



7505 S Holden Street
Midvale, UT 84047
801-567-7200
Midvale.Utah.gov

**REDEVELOPMENT AGENCY OF MIDVALE CITY
MEETING AGENDA
September 17, 2024**

Public Notice Is Hereby Given that the **Redevelopment Agency of Midvale City** will hold an electronic and in-person meeting on **September 17, 2024** as follows:

Electronic & In-Person City Council Meeting

This meeting will be held electronically and in-person. **Public comments may be submitted electronically to the Board at Midvale.Utah.gov/PublicComment by 5:00 p.m. on September 16, 2024.**

The meeting will be broadcast on **YouTube (Midvale.Utah.gov/YouTube)**

6:00 p.m. or immediately following the City Council Meeting

I. GENERAL BUSINESS

A. Welcome and Roll Call

II. PUBLIC COMMENTS

Any person wishing to comment on any item not otherwise scheduled for public hearing on the agenda may address the Redevelopment Agency of Midvale City Board at this point by stepping to the microphone and giving his or her name for the record. **Comments should be limited to not more than three (3) minutes unless additional time is authorized by the Redevelopment Agency of Midvale City Board.** Resident groups will be asked to appoint a spokesperson. This is the time and place for any person who wishes to comment on issues not scheduled for public hearing. Items brought forward to the attention of the Redevelopment Agency of Midvale City will be turned over to staff to provide a response outside of the Redevelopment Agency meeting.

III. CONSENT AGENDA

A. Consider Minutes of September 3, 2024 - ***[Rori Andreason, HR Director/City Recorder]***

IV. ACTION ITEM

A. Consider **Resolution No. 2024-24RDA** approving the Agreement for Artist's Commissioned Work for the installation of a mural located on the exterior west-facing wall of the parking structure located at 7860 S Bingham Junction Blvd — ***[Aubrie Ruiz, CD/RDA Executive Assistant]***

V. POSSIBLE CLOSED SESSION

The Board may, by motion, enter into a Closed Session for:

September 17, 2024

- A. Discussion of the Character, Professional Competence or Physical or Mental Health of an Individual;
- B. Strategy sessions to discuss pending or reasonably imminent litigation;
- C. Strategy sessions to discuss the purchase, exchange, or lease of real property;
- D. Discussion regarding deployment of security personnel, devices, or systems; and
- E. Investigative proceedings regarding allegations of criminal misconduct.

VI. ADJOURN

In accordance with the Americans with Disabilities Act, Midvale City will make reasonable accommodations for participation in the meeting. Request assistance by contacting the City Recorder at 801-567-7207, providing at least three working days' notice of the meeting. TTY 711

The agenda was posted at the following locations on the date and time as posted above: City Hall Lobby, on the City's website at Midvale.Utah.gov and the State Public Notice Website at pmn.utah.gov. Board Members may participate in the meeting via electronic communications. Board Members' participation via electronic communication will be broadcast and amplified so other Board Members and all other persons present in the Council Chambers will be able to hear or see the communication.

Date Posted: September 12, 2024

**Rori L. Andreason, MMC
H.R. Director/City Recorder**



REDEVELOPMENT AGENCY MEETING

Minutes

Tuesday September 3, 2024

Council Chambers
7505 S Holden Street
Midvale, Utah 84047

CHAIR: Marcus Stevenson

BOARD MEMBERS: Board Member Paul Glover
Board Member Bonnie Billings
Board Member Dustin Gettel
Board Member Bryant Brown
Board Member Heidi Robinson

STAFF: Matt Dahl, City Manager; Nate Rockwood, Assistant City Manager; Rori Andreason, City Recorder; Garrett Wilcox, City Attorney; Mariah Hill, Administrative Services Director; Adam Olsen, Community Development Director; Laura Magness, Communications Director; Glen Kennedy, Public Works Director; Cody Hill, Economic Development Director; Wendelin Knobloch, Planning Director; Chief Randy Thomas, UPD; and Juan Rosario, Systems Administrator.

Chair Stevenson called the meeting to order at 7:22 p.m.

I. GENERAL BUSINESS

A. Roll Call - Board Members Dustin Gettel, Bonnie Billings, Bryant Brown, Heidi Robinson, and Paul Glover were present at roll call.

II. PUBLIC COMMENTS

There was no one who desired to speak.

III. CONSENT AGENDA

A. CONSIDER MINUTES OF AUGUST 6, 2024

MOTION: Board Member Paul Glover **MOVED** to approve the consent agenda. The motion was **SECONDED** by Board Member Dustin Gettel. Chair Stevenson called for discussion on the motion. There being none he called for a roll call vote. The voting was as follows:

Board Member Bryant Brown **Aye**
Board Member Dustin Gettel **Aye**
Board Member Paul Glover **Aye**
Board Member Bonnie Billings **Aye**
Board Member Heidi Robinson **Aye**

The motion passed unanimously.

