



## 2021 Independent Contractor Service Agreement For Avon Recreation Center Mural Project

This Independent Contractor Service Agreement ("**Agreement**") dated as of \_\_\_\_\_, 2021, is between the Town of Avon, a Colorado home rule community ("**Town**") and \_\_\_\_\_, a \_\_\_\_\_ of the State of \_\_\_\_\_, whose business address is \_\_\_\_\_ ("**Contractor**" and, together with the Town, "**Parties**").

**1. Services:** Contractor agrees to provide services ("**Services**") as described in the proposal ("**Proposal**") attached hereto and incorporated herein as **Exhibit A**. To the extent the provisions of this Agreement conflict with the Proposal, the terms of this Agreement shall control. Contractor shall provide and complete the Services in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances in Colorado. Contractor hereby warrants that it has the workforce, training, experience and ability necessary to properly complete the Services in a safe and timely fashion. Contractor will comply, and cause all of its employees, agents and subcontractors to comply, with applicable safety rules and security requirements while performing the Services.

**2. Independent Contractor:** The Contractor shall perform the Services as an independent contractor and shall not be deemed by virtue of this Agreement, or any other document attached or referenced herein, to have entered into any partnership, joint venture, employer/employee or other relationship with the Town other than as a contracting party and independent contractor. The Town shall not be obligated to secure, and shall not provide, any insurance coverage or employment benefits of any kind or type to or for the Contractor or the Contractor's employees, sub-consultants, contractors, agents, or representatives, including coverage or benefits related but not limited to: local, state, or federal income or other tax contributions; insurance contributions (e.g., FICA); workers' compensation; disability, injury, or health; professional liability insurance, errors and omissions insurance; or retirement account contributions.

**3. Insurance:**

**3.1. Minimum Amounts.** The Contractor shall obtain and shall continuously maintain during the Term (as defined herein) of this Agreement insurance of the kind and in the minimum amounts specified in this **Section 3.1**. The Required Insurance (defined below) shall be procured and maintained with insurers with an A- or better rating as determined by Best's Key Rating Guide. All Required Insurance shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by the Contractor.

The Contractor shall secure and maintain the following ("**Required Insurance**"):

**A.** Worker's Compensation Insurance in the minimum amount required by applicable law for all employees and other persons as may be required by law. Such policy of insurance, if any, shall be endorsed to include the Town as a Certificate Holder.

**B.** Comprehensive General Liability insurance with minimum combined single limits of One Million Dollars (\$1,000,000.00) each occurrence and of One Million Dollars (\$1,000,000.00) aggregate. The policy shall be applicable to all premises and all operations of the Contractor. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall contain a severability of interests' provision.

Coverage shall be provided on an "occurrence" basis as opposed to a "claims made" basis. Such insurance shall be endorsed to name the Town as Certificate Holder and name the Town, and its elected officials, officers, employees and agents as additional insured parties.

**3.2. Additional Requirements for All Policies.** In addition to specific requirements imposed on insurance by this **Section 3. INSURANCE** and its subsections, insurance shall conform to all of the following:

- A.** For both Required Insurance and other insurance carried by Contractor ("**Contractor Insurance**"), all policies of insurance shall be primary insurance, and any insurance carried by the Town, its officers, or its employees shall be excess and not contributory insurance to that provided by the Contractor; provided, however, that the Town shall not be obligated to obtain or maintain any insurance whatsoever for any claim, damage, or purpose arising from or related to this Agreement and the Services. The Contractor shall not be an insured party for any Town-obtained insurance policy or coverage.
- B.** For both Contractor Insurance and Required Insurance, the Contractor shall be solely responsible for any deductible losses.
- C.** For Required Insurance, no policy of insurance shall contain any exclusion for bodily injury or property damage arising from completed operations.
- D.** For Required Insurance, every policy of insurance shall provide that the Town will receive notice no less than thirty (30) days prior to any cancellation, termination, or a material change in such policy.

**3.3. Failure to Obtain or Maintain Insurance.** The Contractor's failure to obtain and continuously maintain policies of insurance in accordance with this **Section 3. INSURANCE** and its subsections shall not limit, prevent, preclude, excuse, or modify any liability, claims, demands, or other obligations of the Contractor arising from performance or non-performance of this Agreement. Failure on the part of the Contractor to obtain and to continuously maintain policies providing the required coverage, conditions, restrictions, notices, and minimum limits shall constitute a material breach of this Agreement upon which the Town may immediately terminate this Agreement, or, at its discretion, the Town may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the Town shall be repaid by Contractor to the Town immediately upon demand by the Town, or at the Town's sole discretion, the Town may offset the cost of the premiums against any monies due to the Contractor from the Town pursuant to this Agreement.

