed, the Artwork is known by the County as one of a limited edition. Artist warrants that the execution and fabrication of the Artwork will be performed in a professional manner and that the Artwork, as fabricated and installed, will be free of defects in material and workmanship, including any defects consisting of “inherent vice” or qualities which cause or accelerate deterioration of the Artwork. Artist shall guarantee and maintain the Artwork from faults of material and workmanship for a period of one year after installation. Artist hereby certifies that the Artwork has no breakable or easily damaged parts or pieces, is suitable for outdoor public display (if applicable), and is constructed in a way which will not cause safety or liability issues.

- B. Changes in Design. Artist shall create the Artwork in accordance with the proposed and approved design detailed in **Addendum A**. Recognizing that the change in scale from model/sketch to full scale may require adjustments, Artist has the right to make minor changes in the Artwork that are structurally and esthetically necessary. Any change in scope, design, or material that significantly alters the original and approved concept and design of the Artwork or affects installation, scheduling, site preparation, location or maintenance for the Artwork shall require the prior review and written approval of the County.
- C. Transportation, Installation and Timetable. Artist shall coordinate all Site preparation, transportation, installation plans, and all deliverables with the County and said plans shall adhere to the timetable attached hereto as **Addendum C**. Artist shall deliver and complete installation of the Artwork no later than August 1st, 2020. (The “Completion Date”). Artist shall be responsible for delivery and transportation of the Artwork to the Sites in coordination with the County. Prior to the installation of the Artwork, Artist shall inspect the Sites to ensure that they are ready to accept the Artwork and are compliant with the specifications provided by the Artist. Artist shall notify the County of any perceived conflict, defect or non-compliance with specifications. Artist shall ensure that the Artwork as installed shall not interfere with the intended use of the Sites, pedestrian and other traffic flow, parking, safety devices and procedures, and other needs and function of the Site as defined by the County and/or ordinance.

The responsibility for and risk of damage to or loss of the Project through installation shall be solely that of the Artist. Artist shall take such measures as are reasonably necessary to protect the Artwork from loss or damage during the storage, transportation, delivery of the Artwork, and through completion of installation of the Artwork. Artist shall be required to provide a policy of insurance to cover the risk of damage to or loss of the Project through installation. The insurance requirements are outlined in Paragraph 10.

In the event that, through the fault of the Artist (as determined by the County) the Artwork is not completed and installed by the Completion Date, the amount of 10% of the balance due shall be deducted every fourteen (14) calendar days until the installation is completed. Artist may request an extension of the Completion Date from the County. Requests for extensions must be in writing and be submitted within ten (10) days of Artist’s knowledge, of a delay, but no later than fourteen (14) calendar days prior to the Completion Date. If the extension is granted, a new Completion Date shall be agreed upon in writing and such change shall not affect any other provisions of this Agreement. In recognition of the significant engineering and infrastructure components involved in the Artwork, request for extensions of time shall not be unreasonably refused.

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- D. Permits. Artist shall secure any and all required licenses, permits and similar legal authorization at the Artist's expense as may be necessary for the installation of the Artwork at the Sites.
- E. Maintenance and Repairs. Prior to the Completion Date, Artist shall supply the County with written maintenance instructions. The County agrees to ensure that the Artwork is maintained and protected to the extent practical. During the lifetime of the Artwork, Artist will supply at no cost to the Artist and at no charge to the County, advice as to problems arising in relation to maintenance of the Artwork.

The County shall make every reasonable effort to consult with Artist concerning repairs to the Artwork. To the extent practical, Artist shall be given the opportunity to accomplish repairs at a reasonable fee. The County reserves the right to obtain competitive bids and to choose the highest quality and least expensive vendor for all repairs and restoration.

- F. Meetings. Artist shall be available with reasonable advance notice for a reasonable number of meetings required to coordinate design and project implementation, ceremonies and the like, as necessary.