IV. ACTION ITEM

A. CONSIDER RESOLUTION NO. 2024-23RDA AUTHORIZING THE CHIEF ADMINISTRATIVE OFFICER TO EXECUTE THE ART HOUSE EXTERIOR IMPROVEMENT CONSTRUCTION ACCESS AND TRANSFER AGREEMENT WITH MIDVALE CITY

Cody Hill said this spring, the City entered into an interlocal agreement with Salt Lake County to receive a grant of \$40,800.00 from the Tourism, Recreation, Cultural, Convention, and Airport Facilities Tax Act. These funds will be used to renovate and improve the rear exterior of the Midvale Main Art House, creating a usable outdoor space for the creation of art.

To facilitate these improvements, the Agency staff are requesting the RDA Board's approval to enter into a construction access and transfer agreement with the City. This agreement will grant the City access to the Agency's property for the purpose of making improvements.

In exchange for these improvements, the Agency will provide the City with the required grant funding match of \$6,500.00. Additionally, the agreement outlines that ownership and maintenance responsibility for the improvements will transfer back to the Agency upon completion of construction and the warranty period.

FISCAL IMPACT:

Upon execution of this Agreement, the Agency agrees to pay to the City \$6,500.00, which is to be used by the City as the matching grant funds required by the Interlocal Agreement with Salt Lake County to construct the improvements.



**Redevelopment
Agency of
Midvale City**

**Art House Exterior
Improvement
Construction Access &
Transfer Agreement**

Agreement Terms

Funding:

- From SLCO: The maximum reimbursable award amount is \$40,800
- From Midvale RDA to Midvale City: \$6,500

Deadline:

- Project needs to be completed by 3/31/2025
- Request for reimbursement to SLCo by 6/30/2025

Access & Conveyance:

- City may access RDA Property to facilitate installation of improvements and will convey the improvements to the RDA after a warranty period

Scope of Work

- A. Replace 325 Square Feet concrete pad with new 40'x40' concrete pad
- B. Install shade structure roughly 20'x12'
- C. Install decorative fencing around perimeter of patio

MOTION: Board Member Dustin Gettel **MOVED** to suspend the rules and adopt Resolution No. 2024-23RDA Authorizing the Chief Administrative Officer to Execute the Art House Exterior Improvement Construction Access and Transfer Agreement with Midvale City. The motion was **SECONDED** by Board Member Heidi Robinson. Chair Stevenson called for discussion on the motion. There being none he called for a roll call vote. The voting was as follows:

Board Member Bryant Brown Aye
Board Member Dustin Gettel Aye
Board Member Paul Glover Aye
Board Member Bonnie Billings Aye
Board Member Heidi Robinson Aye
The motion passed unanimously.

VI. ADJOURN

MOTION: Board Member Paul Glover MOVED to adjourn the meeting. The motion was
 SECONDED by Board Member Dustin Gettel. Chair Stevenson called for
 discussion on the motion. There being none he called for a vote. The motion
 passed unanimously.

The meeting was adjourned at 7:23 p.m.

Rori L. Andreason, MMC
City Recorder

Approved this September 17, 2024.



REDEVELOPMENT AGENCY OF MIDVALE CITY

Meeting Date: September 17, 2024

ITEM TYPE: Action

SUBJECT: Consider Resolution No. 2024-24RDA approving the Agreement for Artist's Commissioned Work for the installation of a mural located on the exterior west-facing wall of the parking structure located at 7860 S Bingham Junction Blvd.

SUBMITTED BY: Aubrie Ruiz, CD/RDA Executive Assistant

CITIZEN AGENDA: The Redevelopment Agency of Midvale City Board of Directors will consider approving an agreement to commission a mural on the wall of Zions Bank's technology headquarters' parking structure.

SUMMARY:

On May 13, 2024, Zions Bancorporation, N.A. ("Zions") signed the Agreement Between Zions Bancorporation, N.A. and the Redevelopment Agency of Midvale City for the Placement of Artist's Commissioned Work. This agreement between the Agency and Zions provides for the cooperation between the Agency and Zions to commission a mural on the west-facing wall of Zions' parking structure, located at 7860 S Bingham Junction Blvd. Zions agrees to help select the artist and mural and keep the mural in place for at least 10 years.

