

RESOLUTION NO. 2022-11RDA

A RESOLUTION AUTHORIZING THE CHIEF ADMINISTRATIVE OFFICER TO EXECUTE THE MIDVALE CITY HALL PLAZA PROJECT AGREEMENT WITH BLU LINE DESIGN ALONG WITH AN AUTHORIZATION FOR THE USE OF FUNDS FROM THE BINGHAM JUNCTION PROJECT FOR THIS PROJECT.

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

WHEREAS, the Agency's Board of Directors adopted the Main Street Community Development Area Plan on November 17, 2015; and

WHEREAS, the Agency desires to provide improvements to both the north and south side of City Hall along with the addition of sidewalks on the east side of Holden from the plaza on the north side of City Hall to the existing sidewalk on the north side of the rail spur; and

WHEREAS, the Agency desires to bring food, arts and culture to Main Street to help establish the street as a destination for dining, art and entertainment; and

WHEREAS, the Agency believes that based on the high visibility of the area the food plaza has the potential for ongoing activation on Main Street; and

WHEREAS, the Agency believes that the plaza will provide a significant sense of place for locals and visitors on Midvale's Main Street

WHEREAS, funding for this project will derive from existing revenue in the Bingham Junction Project Area; and

WHEREAS, this City Hall Plaza project is outside of the Bingham Junction Project Area boundaries, but will provide a direct benefit to the Bingham Junction area. The funding for this project is not a loan and will not require repayment.

WHEREAS, this is an allowable use of agency funds under the requirements listed in U.A.C § 17C-1-409(1)(a)(iii)(e) as the location of the plaza is located on a highly visible major corridor connecting the three Midvale project areas; and

WHEREAS, Midvale City Council will need to approve the use of Bingham Junction Project Area funds for use outside of project area in the neighboring Main Street Community Development Area.

WHEREAS, Agency staff has previously worked with blū line designs to develop initial concepts of the plaza; and

WHEREAS, the Agency wishes to proceed with the developed concepts by working with blū line designs to provide the needed services to bring the plaza to fruition; and

WHEREAS, an agreement to complete the Midvale City Hall Plaza Project has been drafted and is acceptable to the Agency and blū line designs.

NOW THEREFORE BE IT RESOLVED BY THE REDEVELOPMENT AGENCY OF MIDVALE CITY, that the Board of Directors does hereby authorize the Chief Administrative Officer to execute the Midvale City Hall Plaza Project Agreement with blū line designs set forth in Exhibit A and authorizes the use of funds from the Bingham Junction Project Area for this project

APPROVED AND ADOPTED this 23rd day of August 2022.



Marcus Stevenson
Marcus Stevenson
Chief Administrative Officer

Matt Dahl
Matt Dahl
Executive Director

ATTEST:

Rori L. Andreason
Rori L. Andreason, MMC
Secretary

Voting by the Board of Directors:

Quinn Sperry

Paul Glover

Heidi Robinson

Bryant Brown

Dustin Gettel

“Aye” “Nay”

<u>✓</u>	<u> </u>
<u>✓</u>	<u> </u>
<u>✓</u>	<u> </u>
<u>✓</u>	<u> </u>
<u>✓</u>	<u> </u>

**CONTRACT APPROVAL COVER SHEET**
 CONTRACT NO: 2022-58
 (RECORDER ONLY)

Contract Title: Midvale City Hall Plaza Project Agreement
Approval Signature Required:

Contract Analyst:	DocuSigned by: <u>Susan Stengel</u> <small>D0C23A41D234492...</small> DocuSigned by:	Date: <u>9/1/2022</u>
City Attorney's Office:	DocuSigned by: <u>Lisa Garner</u> <small>9375645E6BE84C5...</small> DocuSigned by:	Date: <u>9/1/2022</u>
Department Head:	DocuSigned by: <u>JN Rockwood</u> <small>45A293098C2C43C...</small> DocuSigned by:	Date: <u>9/1/2022</u>
City Manager:	DocuSigned by: <u>[Signature]</u> <small>3685E1BC4C0A497...</small>	Date: <u>9/1/2022</u>

Requesting Department: RDA

 City Contact Name: Kate Andrus

 Project/Contract Name: Midvale city Hall Plaza Project

 Budget Amount: \$150,000.00
Bid Information:

Bid Type: _____

 Bid Exception: Professional Services
 (i.e: Sole Source, Professional Services, etc.)