5. COUNTY'S OBLIGATIONS.

- A. The County shall perform all obligations in strict compliance with all terms and conditions of this Agreement.
- B. The County shall be responsible for providing Artist, at no expense to the Artist, copies of existing designs, drawings reports, list of required permits, and other existing relevant data, if any, which is needed by Artist in order to perform.
- C. The County shall prepare the Sites for the timely transportation and installation of the Artwork. The County shall make provision for access to the Sites and adjacent properties, if necessary for performing the services herein.
- D. Except for claims that may occur as a result of the Artist's breach of warranties provided in Paragraph 4(A), upon installation and acceptance of the Artwork, the responsibility for and risk of damage to or loss of the Artwork shall no longer be the responsibility of the Artist and the County will be responsible for protecting the Artwork against loss, theft, vandalism, or other damage.
- E. In the event the Artwork is lost, damaged, or destroyed, the County reserves the right to replace it without consulting the Artist. If at any time, the County determines that the Artwork creates a safety concern, is a blight on the community, is an issue with community welfare, or anything that is not in the best interest of the County, the County may require the Artwork to be removed or, if agreed to by the Artist, may be modified in order to remedy the situation or condition.
- F. The County shall retain the right to provide signage, publicity and web information about the Project/Artwork.

6. RECORDS AND INSPECTIONS.

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- A. The Artist shall maintain books, records, documents, statements, reports, data, information, and other material with respect to matters covered, directly or indirectly, by this Agreement, including (but not limited to) that which is necessary to sufficiently and properly reflect all direct and indirect costs related to the performance of this Agreement, and shall maintain such accounting procedures and practices as may be necessary to assure proper accounting of all funds paid pursuant to this Agreement.
- B. The Artist shall retain all such books, records, documents, statements, reports, data, information, and other material with respect to matters covered, directly or indirectly, by this Agreement for six (6) years after expiration of the Agreement.
- C. The Artist shall, at such times and in such form as the County may require, make available for examination by the County, its authorized representatives, the State Auditor, or other governmental officials authorized by law to monitor this Agreement all such books, records, documents, statements, reports, data, information, and other material with respect to matters covered, directly or indirectly, by this Agreement. The Artist shall permit the County or its designated authorized representative to audit and inspect other data relating to all matters covered by this Agreement. The County may, at its discretion, conduct an audit at its expense, using its own or outside auditors, of the Artist's activities, which relate directly or indirectly to this Agreement.
- D. The County reserves the right to inspect and review the Artwork upon reasonable notice at any time while materials for the Artwork are on Artist's premises or in transit.
- E. The County is subject to the requirements of the Government Records Access and Management Act, Chapter 2, Title 63G, Utah Code Annotated, 1953, as amended and Summit County Code Title 5 ("GRAMA"). All materials submitted by Artist pursuant to this Agreement are subject to disclosure unless such materials are exempt from disclosure pursuant to GRAMA. The burden of claiming and exemption from disclosure rests solely with Artist. Any materials for which Artist claims a privilege from disclosure based on business confidentiality shall be submitted marked as "confidential - business confidentiality" and accompanied by a concise statement from Artist of reasons supporting its claim of business confidentiality. Generally, GRAMA only protects against the disclosure of trade secrets or commercial information that could reasonably be expected to result in unfair competitive injury. The County will make reasonable efforts to notify Artist of any requests made for disclosure of documents submitted under a claim of confidentiality. Artist specifically waives any claims against the County related to any disclosure of materials pursuant to GRAMA.

7. INDEPENDENT CONTRACTOR RELATIONSHIP.

- A. The Parties intend that an independent Artist/County relationship will be created by this Agreement. No agent, employee, or representative of the Artist shall be deemed to be an employee, agent, or representative of the County for any purpose, and the employees of the Artist are not entitled to any of the benefits the County provides for its employees. The Artist

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will be solely and entirely responsible for its acts and for the acts of its agents, employees, subcontractors or representatives during the performance of this Agreement.

- B. In the performance of the services herein contemplated the Artist is an independent contractor with the authority to control and direct the performance of the details of the work, however, the results of the work contemplated herein must meet the approval of the County and shall be subject to the County's general rights of inspection and review to secure the satisfactory completion thereof.

