

RESOLUTION NO. 2022-12RDA

A RESOLUTION SELECTING BILL LOUIS AS THE ARTIST FOR THE 2022 BINGHAM JUNCTION PUBLIC ART PROJECT AND APPROVING THE AGREEMENT FOR ARTIST'S COMMISSIONED WORK.

WHEREAS, the 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 adopted the Bingham Junction Project Area Plan on August 10th, 2004; and

WHEREAS, the Agency's Board of Directors adopted the Bingham Junction Public Art Program on January 14th, 2014; and

WHEREAS, the Agency's Board of Directors approved of the 2022 Bingham Junction Public Art Project on September 7th, 2021, and authorized the release of a Request for Qualifications which took place on May 31st, 2022 to solicit artists to design and install art ("Artwork") onto a Overstock.com parking garage wall ("Wall") located on their corporate campus along the east side, facing 700 West.

WHEREAS, Overstock.com is the owner of the Wall; and

WHEREAS, Overstock.com is willing to allow the Agency and its agents access to the Wall to install the Artwork; and

WHEREAS, the Agency and Overstock.com have negotiated the terms of an access agreement to allow for the implementation of the 2022 Bingham Junction Public Art Project; and

WHEREAS, the Agency sent out the Request for Qualifications (RFQ) on May 31, 2022; and

WHEREAS, the Agency received eighteen (18) RFQ's from Utah based artists on June 20, 2022; and

WHEREAS, the Design Advisory Board reviewed these RFQ's on June 29, 2022 and selected four (4) artists to create mural proposals, Artwork; and

WHEREAS, the Agency's Board of Directors, upon recommendation by the Design Advisory Board, desire to commission Bill Louis for the installation of Artwork; and

WHEREAS, the Agency and Bill Louis have negotiated the terms of an artist agreement for the design, fabrication, and installation of the artwork.

NOW THEREFORE BE IT RESOLVED BY THE REDEVELOPMENT AGENCY OF MIDVALE CITY, that the Board of Directors does hereby select Bill Louis as the artist for the 2022 Bingham Junction Public Art Project and authorizes the Chief Administrative Officer and Executive Director to execute an Artist Agreement with Bill Louis based on the Artist Agreement Term Sheet and subject to such other terms as required by the Agency's legal counsel.

PASSED AND ADOPTED BY THE REDEVELOPMENT AGENCY OF MIDVALE CITY BOARD OF DIRECTORS, this 14th day of September 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:

"Aye"

"Nay"

Bryant Brown

✓

Paul Glover

✓

Quinn Sperry

✓

Heidi Robinson

absent

Dustin Gettel

✓



CONTRACT APPROVAL COVER SHEET

CONTRACT NO: 2022-65
(RECORDER ONLY)

Contract Title: William Louis Artist's Commissioned Work

Approval Signature Required:

Contract Analyst:	<small>DocuSigned by:</small> <u>Susan Stengel</u>	Date:	<u>9/13/2022</u>
	<small>DocuSigned by:</small> <u>Lisa Garner</u>		
City Attorney's Office:	<small>DocuSigned by:</small> <u>JN Rockwood</u>	Date:	<u>9/14/2022</u>
Department Head:	<small>DocuSigned by:</small> <u>Matthew</u>	Date:	<u>9/14/2022</u>
City Manager:			

Requesting Department: RDA

City Contact Name: Meggie Troili

Project/Contract Name: Artist's Commissioned Work

Budget Amount: \$35,490

Bid Information:

Bid Type: _____

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

Bid/Exception Date: 9/7/2022

Council Approval Date: 9-6-22 Resolution No. 2022-12 RDA

Party/Vendor Information:

Name:	<u>William Louis</u>
Contact:	<u>William Louis</u>
Telephone:	<u>650-281-3130</u>
Email:	<u>biltslouisart@gmail.com</u>
Contract Purpose:	<u>Artist Agreement</u>
Begin Date:	<u>9/13/2022</u>
Termination Date:	<u>9/12/2032</u>
Renewal Option:	<u>None</u>
Other Documents Required:	<u>Due Date:</u>

OTHER SIGNIFICANT TERMS AND ANNUAL OBLIGATIONS (Insurance Certificate, Payments, etc.):

RECORDER ONLY

DATE RECEIVED: 9-15-2022

DATE SCANNED TO ONBASE: 9-15-22 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: Meggie Troili, RDA Project Manager

Date: 9/7/2022

RE: Professional Services Exception Request for

The Redevelopment Agency of Midvale City is requesting a professional services exception for William (Bill) Louis who completed the RFQ and project proposal process and has been selected for the 2022 Bingham Junction Public Art Project. Bill was selected by the Bingham Junction Design Board to design and install a mural at the Overstock.com headquarters (799 Coliseum Way, Midvale, UT 84047), along the East side of their parking facility.

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.

The Redevelopment Agency of Midvale City is recommending awarding a professional services exception for these services. The total proposed price is \$35,490 that includes, materials, equipment, travel, and artist fees.

Please indicate approval of this Professional Service.

Approved:

DocuSigned by:

9/14/2022

Matt Dahl, City Manager

Date

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PASSED AND ADOPTED BY THE REDEVELOPMENT AGENCY OF MIDVALE CITY BOARD OF DIRECTORS, this 14th day of September 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:

"Aye"

"Nay"

Bryant Brown
Paul Glover
Quinn Sperry
Heidi Robinson
Dustin Gettel

✓
✓
✓
present
✓

**AGREEMENT FOR
ARTIST'S COMMISSIONED WORK**

THIS AGREEMENT FOR ARTIST'S COMMISSIONED WORK (the "Agreement"), made and entered into as of 9/13/22, by and among the Redevelopment Agency of Midvale City, a public agency (the "Agency"), and William Louis, an individual ("Artist").

WITNESSETH:

WHEREAS, the Agency has implemented a public art program which allocated certain funds for the establishment of artwork within the Bingham Junction Project Area;

WHEREAS, Overstock.com is the owner of a building located at 799 Coliseum Way, Midvale, UT 84047 (as more particularly depicted in **Exhibit A** attached hereto, the "Location"), and the Agency is interested in the installation of artwork thereon;

WHEREAS, the Agency approved of the 2022 Bingham Junction Public Art Project Area to facilitate the installation of artwork at the Location;

WHEREAS, the Agency issued a Request for Qualifications ("RFQ") to solicit qualified artists to design and install a mural at the Location (the "Artwork");

WHEREAS, the selected Artist then submitted a proposal to the Agency (as more particularly depicted in **Exhibit B** attached hereto, the "Proposal");

WHEREAS, the Agency has selected the Artist for the design, creation, and installation of the Artwork at the Location; and

WHEREAS, the Agency and the Artist desire at this time to document their understanding and agreement with respect to the foregoing;

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

1. **Scope of Services.** The Artist will design and create the Artwork in accordance with and as set forth in the Proposal, and the Artist will manage the construction and installation of the Artwork. The Artist agrees that the Artwork will be completed, delivered, and installed at the Location by October 15, 2022, in accordance with the provisions of this Agreement.

The Artist represents, warrants and covenants that:

- i. the Artwork will be the original creation of the Artist;

- ii. the Artwork will be unique and an edition of one;
- iii. no identical or substantially similar Artwork of whatever size or any additional or duplicate reproductions of the Artwork will be created by the Artist and the Artist may not grant permission to others to do so;
- iv. the Artwork will not infringe upon any copyright, trademark or other property or personal right;
- v. the Artwork will be free and clear of liens or encumbrances from any sources whatsoever;
- vi. the Artist may not have any adverse claim to the Artwork; and
- vii. the Artwork must follow the guidelines set forth in the Proposal.

