



FOLSOM TRAIL MURAL PROJECT.

AGREEMENT.

This Agreement is made and entered into this ____ day of _____ 20__ (“Effective Date”), by and between the Seven Canyons Trust (“Trust”), a Utah non-profit (501-c3) corporation located at 122 J St, Salt Lake City, UT 84103, _____ (“Artist”), located at _____, Salt Lake City, UT 84____, and FOLSOM TEN, LLC (“Owner”), located at 25 S 1000 W, Salt Lake City, UT 84104.

Recitals.

A. The Selection Committee shall be a group of representatives from organizations involved in the Folsom Trail, including but not limited to, the Trust, Salt Lake City, Poplar Grove Community Council, and the Owner.

B. The Selection Committee chose the Artist to create a unique and original work of art (“Artwork”) to be located at 25 S 1000 W, Salt Lake City, UT 84104 (“Location”) as depicted and described in Exhibit A (“Design”).

C. The Artist is in the business of creating original works of art for site-specific locations.

D. The Trust, Artist, and Owner desire to enter into an agreement to design, implement, and maintain the Artwork as specified below.

Agreements.

NOW, THEREFORE, the parties agree to the following:

SECTION 1 – SERVICES.

The Artist shall design and implement the Design, as specified in Exhibit A, and generally described as the Folsom Trail Mural Project (“Project”). The Artist has designated _____ as Project Manager. The Project Manager, if not the Artist, has

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the authority to act on behalf of the Artist. The Artist shall not change the Project Manager without seven (7) days written notice to the Trust at info@sevencanyonstrust.org. If the Artist is comprised of a team, the Artist shall not change any member of the team without seven (7) days written notice to the Trust.

The Trust may approve or disapprove a change in the Project Manager or team at its sole discretion. Any replacement shall be as qualified for the work as the person being replaced. If no written notice is provided, the Trust may terminate this Agreement upon delivery of written notice to the Artist. The Artist is an independent contractor and not an employee of the Trust.

The Artist shall furnish all materials, equipment, and labor, including surface preparation, for the Artwork. The Artist shall create a projected timeline and coordinate dates with the Trust and Owner for installation. The Artist shall agree in good faith to communicate progress or potential delays. The final Artwork shall be in accordance with the proposed design in Exhibit A approved by the Selection Committee—unless otherwise approved by the Trust. The Artist shall agree to attend a community celebration, at an agreed-upon date, to unveil the Artwork unless there is significant reason for the absence.

The Artist represents and warrants that:

- A. The Artwork is the Artist's original creation, and no identical or substantially similar piece shall be created by the Artist;
- B. The Artwork does not infringe upon any copyright, trademark, or any other property or personal right;
- C. The Artwork is free and clear of obscenities or vulgarity as determined by the Trust, as well as liens or encumbrances from any source whatsoever;
- D. The Artist knows of no adverse claims to the Artwork and neither the Artwork nor any portion thereof is in the public domain; and
- E. The Artwork, as installed, is free of defects in material and workmanship.

The warranties described herein shall survive for two (2) years after the final acceptance of the Artwork. In the event of any breach of warranty that is curable by the Artist and which cure is consistent with generally accepted professional conservation standards, the Artist shall cure such breach at no cost at the request of the Trust. The Trust shall give notice to the Artist of any such observed breach with reasonable promptness and the Artist shall cure such breach with reasonable promptness.

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SECTION 2 – TERM.

The term of this Agreement shall commence upon the Effective Date and continue through the 30th day of September 2023, unless terminated or extended as specified herein. The mural shall remain on the wall for at least five (5) years. If the building is sold, demolished, or expanded and/or the mural otherwise interferes with the use, occupancy, or control of the property within this five (5) year period, the Owner has right of removal upon thirty (30) days written notice of the Trust and Artist. Outside of the five (5) year period, the Owner has right of removal at any time without written notice.

SECTION 3 – NON-EXCLUSIVITY.

The Artist acknowledges that the Trust has hired or may hire other artists to perform work similar to the scope of work under this Agreement. The Artist further acknowledges that this Agreement is not a guarantee of any work, and the Trust may assign work to various artists solely at its discretion.

SECTION 4 – COMPENSATION.