Bid/Exception Date: _____

 Council Approval Date: 8/23/2022 Resolution No. 2022-R-40
\$
2022-11RDA
Party/Vendor Information:

Name:	<u>blu line designs</u>
Contact:	<u>Robert Donigan</u>
Telephone:	_____
Email:	<u>rob@blulinedesigns.com</u>
Contract Purpose:	_____
Begin Date:	<u>8/25/2022</u>
Termination Date:	<u>8/24/2023</u>
Renewal Option:	<u>1-Year term renewals until final acceptance by the RDA</u>
Other Documents Required:	_____
	Due Date: _____

OTHER SIGNIFICANT TERMS AND ANNUAL OBLIGATIONS (Insurance Certificate, Payments, etc.): _____
RECORDER ONLY
 DATE RECEIVED: 9-6-2022

 DATE SCANNED TO ONBASE: 9-6-22 INDEX: Recorder/agreements

CONTRACT APPROVAL COVER SHEET
Page 2

APPROVAL:

I certify that I have read and understand the terms of this draft agreement and have met all procurement requirements. I certify that I have appropriate authority to submit this draft agreement on behalf of my department. I further certify that the draft agreement is complete and includes all exhibits, attachments, and pages.

Signed: _____ Date: _____
Name: _____
Title: _____



7505 South Holden Street
Midvale, UT 84047
Phone (801) 567-7200
www.midvalecity.org

MEMO

To: Matt Dahl, City Manager

From: Nate Rockwood, Community Development Director
Kyle Maurer, Assistant City Manager

CC: Susan Stengel, Procurement/Contract Analyst

Date: April 21, 2022

RE: Professional Services Exception Request – Design Work for Main Street Food Truck Plaza

The Midvale City Redevelopment Agency is requesting a professional services exception for completion of design work on the Main Street Food Truck Plaza concept. Initial concept design was completed under a contract approved by the RDA Board (Resolution 2021-05RDA). After receiving support from the Redevelopment Agency Board, Redevelopment Agency staff would like to complete design of the proposed food truck plaza. Design costs are estimated to be approximately \$150,000.

Per Midvale City Municipal Code § 3.02.030, a professional service is defined as:

"...Services that are provided by a person skilled in the practice of a learned and/or technical discipline. Providers of professional services often require prolonged and specialized intellectual training, and profess attainments in special knowledge as distinguished from mere skills. Disciplines may include, without limitation to, accounting, auditing, architecture, construction design and management, engineering, finance, information technology, law, materials testing, medicine, city planning, surveying, underwriting, and others."

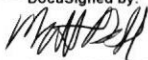
Professional services may be awarded outside of competitive bidding using the following procedure (Midvale Municipal Code § 3.02.060(E)(7)):

Contracts for such expenditures shall be awarded at the discretion of the City Manager based on the recommendation of the department head and/or procurement officer.

Since Blue Line Design completed initial design of the plaza, it will take less time and be financially less expensive to have Blue Line complete design work on the plaza.

Please indicate approval of this Professional Service.