On September 3, 2024, the selection committee reviewed the 119 artists who responded to our call for qualifications and narrowed the list down to just four artists. The four finalists were asked to prepare a rendering for the mural they would install. On September 16, 2024, the Selection Committee met again to review the renderings and selected the mural and artist who will install the mural.

The Agreement for Artist's Commissioned Work specifies the scope of services the artist will be providing, the compensation they will be receiving, ownership of the mural, insurance requirements, and other details specific to completing the mural. See Attachment A: Agreement for Artist's Commissioned Work.

FISCAL IMPACT:

The budget for the project is \$50,000. This includes the cost of the mural and compensation for the renderings not selected by the Selection Committee on September 16, 2024. The funds will come from the Public Art account of the Jordan Bluffs RDA Fund. This expense was included in the FY2025 budget approved by the Agency board.

STAFF RECOMMENDATIONS:

Agency staff recommend the Agency Board approve the Agreement for Artist's Commissioned Work by adopting Resolution No. 2024-24RDA

STAFF RECOMMENDATIONS:

"I move that we suspend the rules and adopt Resolution No. 2024-24RDA approving the Agreement for Artist's Commissioned Work for the installation of a mural located on the exterior west-facing wall of the parking structure located at 7860 S Bingham Junction Blvd."

* Agency staff request that the rules be suspended to enable the selected artist to begin working on the mural before the weather turns cold and inhospitable for a muralist working outdoors.

ATTACHMENTS:

Attachment 1: Resolution No. 2024-24RDA

Attachment A: Agreement for Artist's Commissioned Work

**THE REDEVELOPMENT AGENCY OF MIDVALE CITY
RESOLUTION NO. 2024-24RDA**

**A RESOLUTION APPROVING THE AGREEMENT FOR ARTIST’S COMMISSIONED WORK FOR
THE INSTALLATION OF A MURAL LOCATED ON THE EXTERIOR WEST-FACING WALL OF
THE PARKING STRUCTURE LOCATED AT 7860 S BINGHAM JUNCTION BLVD.**

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

WHEREAS, the Agency and Zions Bancorporation, N.A. (“Zions”) desire to see the installation of a mural on the west-facing wall of Zions’ parking structure located at 7860 Bingham Junction Blvd., Midvale, UT 84047; and

WHEREAS, on May 13, 2024, Zions signed the Agreement Between Zions Bancorporation, N.A. and the Redevelopment Agency of Midvale City for the Placement of Artist’s Commissioned Work; and

WHEREAS, the Selection Committee has selected an artist and rendering for the Zions parking structure mural; and

WHEREAS, the Agency now wishes to enter into the Agreement for Artist’s Commissioned Work with the selected artist and Zions.

NOW THEREFORE BE IT RESOLVED BY THE REDEVELOPMENT AGENCY OF MIDVALE CITY, that the Board of Directors does hereby approve and enter into the Agreement for Artist’s Commissioned Work as attached here to as Attachment A.

Passed and Adopted by the Board of Directors of the Redevelopment Agency of Midvale City, State of Utah, this _____ day of _____, 2024.

Marcus Stevenson,
Chief Administrative Officer

Matt Dahl
Executive Director

ATTEST:

Rori L. Andreason, MMC
Secretary

Voting by the Board: “Aye” “Nay”

Bonnie Billings	_____	_____
Paul Glover	_____	_____
Heidi Robinson	_____	_____
Bryant Brown	_____	_____
Dustin Gettel	_____	_____

Attachment A: AGREEMENT FOR ARTIST'S COMMISSIONED WORK

AGREEMENT FOR ARTIST'S COMMISSIONED WORK

THIS AGREEMENT FOR ARTIST'S COMMISSIONED WORK (the "Artist Agreement" or "Agreement"), made and entered into as of September 16, 2024, by and among the Redevelopment Agency of Midvale City, a public agency (the "Agency"), and Erik Burke, an individual ("Artist"). Agency and Artist are referred to throughout this Agreement individually as a ("Party") and collectively as ("Parties").

WITNESSETH:

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

WHEREAS, Zions Center of Excellence, LLC is the owner ("Owner") of the parking garage located at 7860 South Bingham Junction Blvd (as more particularly depicted in **Exhibit A** attached hereto, the "Property"), and the Agency is interested in the installation of a mural thereon ("Mural"); and

WHEREAS, Owner and Agency have entered into an agreement for the placement of an artist's commissioned work on the Property ("Owner Agreement"), attached as **Exhibit C**; and

WHEREAS, the Agency issued a Request For Qualifications ("RFQ") to solicit qualified artists to design and install murals as part of the Program; and

WHEREAS, the Agency has by resolution created the Artist Selection Committee; and

WHEREAS, