

**MIDVALE CITY,
UTAH RESOLUTION
2023-R-16**

**A RESOLUTION OF MIDVALE CITY APPROVING
AN AGREEMENT TO PARTICIPATE IN THE
ANNUAL MIDVALE MAIN MURAL FESTIVAL BY
ALLOWING THE INSTALLATION OF A MURAL AT
7683 S. HOLDEN STREET, MIDVALE, UTAH 84047**

WHEREAS, the Redevelopment Agency of Midvale City (the "Agency") was created by the Midvale City Council to transact the business and exercise the powers provided for in the Utah Redevelopment Agencies Act; and

WHEREAS, the Agency created the Main Street Community Development Area (the "CDA") in 2015 to revitalize and improve the Main Street area; and

WHEREAS, the overarching goal of the CDA is to establish an arts and culture district within the Main Street area; and

WHEREAS, an annual mural festival was initiated in 2022 to enhance the Main Street area with public art and the Agency is planning for an additional ten murals to be installed at this year's mural festival; and

WHEREAS, the building located at 7683 S. Holden Street, Midvale, UT 84047 is owned by Midvale City, and the decision to enhance the north side of the building with a mural as part of the 2023 mural festival rests with the city council members and mayor;

WHEREAS, the Mural Selection Committee recommends the artist Adrian Garcia as the muralist selected for the installation for the mural on the designated wall.

NOW THEREFORE BE IT RESOLVED, by the City Council of Midvale City, Utah, that it approves and adopts the Agreement found in Attachment A for the allowance of a mural to be installed on the north-facing wall of the old fire station building located at 7683 S. Holden in Midvale.

PASSED AND ADOPTED BY THE CITY COUNCIL OF MIDVALE CITY, STATE OF UTAH this 2nd day of May, 2023.



ATTEST:


Rori L. Andreason, MMC
City Recorder


Marcus Stevenson, Mayor

Voting by the City Council	Aye	Nay
Quinn Sperry	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Paul Glover	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Heidi Robinson	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Bryant Brown	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Dustin Gettel	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**MIDVALE CITY MURAL FESTIVAL AGREEMENT
BETWEEN MIDVALE CITY CORPORATION AND
THE REDEVELOPMENT AGENCY OF MIDVALE CITY**

THIS AGREEMENT FOR PARTICIPATION IN THE MIDVALE CITY MURAL FESTIVAL (the "Agreement"), is made and entered into as of May 2, 2023, by and among the Redevelopment Agency of Midvale City, a public agency (the "Agency"), and Midvale City Corporation a corporation ("Applicant"). Agency and Applicant are referred to throughout this Agreement individually as a ("Party") and collectively as ("Parties").

WITNESSETH:

WHEREAS, the Applicant is the Owner of certain property located at 7683 Holden Street (the "Property") and has obtained the consent of the Lessee of the Property to participate in the Midvale City Mural Festival (the "Program") by obtaining and submitting with this document a signed Lessee Permission in the form attached as Exhibit A; and

WHEREAS the Applicant is interested in the installation of a mural on the Property (the "Mural"); and

WHEREAS, the Agency will release a call for artists to design and install the Mural for participation in the Midvale City Mural Festival; and

WHEREAS, the Agency's Mural Selection Committee will select appropriate artists from the call, then pair an artist with the Applicant for inclusion into the program; and

WHEREAS, the Applicant, Agency, and artist will agree upon a detailed sketch or digital rendering of the proposed Mural design including color and visually represented within the dimensions of the assigned wall; and

WHEREAS, the Agency and Applicant wish to enter into an agreement for participation in the Midvale City Mural Festival; and

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, the Parties agree as follows:

AGREEMENT

1. **Recitals.** The Recitals to this Agreement are incorporated into and shall constitute a part of this Agreement.
2. **Responsibilities of the Agency.** The Agency is responsible for the following:
 - a. The Agency will draft, release, and advertise a call for artists requesting artists' qualifications to design and install Mural at the Property for inclusion in the

Program. The selected artist will enter into a contract with the Agency for the creation of the Artwork.

- b. The Agency agrees to pay the selected artist for the creation and installation of the Mural at the Property. Retaining the Agency's payment is conditioned on the completion of the Mural in accordance with the Agreement for Artist's Commissioned Work in the Midvale City Mural Festival Program, a sample draft of which is attached hereto as **Exhibit B** hereto.
- c. The artist whose past artwork and qualifications are best suited for the Property and the Program will be selected by the Mural Selection Committee. The selected artist will be paired with the Applicant who will approve final design in collaboration with the Agency.
- d. The Agency will ensure the Mural complies with the Midvale Main Street Mural Program Guidelines attached hereto as **Exhibit C** and any applicable laws.
- e. Subject to limitations provided in this Agreement, the Agency agrees to maintain the Mural as described in Section 4 of this Agreement for a period of three years.