**3.4. Insurance Certificates.** Prior to commencement of the Services, the Contractor shall submit to the Town applicable certificates of insurance for all Required Insurance. Insurance limits, term of insurance, insured parties, and other information sufficient to demonstrate conformance with this **Section 3. INSURANCE** and its subsections shall be indicated on each certificate of insurance. Certificates of insurance shall reference the Project Name as identified on the first page of this Agreement. The Town may request, and the Contractor shall provide within three (3) business days of such request a current certified copy of any policy of Required Insurance and any endorsement of such policy. The Town may, at its election, withhold payment for Services until the requested insurance policies are received and found to be in accordance with the Agreement.

**4. Payment:** Payment for Services shall be due only after the Services are completed to the Town's satisfaction, which satisfaction shall be determined by the Town in its sole and reasonable discretion, and after Contractor has submitted an invoice for the amount due complete with the Contractor's taxpayer identification number or social security number. Town shall pay Contractor according to the following installment schedule and within thirty (30) days after:

- A. twenty-five percent (25%) upon delivery of final art design agreed to by all parties
- B. twenty-five percent (25%) on the first day mural installation
- C. remaining fifty percent (50%) on the final day of mural installation; and,

**5. Ownership of Documents:**

**Work Product is Property of Town.** Upon complete payment for services rendered, the Work Product, shall be deemed work made for hire and made in the course of Services performed under this Agreement and will be the exclusive property of Town. Town will have unlimited right to make, have made, use, reconstruct, repair, modify, reproduce, publish, distribute and sell the Work Product, in whole or in part, or combine the Work Product with other matter, or not use the Work Product at all, as it sees fit. Including but not limited to all branding, marketing and promotional materials, civic engagement and communications.

**5.1** Any reuse of the Work Product produced under this Agreement for any purpose not directly related to this Agreement will be at the sole risk of Town.

**5.2 Obligations of Contractor's Personnel and Subcontractors.** Contractor warrants it has enforceable written agreements with all of its personnel and subcontractors to be involved in performing the Services that:

- A. assign to Contractor ownership of all patents, copyrights and other proprietary rights created in the course of their employment or engagement; and
- B. obligate such personnel or subcontractors, as the case may be, upon terms and conditions no less restrictive than are contained in this **Section 5 OWNERSHIP OF DOCUMENTS**, not to use or disclose any proprietary rights or information learned or acquired during the course of such employment or engagement including, without limitation, any Work Product, all Contractor property and any other information pursuant to this **Section 5 OWNERSHIP OF DOCUMENTS**.

**5.3 Assignment of Proprietary Rights.** To the extent that any title to any Work Product may not, by operation of law, vest in Town, or such Work Product may not be considered to be work made for hire, Contractor hereby irrevocably transfers and assigns to Town in perpetuity all worldwide right, title and interest in and to the patent rights, copyrights, trade secrets and other proprietary rights in and ownership of, the Work Product.

**5.4 Town Furnished Information.** Title to all materials and all documentation furnished by the Town to Contractor will remain in the Town. The Contractor will deliver to the Town and any all Work Product and property, including copies thereof on whatever media rendered, upon the first to occur of:

- A. the Town's written request; or
- B. completion of the Services under this Agreement; or
- C. termination of this Agreement.

**5.5** The Contractor waives any right to prevent its name from being used in connection with the Services.

**6. Illegal Aliens:** Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. Contractor shall not contract with a subcontractor that fails to certify that the subcontractor does not knowingly employ or contract with any illegal aliens. By entering into this Agreement, Contractor certifies as of the date of this Agreement it does not and shall not knowingly employ or contract

with an illegal alien who will perform work under the public contract for services and that the Contractor will participate in the e-verify program or department program in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services. The Contractor is prohibited from using either the e-verify program or the department program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed. If the Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, the Contractor shall be required to notify the subcontractor and the Town within three (3) days that the Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien. The Contractor shall terminate the subcontract if the subcontractor does not stop employing or contracting with the illegal alien within three (3) days of receiving the notice regarding Contractor's actual knowledge. The Contractor shall not terminate the subcontract if, during such three days, the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien. The Contractor is required to comply with any reasonable request made by the Department of Labor and Employment made in the course of an investigation undertaken to determine compliance with this provision and applicable state law. If the Contractor violates this provision, the Town may terminate this Agreement, and the Contractor may be liable for actual and/or consequential damages incurred by the Town, notwithstanding any limitation on such damages provided by such Agreement. **Town Unilateral Termination:** Town may terminate this Agreement without cause upon delivery of written notice to the Contractor at least ten (10) days prior to the effective date of termination or may terminate this Agreement immediately upon delivery of written notice if Contractor fails to provide the Services in accordance with the terms of this Agreement.