Approved:

<div><div>DocuSigned by:</div><div></div><div><small>3683E1BC4C0A497</small></div></div>	9/1/2022
Matt Dahl, City Manager	Date

Approved:

<div><div>DocuSigned by:</div><div></div><div><small>00C23A41D234492</small></div></div>	9/1/2022
Susan Stengel, Procurement/Contract Analyst	Date

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

WHEREAS, the Agency's Board of Directors adopted the Main Street Community Development Area Plan on November 17, 2015; and

WHEREAS, the Agency desires to provide improvements to both the north and south side of City Hall along with the addition of sidewalks on the east side of Holden from the plaza on the north side of City Hall to the existing sidewalk on the north side of the rail spur; and

WHEREAS, the Agency desires to bring food, arts and culture to Main Street to help establish the street as a destination for dining, art and entertainment; and

WHEREAS, the Agency believes that based on the high visibility of the area the food plaza has the potential for ongoing activation on Main Street; and

WHEREAS, the Agency believes that the plaza will provide a significant sense of place for locals and visitors on Midvale's Main Street

WHEREAS, funding for this project will derive from existing revenue in the Bingham Junction Project Area; and

WHEREAS, this City Hall Plaza project is outside of the Bingham Junction Project Area boundaries, but will provide a direct benefit to the Bingham Junction area. The funding for this project is not a loan and will not require repayment.

WHEREAS, this is an allowable use of agency funds under the requirements listed in U.A.C § 17C-1-409(1)(a)(iii)(e) as the location of the plaza is located on a highly visible major corridor connecting the three Midvale project areas; and

WHEREAS, Midvale City Council will need to approve the use of Bingham Junction Project Area funds for use outside of project area in the neighboring Main Street Community Development Area.

WHEREAS, Agency staff has previously worked with blu line designs to develop initial concepts of the plaza; and

WHEREAS, the Agency wishes to proceed with the developed concepts by working with blu line designs to provide the needed services to bring the plaza to fruition; and

WHEREAS, an agreement to complete the Midvale City Hall Plaza Project has been drafted and is acceptable to the Agency and blu line designs.

NOW THEREFORE BE IT RESOLVED BY THE REDEVELOPMENT AGENCY OF MIDVALE CITY, that the Board of Directors does hereby authorize the Chief Administrative Officer to execute the Midvale City Hall Plaza Project Agreement with blū line designs set forth in Exhibit A and authorizes the use of funds from the Bingham Junction Project Area for this project

APPROVED AND ADOPTED this 23rd day of August 2022.




Marcs Stevenson
Chief Administrative Officer


Matt Dahl
Executive Director

ATTEST:


Rori L. Andreason, MMC
Secretary

Voting by the Board of Directors:

Quinn Sperry
Paul Glover
Heidi Robinson
Bryant Brown
Dustin Gettel

“Aye” “Nay”

<input checked="" type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>

RESOLUTION NO. 2022-R-40

A RESOLUTION APPROVING THE USE OF FUNDS FROM THE BINGHAM JUNCTION PROJECT AREA TO FUND THE CITY HALL PLAZA PROJECT


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

WHEREAS, the Agency's Board of Directors is considering the execution of the Midvale City Hall Plaza Project Agreement between Redevelopment Agency of Midvale City and blū line designs to provide design work and other services related to the Midvale City Hall Plaza ; and


WHEREAS, this use of funds is an allowable use of agency funds under the requirements listed in Utah State Code Annotated I 7C-1-409(1)(iii)(e) as the location of the plaza will deliver an improvement that will provide a direct benefit to the area and its residents.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF MIDVALE CITY, that the City Council does hereby approve the use of funds from the Bingham Junction project to fund the City Hall Plaza Project as it meets the listed requirements set forth in Utah State Code Annotated I 7C-1-409(1)(iii)(E)

PASSED AND ADOPTED BY THE CITY COUNCIL OF MIDVALE CITY this 23rd day of August 2022.


Marc Stevens
Mayor

ATTEST:


Ron L. Andreason, MMC
City Recorder



Voting by the City Council "Aye" "Nay"

Quinn Sperry	<input checked="" type="checkbox"/>	_____
Paul Glover	<input checked="" type="checkbox"/>	_____
Heidi Robinson	<input checked="" type="checkbox"/>	_____
Bryant Brown	<input checked="" type="checkbox"/>	_____
Dustin Gettel	<input checked="" type="checkbox"/>	_____

Midvale City Hall Plaza Project Agreement

This Agreement (“Agreement”) to provide professional design, development, and architectural services for the Midvale City Hall Plaza Project is executed on August 25th, 2022 (the “Effective Date”), by the Redevelopment Agency of Midvale City (“Agency”), a political subdivision of Utah, and blū line designs (“blū”), a Utah professional corporation.

Recitals

On November 7, 2015, the Redevelopment Agency of Midvale City Board of Directors adopted the Main Street Community Development Project Area Plan which consists of 177 acres on Midvale City’s Town center core and Main Street; and

The Agency desires to create within the Midvale City’s Town center core and Main Street the Midvale City Hall Plaza; and

The Agency desires to ensure that the Midvale City Hall Plaza meets the needs of and maximizes the benefits for the City of Midvale and the Bingham Junction Project Area and Main Street Community Development Project Area; and

blū represented to the Agency that it is qualified to provide planning, landscape architecture, and urban design professional services for the Midvale City Hall Plaza and has demonstrated its desire and competency to provide said services; and

In accordance with Midvale Municipal Code § 3.02.060(E)(7), the Agency determined that blū qualified for a Professional Services Exemption; and

Therefore, in consideration of the mutual promises contained in this Agreement, it is agreed:

Agreement

1. **Recitals Incorporated.** The introductory paragraph and all of the foregoing recitals are incorporated into the terms of this Agreement as if fully set forth herewith.
2. **Services to be Provided to the Agency for the Midvale City Hall Plaza.** The services to be provided by blū pursuant to this Agreement (the “Services”) are defined as follows:

A. **Project Coordination & Mobilization.**

blū will coordinate with the Agency to gather any supplemental information necessary to complete the construction documents and to further understand the Agency’s needs and desires. As part of this Task, a site visit and a topographical survey (for the area around City Hall) are included. Time is also allocated for base set up and coordination, including a kick-off meeting. All Project Coordination and Mobilization shall be completed within 15 days of the Effective Date of this Agreement.

B. Design Development.

Using the information gathered during the Project Coordination and Mobilization and building upon the conceptual design already created, blū will prepare a Design Development review package for submittal to the Agency. These plans will include site design, civil design, electrical/lighting design, and landscaping/irrigation design and detailing to a 60% level. These plans will be submitted to the Agency for review and comment within 60 days of the Effective Date of this Agreement. A comment resolution meeting will be held with Agency staff within 14 days after submittal of the plans to review all comments and resolve any desired changes to the plans (“Design Development Comment Resolution Meeting”).

C. Final Construction Documents.

Based on comments received from, and within 30_ days of, the Design Development Comment Resolution Meeting, blū will prepare final construction documents for bidding and construction. This includes 90% and 100% submittals to the Agency for final comment and approval. Within 14 days of the 90% submittal, a comment resolution meeting will be held (the “90% Comment Resolution Meeting”). The 90% submittal will include refined plans/design in addition to a Preliminary Estimate of Construction Costs and project specifications. The 100% submittal will be final bid documents including final plans, specifications, and bid form. The 100% submittal shall be completed within 30 days of the 90% Comment Resolution Meeting.

D. Post Design Services.

At the direction of the Agency, blū will provide bidding assistance, review/answer RFIs, perform site inspections, etc. during construction to help ensure that the construction of the plaza is consistent with the design intent of the plans and construction documents. This will include bidding assistance, reviewing/answering RFIs as listed above and will include regular site visits and coordination with the selected contractor (at least weekly) to ensure construction follows the drawings and specifications and is of acceptable quality. Attendance and active participation at weekly construction meetings is included. Site inspection reports will be produced and a punch list will be created upon substantial completion with a verification walk through once punch list items have been addressed.

E. Additional Services

Meetings and services as requested by the Agency beyond those scheduled and outlined in the above Tasks (“Additional Services”) will be billed at an hourly rate (\$150.00/hr Principal, \$145.00/hr Senior Associate Landscape Architect, \$130.00/hr Associate Landscape Architect, \$110.00 Senior Landscape Architect, \$95.00 Landscape Architect, \$80.00 Landscape Designer). This allows flexibility to participate in more meetings **and/or** to provide additional services at the request of the Agency. Any Additional Services shall be performed within the timeframe agreed to by blū and the Agency.

F. Assumptions/Exclusions

- i. Environmental services/studies and water feature design are not included in the Services to be provided under this Agreement.
- ii. It is assumed that the site plan created will not change substantially through the comment resolution processes. If substantial changes are requested through the comment resolution processes that would require significant re-design by blū, blū reserves the right to renegotiate the contract to cover additional time/costs. Additional Services will not be provided without written approval by the Agency.
- iii. It is assumed that site furnishings (other than the proposed Midvale sign and commissioned artwork) are pre-fabricated and selected from a catalogue.
- iv. Post design services (whether low or high level) are based on an assumed number of hours. Due to the unpredictable nature of construction, and construction schedules, these hours are estimated. blū will monitor these and if the hours are close to exceeding the assumed hours, blū will alert the Agency. Hours that exceed the estimated amount will be provided for additional compensation at the hourly rates identified in Section 2(E) after being approved by the Agency.

3. **Term.** The Agreement will become effective on the execution date at the top of Agreement (“Effective Date”). The Agreement will expire one year following the Effective Date. The Parties may mutually renew the Agreement for one-year periods until final acceptance of the Midvale City Hall Plaza by the Agency.

4. Compensation.

A. Project Cost.

- i. **Project Coordination and Mobilization.** The Agency will pay blū \$4,590 to complete the Project Coordination and Mobilization requirements under Subsection 2(A) of the Agreement.
- ii. **Design Development.** The Agency will pay blū \$41,820 to complete the City Hall Main Plaza, Main Street, South Plaza and Holden Street Improvements Planning requirements under Subsection 2(B) of the Agreement.
- iii. **Final Construction Documents.** The Agency will pay blū \$56,380 to complete Final Construction Documents requirements under Subsection 2(C) of the Agreement.
- iv. **Post Design Services.** The Agency will pay blū \$32,145 to complete the City Hall Main Plaza, Main Street, South Plaza and Holden Street Improvements Planning requirements under Subsection 2(D) of the

Agreement.

- v. **Additional Professional Services.** The Agency will pay blū to complete any requested Additional Services under Subsection 2(E) of the Agreement in accordance with blū's hourly rates as described hereto: \$150.00/hr Principal, \$145.00/hr Senior Associate Landscape Architect, \$130.00/hr Associate Landscape Architect, \$110.00 Senior Landscape Architect, \$95.00 Landscape Architect, \$80.00 Landscape Designer.
 - B. **Invoices.** In order to receive payment, blū will submit invoices to the Agency by the tenth (10th) of each month. The invoice must include an invoice number, a description of the work performed during the period of the invoice, the names of personnel providing the Services, the dates the Services were performed, the number of hours worked, the specific rate charged, and sufficient documentation of the work performed. Within 30 days of receiving the invoice, the Agency will pay blū for any uncontested charges. The Parties will resolve any disputed charges under Section 11 of this Agreement.
 - C. **Non-Funding.** The Parties acknowledge that funds are not presently available for the Agency's performance under this Agreement beyond June 30, 2023. The Agency's ability to pay compensation under this Agreement beyond June 30, 2023, is contingent upon funds being appropriated in future fiscal years. In the event that insufficient funds are appropriated, the Agreement will terminate and become null and void on the first day of the City fiscal year for which funds were not sufficiently appropriated. In the event of a reduction in appropriations, the Agreement will terminate and become null and void on the last day before the reduction becomes effective. Termination of this Agreement under this Subsection will not be considered a breach of this Agreement and will be without any penalty or liability. The Agency will reimburse blū for the Services approved and properly performed prior to the termination of the Agreement. The Agency is not liable for any performance, commitments, penalties, or liquidated damages that occur or accrue after the termination of the Agreement.
5. **Acts of God.** In the event that a Party is unable to perform any of its obligations under this Agreement due to events beyond its reasonable control, the Party must notify the other Party of its inability to meet its obligations and identify the events beyond its reasonable control. The other Party may either modify the schedule under the Agreement to reasonably accommodate the unforeseen event, or it may terminate the Agreement under Subsection 10 of this Agreement. Events beyond a Party's reasonable control include, but are not limited to, fires, floods, accidents, strikes, riots, acts or threats of terrorism, epidemics, and natural disasters.
- A. **Agency-Caused Delay.** Both Parties recognize that the Agency's cooperation is necessary for blū to successfully complete the Project in accordance with the schedules in Subsection 2. In the event that the Agency unreasonably delays blū's performance, the affected schedule will be extended by the number of days blū's performance was unreasonably delayed by the Agency.