8. ARTIST EMPLOYEE/AGENTS.

The County may at its sole discretion require the Artist to remove an employee(s), agent(s), or representative(s) from employment on this Project. The Artist may, however, employ that (those) individual(s) on other non-County related projects.

9. HOLD HARMLESS INDEMNIFICATION.

- A. The Artist shall indemnify and hold the County and its agents, employees, and officers, harmless from and shall process and defend at its own expense any and all claims, demands, suits, at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, brought against the County arising out of, in connection with, or incident to the execution of this Agreement and/or the Artist's defective performance or failure to perform any aspect of this Agreement; provided, however, that if such claims are caused by or result from the concurrent negligence of The County, its agents, employees, and officers, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Artist; and provided further, that nothing herein shall require the Artist to hold harmless or defend the County, its agents, employees and/or officers from any claims arising from the sole negligence of the County, its agents, employees, and/or officers. The Artist expressly agrees that the indemnification provided herein constitutes the Artist's limited waiver of immunity as an employer under Utah Code Section 34A-2-105; provided, however, this waiver shall apply only to the extent an employee of Artist claims or recovers compensation from the County for a loss or injury that Artist would be obligated to indemnify the County for under this Agreement. This limited waiver has been mutually negotiated by the Parties, and is expressly made effective only for the purposes of this Agreement. The provisions of this section shall survive the expiration or termination of this Agreement.
- B. Artist does hereby remise, release, forever discharge and covenant not to sue SUMMIT COUNTY, its agents, servants, employees, officers, successors and assigns, and/or heirs, executors and administrators, and also any and all other persons, associations and corporations, whether herein named or referred to or not, and who, together with the above named, may be jointly and severally liable to the Artist, of and from any and all, and all manner of, actions and causes of action, rights, suits, covenants, contracts, agreements, judgments, claims and demands whatsoever in law or equity, including claims for contribution, arising from and by reason of any and all KNOWN AND UNKNOWN, FORESEEN AND UNFORESEEN bodily and personal injuries or death, damage to property, and the consequences thereof, which heretofore have been, and which hereafter may be sustained by the Artist or by any and all other persons, associations and corporations, whether herein named or referred to or not, from all liability arising out of, in connection with, or incident to the execution of this Agreement

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- C. No liability shall attach to the County by reason of entering into this Agreement except as expressly provided herein.

10. INSURANCE.

The Artist shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Artist, their agents, representatives, employees, or subcontractors. The Artist shall provide a Certificate of Insurance evidencing:

- A. General Liability insurance written on an occurrence basis with limits no less than One Million Dollars (\$1,000,000) combined single limit per occurrence and Three Million Dollars (\$3,000,000) aggregate for personal injury, bodily injury and property damage.
- B. The Artist shall increase the limits of such insurance to at least the amount of the Limitation of Judgments described in Section 63G-7-604 of the Governmental Immunity Act of Utah, as calculated by the state risk manager every two years and stated in Utah Admin. Code R37-4-3.
- C. Automobile Liability insurance with limits no less than Two Million Dollars (\$2,000,000) combined single limit per accident for bodily injury and property damage.
- D. Professional Liability (Errors and Omissions) insurance with annual limits no less than One Million Dollars (\$1,000,000) per occurrence. If written on a claims-made basis, the Artist warrants that the retroactive date applicable to coverage precedes the effective date of this agreement; and that continuous coverage will be maintained for an extended reporting period and tail coverage will be purchased for a period of at least three (3) years beginning from the time that work under this agreement is complete.
- E. Workers Compensation insurance limits written as follows: Bodily Injury by Accident Five Hundred Thousand Dollars (\$500,000) each accident; Bodily Injury by Disease Five Hundred Thousand Dollars (\$500,000) each employee, Five Hundred Thousand Dollar (\$500,000) policy limit.'
- F. Data Breach and Privacy / Cyber Liability Insurance including coverage for failure to protect confidential information and failure of the security of the Artist's computer systems or the County's systems due to the actions of the Artist which results in unauthorized access to the County's data. The limit applicable to this policy shall be no less than \$5,000,000 per occurrence, and must apply to incidents related to the Cyber Theft of the County's property, including but not limited to money and securities.
- G. Technology Errors and Omissions Insurance with a limit of not less \$5,000,000 for damages arising from computer related services including but not limited to the following:
- Consulting;
 - Data Processing;
 - Programming;
 - System Integration;
 - Hardware or Software Development;

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- Installation;
- Distribution or Maintenance;
- Systems Analysis Or Design;
- Training; and
- Staffing or Other Support Services.