**7. No Waiver of Governmental Immunity:** Nothing in this Agreement shall be construed to waive, limit, or otherwise modify any governmental immunity that may be available by law to the Town, its officials, employees, contractors, or agents, or any other person acting on behalf of the Town and, in particular, governmental immunity afforded or available pursuant to the Colorado Governmental Immunity Act, Title 24, Article 10, Part 1 of the Colorado Revised Statutes.

**8. Affirmative Action:** Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. Contractor will take affirmative action to ensure applicants are employed, and employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

**9. No Third-Party Beneficiaries:** Nothing contained in this Agreement is intended to or shall create a contractual relationship with, cause of action in favor of, or claim for relief for, any third-party, including any agent, sub-consultant or sub-contractor of Contractor. Absolutely no third-party beneficiaries are intended by this Agreement. Any third-party receiving a benefit from this Agreement is an incidental and unintended beneficiary only.

**10. Limitation of Damages:** The Parties agree that Contractor's remedies for any claims asserted against the Town shall be limited to proven direct damages in an amount not to exceed payment amounts for Services due under the Agreement and that Town shall not be liable for indirect, incidental, special, consequential or punitive damages, including but not limited to lost profits.

**11. Indemnity:** To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless Town, its members, affiliates, officers, directors, partners, employees, and agents from and against all claims, damages, losses and expenses, including but not limited to reasonable attorney's fees, arising out

of the performance of the Services, provided that any such claim, damage, loss or expense is caused by any negligent act or omission of Contractor, anyone directly or indirectly employed by Contractor or anyone for whose acts Contractor may be liable, except to the extent any portion is caused in part by a party indemnified hereunder.

**12. Governing Law, Venue, and Enforcement:** This Agreement shall be governed by and interpreted according to the law of the State of Colorado. Venue for any action arising under this Agreement shall be in the appropriate court for Eagle County, Colorado. To reduce the cost of dispute resolution and to expedite the resolution of disputes under this Agreement, the Parties hereby waive any and all right either may have to request a jury trial in any civil action relating primarily to the enforcement of this Agreement. The Parties agree the rule providing ambiguities in a contract are to be construed against the drafting party shall not apply to the interpretation of this Agreement. If there is any conflict between the language of this Agreement and any exhibit or attachment, the language of this Agreement shall govern.

**13. Term.** The provision of Services under this Agreement shall commence on \_\_\_/\_\_\_/2021 (the "Effective Date") and will terminate on \_\_\_/\_\_\_/2021 (cumulatively, the "Term"); provided, however, under no circumstances will the Term exceed the end of the current Town Fiscal year (January 1 – December 31). The Contractor understands and agrees that the Town has no obligation to extend this Agreement's Term, or contract for the provision of any future services, and makes no warranties or representations otherwise. Notwithstanding the foregoing, the Parties may mutually agree in writing to the monthly extension of this Agreement for up to twelve (12) consecutive calendar months if such extension is approved by the Town Council and the Contractor and such extension does not alter or amend any of the terms or provisions of this Agreement.

**14. Article X, Section 20/TABOR.** The Parties understand and acknowledge that the Town is subject to Article X, § 20 of the Colorado Constitution ("TABOR"). The Parties do not intend to violate the terms and requirements of TABOR by the execution of this Agreement. It is understood and agreed that this Agreement does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, therefore, notwithstanding anything in this Agreement to the contrary, all payment obligations of the Town are expressly dependent and conditioned upon the continuing availability of funds beyond the term of the Town's current fiscal period ending upon the next succeeding December 31. Financial obligations of the Town payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the rules, regulations, and resolutions of Town of Avon, and other applicable law. Upon the failure to appropriate such funds, this Agreement shall be terminated.

**15. Background Check.** A background check of Contractor and any Contractor's employees or subcontractors may be required by the Town. Contractor can provide proof of a CBI check within the past six (6) months and shall provide a copy prior to the commencement of any Services (this can be acquired online by going to [www.colorado.gov](http://www.colorado.gov)) or the Town will conduct the background check and provide a submission form to be completed by the Contractor.

**AGREEMENT READ, UNDERSTOOD AND APPROVED:**

**TOWN OF AVON**

**CONTRACTOR**

**By:** \_\_\_\_\_

**Name:** Eric Heil

**Title:** Town Manager

**By:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**EXHIBIT A**  
**Contractor Proposal**