- B. **Time.** For all Services, time is of the essence. Blū is liable for all reasonable damages to the Agency as a result of blū's failure to timely perform the Services required under this Agreement.

6. **Standard of Care.**

blū represents that its performance under this Agreement will be completed in a manner consistent with the level of care and skill ordinarily exercised by the members of blū's profession currently practicing in the same locality, at a similar time, and under similar conditions. blū further represents that all Services performed pursuant to this Agreement shall be in accordance with all applicable laws and regulations.

7. **Insurance.**

- A. **Coverage Amounts.** blū must retain, at a minimum, the following insurance coverages for the term of this Agreement, without interruption, from an insurance company authorized to do business in the State of Utah:
- i. **Commercial General Liability:** blū must have a Commercial General Liability Insurance policy that includes products and completed operations, bodily injury, property damage, and personal and advertising injury and must be in the amount of at least \$1,000,000 combined single limit per occurrence and \$3,000,000 in the aggregate;
 - ii. **Hired/NonOwned Automobile Liability:** \$2,000,000 per occurrence;
 - iii. **Professional Negligence/Errors and Omissions:** \$2,000,000 per occurrence; and \$2,000,000 aggregate;
 - iv. **Worker's Compensation:** blū must have Worker's Compensation Insurance (Part A) that meets Utah's statutory requirements. blū must have Employers Liability Insurance (Part B) in the amount of at least \$1,000,000 for each accident, disease, and employee. No owner or officer may be excluded from coverage.
- B. **Certificate of Insurance.** blū must provide a Certificate of Insurance that meets the requirements of this Section to the Agency five days after a request by the Agency. If no request has been made by the Agency, blū must provide a Certificate of Insurance that meets the requirements of this Section to the Agency no later than thirty (30) days after the execution of this Agreement. Failure to provide proof of insurance will be deemed a material breach of this Agreement.
- C. **Additional Insured.** Except for its Worker's Compensation Insurance policy, blū must list the Agency as an additional insured on the insurance policies required under Subsection 7(A) of this Agreement.
- D. **Primary Insurance.** Insurance under this Section is required to be primary, non-

contributory, and not in excess of any insurance or self-insurance policies available to or maintained by the Agency.

- E. **Cancellation/Expiration.** blū may not cancel or allow an insurance policy to expire unless written notice has been given the Agency at least thirty (30) days prior to the cancellation or expiration.
- F. **Material Breach.** blū's failure to maintain this insurance in accordance with this Section for the term of this Agreement is a material breach of this Agreement. If such breach occurs, the Agency may immediately terminate this Agreement.

8. **Indemnification.**

- A. **blū.** blū agrees to indemnify, defend, and hold harmless the Agency and its officials, officers, employees, volunteers, and agents from and against all damages, liabilities, and claims (including legal fees) arising from the breach of contract, negligence, recklessness, or intentional misconduct of blū or blū's subconsultants or subcontractors.
- B. **Agency.** The Agency agrees to indemnify, defend, and hold harmless blū and its officers, employees, and agents from and against all damages, liabilities, and claims (including legal fees) arising from the Agency's breach of contract, negligence, recklessness, or intentional misconduct.