The policy shall include coverage for third party fidelity including cyber theft and protect the County as "Additional Insured". It is acceptable that the Data Breach and Privacy / Cyber Liability Insurance and Technology Errors and Omissions insurance be provided on the same policy. The total cost of the insurance, as listed above, must be incorporated into the Cost Proposal. The additional insured protection afforded the County must be on a primary and non-contributory basis. All policies must include a waiver of subrogation in favor of The County.

- H. The County shall also be named as an additional insured on general liability and auto liability insurance policies, with respect to work performed by or on behalf of the Artist and a copy of the endorsement naming the County as an additional insured shall be attached to the Certificate of Insurance. Should any of the above described policies be cancelled before the expiration date thereof, Artist shall deliver notice to The County within thirty (30) days of cancellation. The County reserves the right to request certified copies of any required policies.
- I. The Artist's insurance shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

11. TREATMENT OF ASSETS.

- A. Title to all property furnished by the County shall remain in the name of the County and the County shall become the owner of the Artwork, work product and other documents, if any, prepared by the Artist pursuant to this Agreement (contingent on County's performance hereunder). Ownership of the work shall apply regardless of the form of the work product, including, but not limited to, writings, drawings, reports, any form of video or audio, etc. Upon final payment by County to Artist, Artist shall deliver to County all work product applicable to the services provided under this Agreement including, but not limited to, work product in draft form.
- B. Copyright. Notwithstanding Section 11(A) above, Artist expressly reserves every right available to Artist in common law or under the Federal Copyright Act and all other rights in and to the Artwork except ownership and possession of the Artwork and any such rights as those limited or assigned by this Agreement. The County shall have the right to photographically or mechanically reproduce the Artwork for sale without written agreement of Artist. All reproductions of the Artwork by the County shall contain a credit to the Artist as follows: "© (Artist) – (year completed)." Artist agrees to give credit in the following form: "Original owned by Summit County" in any public showing of any reproductions of the Artwork.

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12. COMPLIANCE WITH LAWS AND WARRANTIES.

- A. The Artist, in the performance of this Agreement, shall comply with all applicable federal, state, and local laws and ordinances, including regulations for licensing, certification and operation of facilities, programs and accreditation, and licensing of individuals, and any other standards or criteria as described in this Agreement to assure quality of services.
- B. The Artist specifically agrees to pay any applicable fees or charges which may be due on account of this Agreement.
- C. If this Agreement is entered into for the physical performance of services within Utah, the Artist shall register and participate in E-Verify, or equivalent program. The Artist agrees to verify employment eligibility through E-Verify, or equivalent program, for each new employee that is employed within Utah, unless exempted by Utah Code Ann. § 63G-12-302.
- D. Artist shall be solely responsible to the County for the quality of all services performed by its employees or sub-contractors under this Agreement. Artist hereby warrants that the services performed by its employees or sub-contractors will be performed substantially in conformance with the standard of care observed by similarly situated companies providing services under similar conditions.