Notwithstanding clause (iii) of this Section 1, the Artist is permitted to use depictions of the Artwork in promotional materials such as portfolios and resumes.

The Artist represents, warrants, and covenants that the Artwork, as fabricated and installed, will be free of defects in material and workmanship including, but not limited to, any defects which cause or accelerate deterioration of the Artwork. The Agency and the Artist acknowledge the Artwork is temporary in nature and will need to be repaired or removed in no less than ten years. If the Artwork is found to be defective in such a way that removal or repair before ten years is necessary, the removal or repair will be at the expense of the Artist. In the event the Artwork must be removed or repaired before ten years for reasons such as: vandalism, disaster, and any other condition not caused by a defect in material or workmanship, the removal or repair will be at the expense of the Agency.

2. **Compensation.** The purchase price to be paid to the Artist for the Artwork is \$35,490 ("Purchase Price"). The Agency will pay the Artist the Purchase Price in the following installments:

- a. 50% of the purchase price upon execution of this Agreement; and
- b. 50% of the purchase price upon successful installation of the Artwork on or before the date specified in Section 1 of this Agreement and delivery to the Agency of a bill of sale transferring title to the Artwork to the Agency. The bill of sale must be in form and substance satisfactory to the Agency in its sole discretion.

In order to process the payments, the Artist must invoice the Agency after the above milestones. The Agency will pay the Artist within 30 days after it receives and approves an invoice.

3. **Termination.** The Agency has the right to terminate this Agreement at any time if it determines that the Artwork does not or will not fulfill or comply with the Agency's requirements or specifications as provided for in the RFQ and the Proposal. Upon such termination, the Artist retains all rights to the concept, design, and the Artwork itself, including the right to complete, exhibit and sell the Artwork. If the Artist is unable to complete the Artwork and removal is necessary, the removal will be at the expense of the Artist. The Artist will reimburse the Agency the amount under Subsection 2(a) if the Artist fails to complete the Artwork. The Agency Director may agree to accept portions of the incomplete Artwork in lieu of a proportional percentage of the reimbursement.

4. **Ownership.** Upon completion and installation of the Work, the Agency will own the Artwork and be entitled to exercise all rights previously held by the Artist in and to the Artwork including, but not limited to, any and all rights arising under the Federal Copyright Act. The Artist agrees that, as of the date the Artwork is completed and installed, the Artist will transfer and assign to the Agency all of his or her rights under the Federal Copyright Act and all related State laws. The Artist also waives and relinquishes all other rights the Artist may have in and to the Artwork including, but not limited to, the Artist's rights under the Visual Artists Rights Act of 1990 (as defined and expressly waived below):

THE ARTIST ACKNOWLEDGES HIS OR HER RIGHTS OF ATTRIBUTION AND INTEGRITY GENERALLY CONFERRED BY SECTION 106A(A) OF TITLE 17 OF THE UNITED STATES CODE (THE VISUAL ARTISTS RIGHTS ACT OF 1990), AND ANY OTHER RIGHTS OF THE SAME NATURE GRANTED BY OTHER FEDERAL, STATE OR FOREIGN LAWS. THE ARTIST WAIVES HIS OR HER RIGHTS WITH RESPECT TO THE ARTWORK.

5. **Notice.** The Artist agrees to keep the Agency notified in writing of changes in the Artist's address. Any notice required 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:

The Redevelopment Agency of Midvale City
Attn: RDA Program Manager
7505 S. Holden Street
Midvale, UT 84047

Artist
William Louis
7499 N. Silver Park Dr.
Eagle Mountain, UT 84005
650-281-3130
biltslouisart@gmail.com

6. **Indemnification.** The Artist agrees to protect, defend, release, indemnify and hold harmless the Agency and its officials, officers, employees, and agents from and against any and all losses, damages, claims, demands, actions, causes of action, penalties, expenses, litigation costs, attorneys' fees, expert witness fees, court costs, amounts paid in settlement, judgments, interest or other costs resulting from: (a) any claim by a third party that the Artwork or anything made, used, sold, or otherwise disposed of, in or as a result of this Agreement, allegedly infringes any trademark, copyright, patent, trade secret or other intellectual property right of a third party; (b) loss of or damage to the property of any Party or third person arising from the negligence or willful misconduct of the Artist, his or her representatives, agents or employees in the performance of this Agreement; or (c) death or personal injury to the agents of any Party or to any third person, arising from the negligence or willful misconduct of the Artist, his or her representatives, agents or employees in the performance of this Agreement.