9. **Default.**

- A. **blū.** In the event that the Agency defaults under this Agreement, blū may pursue the following remedies upon written notice of the default to the Agency:
 - i. **Stop Performance.** blū may stop performance under this Agreement until the Agency has cured the default.
 - ii. **Interest.** blū may charge the Agency 1.5% interest, compounded monthly, on any unpaid amount owed by the Agency.
 - iii. **Termination.** If the Agency has not cured the default within ten (10) days of the written notice of default, blū may terminate this Agreement in accordance with Subsection 10(B)(i) of this Agreement.
- B. **Agency.** In the event that blū defaults under this Agreement, the Agency may pursue the following remedies upon written notice of the default to blū:
 - i. **Suspend Performance.** The Agency may suspend blū's performance under this Agreement until blū has cured the default.
 - ii. **Withhold Payment.** The Agency may withhold payment until blū has cured the default.

iii. **Termination.** If blū has not cured the default within ten (10) days of the written notice of default, the Agency may terminate this Agreement in accordance with Subsection 10(B)(ii) of this Agreement.

C. **Other Legal Remedies.** The list of remedies under this Section is not exhaustive. Either Party may pursue any other right or remedy available to it, either in law or equity, on account of the other Party's default.

D. **Nonexclusive.** The remedies available to the Parties are nonexclusive. Either Party may use any combination of remedies available.

10. **Termination.**

A. **Convenience.** The Agency may terminate this Agreement at its convenience at any time by providing blū 30-day prior written notice. Termination under this Section will not be considered a default. The Agency agrees to pay blū for any work performed under this Agreement prior to the termination. blū must provide reasonable, detailed documentation to the Agency for any work performed prior to the termination. blū will provide the Agency with any project-related work product created before termination of the Agreement upon final payment from the Agency.

B. **Cause.**

i. **blū.** In the event that blū terminates this Agreement because of the Agency's default, the Agency will pay blū for all properly performed Services completed prior to the termination of this Agreement. blū will provide the Agency with any project-related work product created before termination of the Agreement upon final payment from the Agency. blū's sole remedy and monetary recovery from the Agency is limited to full payment for all Services approved and properly performed and completed prior to the termination of the Agreement.

ii. **Agency.** In the event that the Agency terminates this Agreement because of blū's default, the Agency will pay blū for all properly performed Services completed prior to the termination of this Agreement. blū will provide the Agency with any project-related work product created before termination of the Agreement upon final payment from the Agency.

11. **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;

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 or attorney's fees in litigation to resolve a dispute arising under or relating to this Agreement, the prevailing Party may recover such fees.

12. **Applicable Laws.**

blū agrees to comply with all applicable laws, rules, and regulations. This includes, but is not limited to, not discriminating against any individual in an employment decision 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

13. **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:

Midvale City RDA
Attn: Kate Andrus
7505 S. Holden Street
Midvale, Utah 84047

blū line designs
Attn: Robert Donigan
8719 S Sandy Parkway
Sandy, Utah 84047

The Parties each have the right, from time to time, to change their respective notice addresses under this Section by written notice to the other Party.

14. **Relationship of Parties.**

blū is an independent contractor. The Parties have not created any other legal relationship with each other including, but not limited to, that of employee or agent of the other Party. blū is not entitled to any of the benefits associated with employment by the Agency. blū is responsible for all applicable federal, state, and local taxes and all FICA contributions. The Parties have no authorization, express or implied, to bind the other Party. The Parties agree not to perform any such acts as an agent for the other Party.

15. **Modification.**

The Parties may modify this Agreement with mutual written agreement of the Parties. Any such modification will be attached to this Agreement. Any other modification is prohibited and invalid.

16. **Assignment and Delegation.**

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

17. **Subcontractors.**

- A. **Prior Consent.** If blū subcontracts with any entity for performance under this Agreement, it must first receive written consent from the Agency. The Agency may not withhold its consent unreasonably.
- B. **Responsibility.** blū is responsible for the acts or omissions of any of its subcontractors or assignees in the performance of this Agreement. Any subcontractor retained by blū to perform work under this Agreement is subject to the requirements of this Agreement.
- C. **Status Verification.** If blū subcontracts with an entity that performs on-site work at any Midvale location, the subcontractor must be compliant with Section 20 of this Agreement. The subcontractor must provide certification of its compliance prior to performing any work under this Agreement.