The Trust shall pay Artist \$_____ (“Stipend”) for the Artwork, as specified in Exhibit A. This includes design, surface preparation, installation, materials, travel expenses, hotels, meals, or any other costs the Artist may incur to perform the Project.

The Trust shall pay the Artist as follows: Seventy-five percent (75%) of the total Stipend upon execution of this Agreement; and the final twenty-five percent (25%) of the Stipend following the installation of the Artwork, delivery of a maintenance plan, and the inspection, approval, and acceptance of the completed Artwork. The Artist shall be responsible for distributing funds among all members if part of a team. Upon all payments made to Artist, the Owner shall own the Artwork free and clear of any claims by the Artist.

SECTION 5 – QUALITY ASSURANCE & SAFETY.

The Artist and Artwork shall conform with all applicable United States, State of Utah, Salt Lake City, and any other applicable laws, regulations, and ordinances. The Artist shall be solely responsible for the quality of all services performed in accordance with the best professional judgment, skill, and timely manner by the Artist and/or team. The Artist shall cooperate with the Trust and other parties involved in the Project. The Artist agrees to possess and keep current all applicable state and local licenses and permits required for the services to be performed herein.

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The Artist agrees to take all necessary safety precautions and comply with all applicable provisions of federal, state, and municipal safety laws and building codes to prevent accidents or injury to the Artist, sub-providers, or anyone directly employed by either, and to protect other persons on, about, or adjacent to the premises where the Artist's work is being performed. The Trust may stop the Artist's work if safety laws or safe work practices are not being observed.

SECTION 6 – INDEMNITY.

Artist shall indemnify, save harmless, and defend the Trust, its officers, and employees, from and against all losses, claims, demands, actions, damages, costs, charges, and causes of action of every kind or character, including attorney's fees, arising out of the Artist's wrongful, reckless, or negligent performance hereunder. Artist's duty to defend the Trust shall exist regardless of whether the Trust or Artist may ultimately be found to be liable for anyone's negligence or other conduct. If the Trust's tender of defense, based upon this indemnity provision, is rejected by the Artist and later found by a court of competent jurisdiction to have been required to indemnify the Trust, then in addition to any other remedies, the Artist shall pay the Trust's reasonable costs, expenses, and attorney's fees incurred in proving such indemnification, defending itself, or enforcing this provision. Nothing herein shall be construed to require the Artist to indemnify the indemnitee against the indemnitee's own negligence.

SECTION 7 – INSURANCE.

The Artist must be covered by insurance for their operations, sub-providers, and all other parties for whom the Artist is legally liable. The Artist, at its own expense, shall secure and maintain the following policies of insurance:

A. Commercial General Liability Insurance – The Artist shall maintain commercial general liability insurance with the Trust as an additional insured. The policy shall have limits of not less than \$500,000 per occurrence and \$1,000,000 aggregate limit of liability. The policy shall provide coverage for operations under this scope of work by the Artist, sub-providers, or anyone directly employed by either.

B. Auto Insurance – Commercial automobile liability insurance that provides coverage for owned, hired, and non-owned automobiles or personal automobile insurance in the minimum amount of a combined single limit of \$500,000 or \$100,000 per person, \$300,000 per occurrence, and \$50,000 property damage.

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C. Workers' Compensation – The Artist shall provide workers' compensation insurance sufficient to cover all the Artist's employees, unless a waiver of coverage is allowed and acquired, pursuant to Utah law.

If work is subcontracted, the Artist shall require its contractors to maintain all minimum insurance coverages required in this section at its own expense. Prior to executing this agreement, the Artist shall provide the Trust with certificates of coverage described in this section to info@sevencanyontrust.org.

SECTION 8 – TERMINATIONS.

The Trust may terminate this Agreement at any time for any reason or no reason upon thirty (30) days written notice to Artist. The Agreement may be terminated for cause upon fourteen (14) days written notice if the Artist fails to fix any defect in their performance under the services in this Agreement unless the Artist is diligently pursuing a cure. The Artist may terminate this Agreement if the Trust fails to meet its responsibilities and obligations under the Agreement upon thirty (30) days written notice unless the Trust is diligently pursuing a cure.