7. **Insurance.** The Artist, at his or her own cost and expense, must secure and maintain Comprehensive General Liability Insurance with the Agency and Midvale City as named insureds in the minimum amount of One Million Dollars (\$1,000,000.00) in the aggregate and Five Hundred Thousand Dollars (\$500,000) per occurrence. The policy must provide that coverage will not be canceled or reduced without at least thirty days prior written notice to the Agency. Certificates evidencing such insurance coverage must be filed with the Agency prior to or upon execution of this Agreement.

8. **Relationship of Parties.** For purposes of this Agreement, it is understood that the Artist is an independent contractor. No other legal relationship has been formed by this Agreement, and in no manner is the Artist an employee or agent of the Agency. The Artist is not entitled to any of the benefits associated with such employment. The Artist 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. Nothing contained in this Agreement inures to the benefit of third parties. All negotiations relative to this Agreement and the transactions contemplated by and under this Agreement have been carried on without the intervention of any person whose act or acts would give rise to any valid claim against any party to this Agreement for a finder's fee, brokerage commission, or other like payment.

9. **Force Majeure.** Neither Party to this Agreement will be held responsible for delay or default caused by reason of a fire, riot, strike, labor trouble, acts of God or any other cause beyond the reasonable control of such Party (financial inability excepted). Either Party may terminate this Agreement by written notice to the other Party after determining such delay will prevent successful performance of this Agreement.

10. Severability. In the event that any provision of this Agreement shall be held invalid and unenforceable, such provision will be severable from, and such invalidity or unenforceability will not be construed to have an effect on, the remaining provisions of this Agreement.

11. Governing Law and Venue. This Agreement is governed by the laws, rules, and regulations of the State of Utah. Any action or proceeding arising from this Agreement must be brought in a court of competent jurisdiction in Salt Lake County, Utah.

In the event a party commences a legal proceeding to enforce any of the terms of this Agreement, the prevailing party in such action may recover reasonable attorneys' fees and court costs from the other party to be fixed by the court in the same action

12. Entire Agreement. This Agreement contains all the representations and the entire agreement between the Parties with respect to the Artwork. Except as otherwise specified in this Agreement, any prior correspondence, memoranda, agreements, warranties, or representations are superseded in total by this Agreement. This Agreement may be modified only by a written instrument signed by the Parties.

13. Non-Appropriation of Funds or Changes in Law. Upon 30 days written notice delivered to the Artist, this Agreement may be terminated in whole or in part at the sole discretion of the Agency, if the Agency reasonably determines:

- A. A change in federal, state, or City law materially affects the ability of either Party to perform under this Agreement; or
 - B. A change in available funds affects the Agency's ability to pay under this Agreement;
- If the Agreement is terminated under this Section, the Agency will reimburse Artist for the Artwork approved and properly performed until the effective date of said notice. The Agency is not liable for any performance, commitments, penalties, or liquidated damages that accrue after the effective date of said written notice.

14. 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 attorneys' fees or costs in litigation to resolve a dispute arising under or relating to this Agreement, the prevailing Party may recover such fees and costs.

15. Laws and Regulations. At all times during this Agreement, the Artist and all Artwork performed under this Agreement must comply with all applicable federal, state, and City constitutions, laws, rules, codes, orders, 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.