18. **Conflict of Interest.**

- A. **Relationship.** blū represents and warrants that none of its officers, employees, or immediate family members of its officers or employees is or has been an elected official, employee, board member, commission member, or agent of the Agency or its affiliates who influences the Agency's procurement process. This includes, but is not limited to, anyone involved in the Agency's drafting of procurement and project documents or the Agency's selection of a bidder.
- B. **Gift.** blū represents and warrants that is has not provided any compensation or gift in any form, whether directly or indirectly, to an elected official, employee, board member, commission member, or agent of the Agency or its affiliates who influences the Agency's procurement process. This includes, but is not limited to, anyone involved in the Agency's drafting of procurement and project documents or the Agency's selection of a bidder.

19. **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 blū believes that a document should be protected under Utah Code Ann. §§ 63G-2-305(1) or (2), blū 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). blū 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.

20. **Status Verification.**

Under the Utah Immigration Accountability and Enforcement Act, Utah Code Ann. §§ 63G-12-101 to -402, any entity contracting with a public employer is required to participate in Utah’s Status Verification System. blū will provide the Agency a certification of its compliance with this requirement prior to performing the Services under this Agreement.

21. **Publicity.**

Blū must submit all advertising and publicity matters relating to this Agreement to the Agency for written approval. It is the Agency’s sole discretion whether to provide approval.

22. **Document Retention.**

Blū must retain all working papers, reports, and all necessary records to properly account for its performance and the payments made by the Agency to blū under this Agreement. These records must be retained by blū for at least five (5) years. The Agency may extend the retention period by written notice. Blū agrees to make all documents related to this Agreement available to the Agency or third parties upon the Agency’s request.

23. **Ownership of Intellectual Property.**

The Agency and blū each recognize that each has no right, title, or interest, proprietary or otherwise, in the intellectual property owned or licensed by the other, unless otherwise agreed upon by the Parties in writing. All deliverables, documents, records, programs, data, articles, memoranda, and other materials not developed or licensed by blū prior to the execution of this Agreement, but specifically created or manufactured under this Agreement, are considered work made for hire, and blū must transfer any ownership claim to the Agency.

24. **Waiver.**

Failure by either Party to insist upon the strict performance of any condition of this Agreement or to exercise any right or remedy found under the Agreement does not constitute a waiver. Either Party may waive any of its rights or any conditions by written notice to the other Party. No waiver may affect or alter the remainder of this Agreement. Every other condition in the Agreement will remain in full force with respect to any

existing or subsequently occurring default.

25. **Severability.**

In the event that any provision of the Agreement is held to be void, the voided provision will be considered severable from the remainder of the Agreement and will not affect any other provision in the Agreement. If the provision is invalid due to its scope or breadth, the provision will be considered valid to the extent of the scope or breadth permitted by law.

26. **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.

27. **Survival.**

Termination of this Agreement does not extinguish or prejudice the Agency's right to enforce this Agreement with respect to any default or defect in the Services that has not been cured or for any term that explicitly survives the termination of this Agreement.

28. **Entire Agreement.**

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

Signature Page to Follow.

The Redevelopment Agency of Midvale City and blū have read and understand the terms of this Midvale City Hall Plaza Project Agreement. Both Parties have demonstrated their willingness to enter into the Agreement as of the date above by having their Authorized representatives sign below.

THE REDEVELOPMENT AGENCY
OF MIDVALE CITY

DocuSigned by:

Marcus Stevenson

9/2/2022

C946B48D6B064ED

Marcus Stevenson, Chief Administrative Officer

ATTEST:

DocuSigned by:

Rori Andreason

9/6/2022

8E4B4C6D7EB947F

Rori L. Andreason, Secretary

blū line designs

DocuSigned by:

By:

Robert Donigan

9/1/2022

B9244C71785C48D

Its: Project Manager