3. Responsibilities of Applicant. The Applicant is responsible for the following:

- a. The Applicant will designate a wall for the installation of a Mural as part of the Program.
- b. The Applicant will be available to the selected artist before and during the installation process, communicating with the artist and the Agency to approve final design and for any installation needs by the artist.
- c. The Applicant is responsible for providing the artist and Agency access to the Property for the design, installation, and maintenance of the Mural.
- d. The Applicant is responsible for providing the artist, Agency, and public access to the Property to view the Mural during the Midvale Main Mural Festival.
- e. The Applicant agrees that the Agency and the artist may use photos of the Mural on the Agency's managed website and any promotional materials of the Agency. The Agency shall credit the artist in any such use. The Applicant shall ensure that the artist is/are aware of and agrees to the foregoing.

4. Maintenance Period.

- a. The Agency agrees to maintain the Mural in good repair for a period of three years from the June 11, 2023, or the date in which the Mural has been fully installed on the wall (the "Maintenance Period"). The Applicant must notify the Agency of any damage, vandalism, or deterioration to the Mural. The Agency will occasionally inspect the Mural for any damage, vandalism, or deterioration. If the Mural has been damaged, vandalized, or the Mural has deteriorated, the Agency will determine if the Agency can clean or repair the Mural itself. If the Agency determines that it cannot clean or repair the Mural and the Agency determines that the Mural can be repaired, the Agency will give the Artist the first opportunity to repair the Mural. If the Artist does not respond or provide a repair date satisfactory to the Agency, the Agency may contract with another individual or entity to repair, replace, or remove the Mural at its sole discretion. The Agency will notify the

Applicant of its decision and anticipated completion date within 30 days of the Applicant's notification.

- b. Applicant understands that the Agency cannot guarantee that Mural will remain installed for the three-year period. Vandalism, weather, deterioration or destruction of the Property, actions of the Applicant, Applicant's Lessee, and their invitees, and events outside of the control of the Agency may result in the Mural being removed partially or in whole before the end of the three-year period.

5. Effective Date and Duration.

This Agreement is effective as of the date above. Unless otherwise terminated pursuant to Section 6 below, this Agreement shall continue until the expiration of the Maintenance Period.

6. Termination

- a. The Agency shall have the right to terminate this Agreement at any time, upon finding that the Mural does not or will not fulfill or comply with the Applicant's design specifications approved by the Agency.
- b. The Agency shall have the right to terminate this Agreement if the Mural is not maintained during the required Maintenance Period. The Applicant agrees to allow the Mural to remain at the Property for no fewer than three years. In the event the Applicant removes the Mural from the Property sooner than three years from the completion date of the Mural, the Applicant will reimburse the Agency all funds provided pursuant to this Agreement.
- c. In the event Applicant intends to lease, sell or transfer ownership of the Property, the Applicant shall notify Agency staff at least 30 days prior to the closing of the sale or transfer. The notice will include the following information about the Property's new owner:

- i. Name
- ii. Address
- iii. Phone number

Upon the closing of the lease, sale or transfer, this Agreement will become void.

- d. The Agency may terminate this Agreement upon notification to the Applicant at its sole discretion under Subsection 4(b) of this Agreement.

7. Default.

In the event any Party defaults in its obligations under the terms of this Agreement, in addition to all other remedies available, the non-defaulting Party can declare, at its option, this Agreement to be null and void. The non-defaulting Party of this Agreement shall be entitled to all costs and fees, including attorney's fees and costs, incurred to enforce the terms of this Agreement.

8. Indemnification.

- a. The Applicant and the Agency acknowledge and agree that each Party to this Agreement shall be responsible and liable for all damages, losses, costs, actions, causes of action, claims, demands, liens, liabilities, expenses and indirect or consequential damages of any kind and nature whatsoever (collectively, "Losses"), caused by, resulting from, arising out of, or incidental to the Program, including, without limitation, any Losses resulting from any negligent act of omission of the Applicant or Agency or its personnel or contractors.
- b. The Applicant and the Agency, for themselves and any persons or firms claiming through the Applicant and the Agency, hereby release and discharge the other Party from and against all Losses which may arise or accrue to the Applicant or the Agency, that arise out of, or would not have been incurred but for the Program whether or not such Losses are the result of, or relate in any way to any negligent acts or omissions on the part of any of the Parties; and the Applicant and the Agency hereby covenant and agree to indemnify and save harmless each other, from and against all Losses which may arise or accrue to any person or firm against any of the Parties or which any of the Parties may pay, incur, sustain or be put to, by reason of or in connection with:
 - i. The Mural;
 - ii. The Agency; or
 - iii. Any personal injury, damage or death, whether or not such Losses are a result of, or relate in any way to any negligent acts or omissions on the part of any of the Parties.

9. Nonexclusive.

This Agreement is not exclusive and does not limit the Agency from entering other Agreements regarding the Program.