16. Status Verification. Under the Utah Immigration Accountability and Enforcement Act, Utah Code Ann. §§ 63G-12-101 to -402, any entity physically performing services within Utah for a public employer is required to participate in Utah's Status Verification System. The Artist will provide the Agency a certification of its compliance with this requirement prior to performing Artwork under this Agreement.

17. 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 Artist believes that a document should be protected under Utah Code Ann. §§ 63G-2-305(1) or (2), the Artist 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 Artist 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.

18. Time. For the Artwork, time is of the essence. The Artist is liable for all reasonable damages to the Agency as a result of the Artist's failure to timely perform the Artwork and obligations required under this Agreement.

19. Conflicts of Interest.

- a. Officer or Employee.** The Artist 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 Artist has made such disclosure to the Agency prior to execution of this Agreement. The Artist 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 Artist 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.

20. Assignment and Delegation. A Party may not assign or delegate any part of this Agreement without the other Party's prior written consent. Unless otherwise noted in the Agreement, a Party may not unreasonably withhold its consent.

21. Subcontractors. Performance of the Artwork under this Agreement may not be subcontracted to another individual or entity without the Agency's prior written consent. The

Agency may withhold its consent at its sole discretion. If a subcontractor is permitted to perform the Artwork under this Agreement, the Artist is responsible for the subcontractor's performance of the Artwork. The subcontractor is subject to all of the terms of this Agreement that apply to the Artist except for invoices and payments. The Agency will only accept invoices from the Artist and will only make payments to the Artist.

22. Not Exclusive. The Artist understands that this Agreement is not exclusive. The Agency may contract with other individuals or entities to provide the same or similar services. This contract does not guarantee any amount of work.

23. Publicity. The Artist 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.

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

25. Amendments. This Agreement may only be modified by the mutual written agreement of the Parties. Any such amendment will be attached to this Agreement.

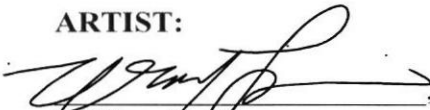
26. Waiver. Failure by either Party to insist upon the strict performance of any condition of this Agreement or to exercise any right or remedy found under the Agreement does not constitute a waiver. Either Party may waive any of its rights or any conditions by written notice to the other Party. No waiver 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.

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 Artwork that has not been cured or for any term that explicitly survives the termination of this Agreement.

Signature Page Follows

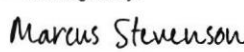
IN WITNESS WHEREOF, the parties have signed this Agreement to be effective as of the day and year first above written.

ARTIST:



_____, an individual
William Louis
Artist

AGENCY:

REDEVELOPMENT AGENCY OF MIDVALE CITY

DocuSigned by:
By  9/15/2022

C940B40D0B004ED...
Marcus Stevenson
Mayor, RDA Chair

DocuSigned by:
By  9/14/2022

3685E1BC4C0A497...
Matt Dahl
City Manager, RDA Executive Director

DocuSigned by:
 9/15/2022

8E4B4C6D7EB947F...
City Recorder



Exhibit A
Location

The mural site is located on the Oversock.com parking garage, located on the east side of the corporate campus (799 Coliseum Way, Midvale UT 84047) facing 700 West. A single wall on the structure was selected for the mural installation highlighted in yellow below.



Exhibit B
Artist Proposal

Artist

Bill Louis
Utah based Polynesian artist

Mural Budget

\$26 per sq foot
\$35,490 total

Proposal Concept/Description

Focusing on the "Do Good" corporate value from Overstock.com, the hands feeding the bird it is symbolic to charity. Overstock has donated much to the underprivileged communities in the community, and I wanted to represent that in the mural design. The various colors represent diversity and culture. Some images include the garden box to represent the greenhouse that was built on the property that was being used before the pandemic. There are also many nature images that represent Utah. The bluebird which is a power animal representing "to be carefree". The tribal represents family and I wanted to include many other Utah elements such as the Wasatch Mountains and leaves and so on.