In the event of termination, the Trust shall pay the Artist on an actual work basis based upon the Trust's discretion. The Artist shall supply a complete accounting of all services performed under the contract to the date of termination, which the Trust shall consider in determining payment due. The Artist acknowledges that such compensation shall be the full and complete compensation and no additional compensation or damages shall be provided. If the value of the first payment of the Stipend exceeds the compensation due, the Artist may be asked to return the difference to the Trust.

If installation has not begun upon termination, the design and rights to the Artwork shall be returned to the Artist. If installation has been initiated but not completed, the Trust shall have the right to finish installation of the Artwork itself or by a third party. In this case, the Artist shall submit the design of the Artwork to the Trust so it can be completed.

SECTION 9 – OWNERSHIP OF ARTWORK.

Except as otherwise specified, all rights and interests of any kind, including copyright, of the Artwork shall pass to the Owner upon completion, acceptance of the Artwork by the Trust, and the Artist has received all payment due under this Agreement. All media, including photo and film, of the Artwork by the Trust and Owner shall identify the Artist. The Artist grants the Trust and Owner the right to use the Artist's name,

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biography, and Artwork description in connection with the Artwork in any manner or media for non-commercial purposes. The Trust and Owner shall not use the Artwork for commercial purposes unless agreed upon by the Artist.

The Trust shall expense and install a plaque on or near the Artwork, including but not limited to the Artwork title, description, and credit to the Artist. Placement and information on the plaque shall be made in consultation with the Artist. The Owner shall maintain such plaque in good repair and free of vandalism.

The Artist shall not produce a substantially similar replica of the Artwork, or allow others to do so on its behalf, without prior written approval of the Trust. This covenant shall continue in effect for a period consisting of the life of the Artist plus fifty (50) years after their death and shall be binding on Artist's successors, heirs, and assigns. The Trust understands and acknowledges that the Artist may use materials, themes, elements, concepts, dimensions, colors, and shapes used in the Artwork in other works of art, which does not violate this section. In addition, the Artist waives any and all claims that might arise from any application of the Visual Artist's Rights Amendments to the Copyright Law of the United States, 17 U.S.C. §106A ("VARA").

SECTION 10 – RISK OF LOSS.

The Artist shall bear all risk of loss or damage to the Artwork prior to the Trust's acceptance. The period of risk shall include any time in which the Trust has suspended performance. The risk shall pass to the Owner upon final installation of the Artwork and the Trust's acceptance. If the Artwork, or any part thereof, is lost, damaged, or destroyed during the Artist's period of risk, and such loss, damage, or destruction is not caused by the Trust or its agent, the Artist shall be responsible to remake such Artwork without any additional compensation.

SECTION 11 – MAINTENANCE

The Owner shall be responsible for keeping the Artwork free and clear of vandalism and protecting it from the passage of time and natural processes for as long as the Artwork lasts up to and beyond five (5) years. Upon installation, the Artist shall apply a clear, anti-graffiti coating over the entirety of the surface of the completed Artwork to make maintenance easier. The Owner shall decide when and if repairs and restorations to the Artwork shall be made. The Owner may contract with the Artist for a mutually agreed-upon fee or a third party for any such services. All repairs and restorations shall be made in accordance with recognized principles of conservation. The Owner shall use best efforts to implement the Artist's suggested maintenance plan to protect the Artwork from vandalism, the passage of time, and natural processes.

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The Artist may disclaim authorship and attribution of the Artwork if it is intentionally distorted or mutilated, as determined solely by the Trust. The Artist agrees that, regardless of maintenance activities, modification of the Artwork by the Owner or another contracted party's conservation efforts, the passage of time, any natural event, or any unintentional modification of the Artwork does not constitute a modification for purposes of disclaiming authorship.

The Artist shall be responsible for any and all damage to property belonging to the Owner or any other third party to the extent caused by any act or omission of the Artist, its sub-providers, and all other parties for whom the Artist is legally liable. The Artist shall be responsible for repairing any damaged property and shall pay the costs therein.

SECTION 12 - COMPLETE AGREEMENT.

This Agreement constitutes the entire agreement between the parties and supersedes all prior negotiations, representations, or agreements either written or oral, and cannot be altered, amended, or modified except in writing signed by both parties.

IN WITNESS WHEREOF, the parties have signed this Agreement to be effective as of the Effective Date.

Trust:

Artist:

Owner:

Signature

Signature

Signature

Print Name

Print Name

Print Name

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