13. NONDISCRIMINATION.

- A. The County is an equal opportunity employer.
- B. In the performance of this Agreement, the Artist will not discriminate against any employee or applicant for employment on the grounds of race, creed, color, national origin, sex, marital status, age or the presence of any sensory, mental or physical handicap; provided that the prohibition against discrimination in employment because of handicap shall not apply if the particular disability prevents the proper performance of the particular worker involved. The Artist shall ensure that applicants are employed, and that employees are treated during employment without discrimination because of their race, creed, color, national origin, sex, marital status, age or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to: employment, upgrading, demotion or transfers, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and programs for training including apprenticeships. The Artist shall take such action with respect to this Agreement as may be required to ensure full compliance with local, state and federal laws prohibiting discrimination in employment.
- C. The Artist will not discriminate against any recipient of any services or benefits provided for in this Agreement on the grounds of race, creed, color, national origin, sex, marital status, age or the presence of any sensory, mental or physical handicap.
- D. If any assignment or subcontracting has been authorized by the County, said assignment or subcontract shall include appropriate safeguards against discrimination. The Artist shall take such action as may be required to ensure full compliance with the provisions in the immediately preceding paragraphs herein.

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14. ASSIGNMENTS/SUBCONTRACTING.

- A. The Artist shall not assign its performance under this Agreement or any portion of this Agreement without the written consent of the County, and it is further agreed that said consent must be sought in writing by the Artist not less than thirty (30) days prior to the date of any proposed assignment. The County reserves the right to reject without cause any such assignment. Any assignment made without the prior express consent of the County, as required by this part, shall be deemed null and void.
- B. Any work or services assigned hereunder shall be subject to each provision of this Agreement and property bidding procedures where applicable as set forth in local, state or federal statutes, ordinance and guidelines.
- C. Any technical/professional service subcontract not listed in this Agreement, must have express advance approval by the County.
- D. Each subcontractor that physically performs services within Utah shall submit an affidavit to the Artist stating that the subcontractor has used E-Verify, or equivalent program, to verify the employment status of each new employee, unless exempted by Utah Code Ann. § 63G-12-302.

15. CHANGES.

Either Party may request changes to the scope of services and performance to be provided hereunder, however, no change or addition to this Agreement shall be valid or binding upon either party unless such change or addition be in writing and signed by both Parties. Such amendments shall be attached to and made part of this Agreement.

16. PROHIBITED INTEREST, NO THIRD PARTY RIGHTS AND NO GRATUITY TO COUNTY EMPLOYEES.

- A. No member, officer, or employee of the County shall have any pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof.
- B. Nothing herein is intended to confer rights of any kind in any third party.
- C. No County employee who has procurement decision making authority and is engaged in the procurement process, or the process of administering a contract may knowingly receive anything of value including but not limited to gifts, meals, lodging or travel from anyone that is seeking or has a contract with the County.
- D. Artist represents that it has not: (i) provided an illegal gift to any County officer or employee, or former County officer or employee, or to any relative or business entity of a County officer or employee, or relative or business entity of a former County officer or employee; (ii) retained any person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, other than bona fide employees of bona fide commercial agencies established for the purpose of securing business; (iii) breached any of the ethical standards set forth in State statute; or (iv) knowingly influenced, and hereby promises that it will not knowingly influence, any County officer or employee or former County officer or

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employee to breach any of the ethical standards set forth in State statute or Summit County ordinances.

- E. None of the funds, materials, property or services provided directly or indirectly under the Agreement shall be used for any partisan political activity, or to further the election or defeat of any candidate for public office.

17. MODIFICATIONS TO TASKS AND MISCELLANEOUS PROVISIONS.

- A. All work proposed by the Artist is based on current government ordinances and fees in effect as of the date of this Agreement.
- B. Any changes to current government ordinances and fees which affect the scope or cost of the services proposed may be billed as an “extra” pursuant to Paragraph 3(D), or deleted from the scope, at the option of The County.
- C. The County shall make provision for access to the property and/or project and adjacent properties, if necessary for performing the services herein.

18. TERMINATION.

- A. Either party may terminate this Agreement, in whole or in part, at any time, by at least thirty (30) days' written notice to the other party. The Artist shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Artist shall promptly submit a termination claim to the County. If the Artist has any property in its possession belonging to the County, the Artist will account for the same, and dispose of it in a manner directed by the County.
- B. If the Artist fails to perform in the manner called for in this Agreement, or if the Artist fails to comply with any other provisions of the Agreement and fails to correct such noncompliance within three (3) days' written notice thereof, the County may immediately terminate this Agreement for cause. Termination shall be effected by serving a notice of termination on the Artist setting forth the manner in which the Artist is in default. The Artist will only be paid for services performed in accordance with the manner of performance set forth in this Agreement.