10. Notice.

Any notice required or permitted under this Agreement will be deemed sufficiently given or served if personally delivered or sent by United States Certified Mail, return receipt requested, addressed as follows:

For the Agency:

RDA Manager
Midvale City
7505 S. Holden Street
Midvale, UT 84047

For the Applicant:

NAME: Midvale City Corporation
ADDRESS: 7505 Holden Street
CITY, UT ZIP: Midvale City, UT 84047

11. Relationship of Parties.

This Agreement does not create any legal relationship between the Parties including, but not limited to, that of partner, employee, agent, or contractor.

12. Third-Party Benefits

This Agreement is for the sole benefit of the named Parties. Nothing contained in this Agreement is for or may be relied upon for the benefit of a third party.

13. Assignment and Delegation.

A Party may not assign or delegate any part of this Agreement without the other Party's prior written consent.

14. Amendments.

Agency and Applicant may amend this Agreement by mutual written agreement. Any other modification is prohibited and invalid.

15. Severability.

In the event any provision of this Agreement shall be held to be invalid and unenforceable, the remaining provisions shall remain valid and binding upon the Parties. In the event that any part of this Agreement shall be determined unlawful or invalid by a court of competent jurisdiction then the remaining provisions shall continue in full force and effect.

16. Waiver.

Any failure or delay by either Party to exercise any right, power, or privilege or to insist upon observance or performance of a provision in this Agreement shall not operate or be construed as a waiver. One or more waivers by either Party of any provision, term, condition, or covenant shall not be construed by the other Party as a waiver of any subsequent breach of the same by the other Party.

17. Dispute Resolution.

Any dispute arising under or relating to this Agreement will be resolved in the following order:

- a. Good faith negotiations between the Parties for a limit of 90 days unless otherwise extended by mutual written agreement;
- b. Good faith mediation with a mutually agreed upon mediator and with each Party paying one half of the mediation costs; and
- c. Litigation. If a Party incurs any legal costs or attorney's fees in litigation to resolve a dispute arising under or relating to this Agreement, the prevailing Party may recover such costs and fees.

18. Governing Law and Venue.

This Agreement is governed, construed, and interpreted under the laws of the State of Utah. Any suit arising from this Agreement must be brought within the appropriate court in Salt Lake County, Utah.

19. Entire Agreement.

This Agreement constitutes the entire agreement between the Parties and supersedes all prior understandings or agreements between the Parties.

20. Authorization.

Each of the Parties executing this Agreement represents that it has taken all the steps necessary to make this Agreement binding upon it. All Parties signing this Agreement represent that they are duly authorized to execute and deliver this Agreement in the capacity and for the entity set forth where he/she signs and that as a result of his/her signature, this Agreement shall be binding upon that Party for which he/she signs.

21. Laws and Regulations. At all times during this Agreement, the Applicant and all artwork performed under this Agreement must comply with all applicable federal, state, and local laws, rules, codes, orders, constitutions and regulations, including, but not limited to, applicable licensure and certification requirements. This includes not discriminating against any individual in an employment decision, including but not limited to hiring, selection of training, promotion, transfer, recruitment, or rates of pay, because of the individual's race, color, sex, age, religion, national origin, disability, pregnancy, familial status, veteran status, genetic information, sexual orientation, or gender identity.

22. Government Records Access and Management Act. The Agency is a governmental entity that is subject to Utah's Government Records Access and Management Act, Utah Code Ann. §§ 63G-2-101 to -901. Any documents produced or collected under this Agreement may be subject to public access. If the Applicant believes that a document should be protected under Utah Code Ann. §§ 63G-2-305(1) or (2), the Applicant must clearly mark such documents as "Proprietary" or "Confidential" and provide a written claim of business confidentiality to the Agency that complies with Utah Code Ann. § 63G-2-309(1). The Applicant agrees to cooperate with and to supply any requested records to the Agency with any public records request. This obligation will survive any suspension or termination this Agreement.

23. Conflicts of Interest.

a. Officer or Employee. The Applicant represents that none of his or her officers or employees are elected officials, officers, employees, volunteers, or agents of the Agency or its affiliates, unless the Applicant has made such disclosure to the Agency prior to execution of this Agreement. The Applicant represents and warrants that none of his or her officers, employees, or immediate family members of his or her officers or employees is or has been an elected official,

officer, employee, volunteer, or agent of the Agency or its affiliates who influences the Agency's procurement process.

- b. **Gifts.** The Applicant represents and warrants that he or she has not provided any compensation or gift in any form, whether directly or indirectly, to an elected official, officer, employee, volunteer, or agent of the Agency or its affiliates who influences the Agency's procurement process.

IN WITNESS WHEREOF, the parties have signed this Midvale City Mural Festival Agreement to be effective as of the day and year first above written.

APPLICANT:

Signed: _____

By: _____

Title: _____

THE REDEVELOPMENT AGENCY OF MIDVALE CITY:

Marcus Stevenson

Chief Administrative Officer