19. INTERPRETATION; NOTICES.

- A. The terms of this Agreement constitute the written expression of the mutual agreement of the Parties and shall be construed neutrally and not for or against either Party.
- B. Notice provided for in this Agreement shall be sent by certified mail to the addresses designated for the Parties on the last page of this Agreement. Notice is effective upon the date it was sent, except that a notice of termination pursuant to paragraph 18 is effective upon receipt. All reference to “days” in this Agreement shall mean calendar days.

20. JURISDICTION AND VENUE.

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- A. This Agreement has been and shall be construed as having been made and delivered within the State of Utah, and it is agreed by each party hereto that this Agreement shall be governed by laws of the State of Utah, both as to interpretation and performance.
- B. Any action of law, suit in equity, or judicial proceeding for the enforcement of this Agreement, or any provisions thereof, shall be instituted and maintained only in any of the courts of competent jurisdiction in Summit County, Utah.

21. SEVERABILITY AND NON-WAIVER.

- A. If, for any reason, any part, term, or provision of this Agreement is held by a court of the United States to be illegal, void or unenforceable, the validity of the remaining provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.
- B. If it should appear that any provision hereof is in conflict with any statutory provision of the State of Utah, said provision which may conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform in such statutory provisions.
- C. No failure of the County or Artist to exercise any power given to it under this Agreement, or to insist upon strict compliance by the other Party with any obligation, responsibility, or condition under it, and no custom or practice of the parties at variance with its terms shall constitute a waiver of that Party's right to demand exact compliance with those terms upon any subsequent default. No waiver shall be effective unless it is in writing and signed by an authorized representative of the waiving Party.

22. PUBLIC FUNDS AND PUBLIC MONIES.

- A. Definitions: "Public funds" and "public monies" mean monies, funds, and accounts, regardless of the source from which they are derived, that are owned, held, or administered by the state or any of its boards, commissions, institutions, departments, divisions, agencies, bureaus, laboratories, or other similar instrumentalities, or any county, city, school district, political subdivision, or other public body. The terms also include monies, funds or accounts that have been transferred by any of the aforementioned public entities to a private contract provider for public programs or services. Said funds shall maintain the nature of "public funds" while in Artist's possession.
- B. Artist's Obligation: Artist, as recipient of "public funds" and "public monies" pursuant to this and other contracts related hereto, expressly understands that it, its officers, and employees are obligated to receive, keep safe, transfer, disburse and use these "public funds" and "public monies" as authorized by law and this Agreement for the provision of services to Summit County. Artist understands that it, its officers, and employees may be criminally liable under Utah Code Ann. § 76-8-402, for misuse of public funds or monies. Artist expressly understands that County may monitor the expenditure of public funds by Artist. Artist expressly understands that County may withhold funds or require repayment of funds from Artist for contract

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noncompliance, failure to comply with directives regarding the use of public funds, or for misuse of public funds or monies.

23. NOTICE TO RETIREES OF UTAH RETIREMENT SYSTEMS ("URS").

County is a URS "participating employer." Entering into this Agreement with County may affect a URS retiree's retirement benefits including, but not limited to, cancellation of the retiree's "retirement allowance" due to "reemployment" with a "participating employer" pursuant to Utah Code Ann. § 49-11-504 to -505. In addition, Artist is required to immediately notify County if a retiree of URS is the Artist; or an owner, operator, or principal of the Artist.

24. CONFIDENTIALITY.

The Parties agree that (a) all knowledge and information that either Party may receive from the other, including its employees or other consultants, or by virtue of the performance of services under and pursuant to this Agreement, relating to products, processes, apparatus, costs, technical data, business affairs of the Parties, and (b) all information provided by either Party in reports of work done, together with any other information acquired by or as a direct result of this Agreement and during the duration of such, shall for all time and for all purposes be regarded by the Parties as strictly confidential and held by each in confidence, and solely for the Parties' benefit and use, and shall not be used by either Party, or directly or indirectly disclosed by either Party to any person whatsoever outside the scope of this Agreement except with the other Party's prior permission. This provision does not apply to documents that are releasable by either Party under the Government Records Access and Management Act ("GRAMA"), UCA §63G-2-101 et seq.

25. GOVERNMENTAL IMMUNITY.

County is a body corporate and politic of the State of Utah, subject to the Governmental Immunity Act of Utah (the "Act"), Utah Code Ann. §§ 63G-7-101 to -904. The Parties agree that County shall only be liable within the parameters of the Governmental Immunity Act. Nothing contained in this Agreement shall be construed in any way, to modify the limits of liability set forth in that Act or the basis for liability as established in the Act.

26. NON-FUNDING CLAUSE.

County intends to request the appropriation of funds to be paid for the services provided by Artist under this Agreement. If funds are not available beyond December 31 of any effective fiscal year of this Agreement, the County's obligation for performance of this Agreement beyond that date shall be null and void. This Agreement shall create no obligation on the County as to succeeding fiscal years and shall terminate and become null and void on the last day of the fiscal year for which funds were budgeted and appropriated, except as to those portions of payments agreed upon for which funds were appropriated and budgeted. Said termination shall not be construed as a breach of this Agreement or any event of default under this Agreement and said termination shall be without penalty, whatsoever, and no right of action for damages or other

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relief shall accrue to the benefit of Artist, its successors, or its assigns, as to this Agreement, or any portion thereof, which may terminate and become null and void.

If funds are not appropriated for a succeeding fiscal year to fund performance by Artist under this Agreement, County shall promptly notify Artist of said non-funding and the termination of this Agreement, and in no event, later than 30 (thirty) days prior to the expiration of the fiscal year for which funds were appropriated.

27. ENTIRE AGREEMENT.

The Parties agree that this Agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated herein are excluded. Further, any modification of this Agreement shall be in writing and signed by both Parties. Failure to comply with any of the provisions stated herein shall constitute material breach of contract and cause for termination. Both Parties recognize time is of the essence in the performance of the provisions of this Agreement.

28. COUNTERPARTS.

This Agreement may be executed in several counterparts and all so executed shall constitute one agreement binding on all the Parties, notwithstanding that each of the Parties are not signatory to the original or the same counterpart. Further, executed copies of this Agreement delivered by facsimile shall be deemed an original signed copy of this Agreement.

Signatures on the following page

ARTIST SERVICES AGREEMENT

IN WITNESS WHEREOF the Parties hereto have caused this Agreement to be executed the day and year first hereinabove written.

SUMMIT COUNTY
60 North Main
P.O. Box 128
Coalville, UT 84017

Thomas C. Fisher
County Manager

Approved as to form:

County Attorney's Office

ARTIST SERVICES AGREEMENT

ARTIST NAME

Address:
Address:
County, State, Zip:

Tax ID#:

County Business License#
BL_____

Signature

Printed name

Title

STATE OF UTAH)
) ss.
COUNTY OF SUMMIT)

On this ____ day of _____, 20__, personally appeared before me _____, whose identity is personally known to me/or proved to me on the basis of satisfactory evidence and who by me duly sworn/affirmed, did say that he/she is the _____ (title or office) of _____, a _____ corporation (or limited liability company), by Authority of its Bylaws/Resolution of the Board of Directors or Member Resolution, and acknowledged that he/she signed it voluntarily for its stated purpose as _____ (title) for _____, a _____ corporation (or limited liability company).

Notary Public

ARTIST SERVICES AGREEMENT

ADDENDUM A

SCOPE OF SERVICES

Create and install a highly creative three dimensional artwork for the east exterior Ledges Event Center at the Summit County Fairgrounds within the previously stated timeline and budget.

ARTIST SERVICES AGREEMENT

ADDENDUM B

PAYMENT SCHEDULE

(including payment for extra work, if applicable)

ADDENDUM C

TIME SCHEDULE

ADDENDUM D

SITE PLAN

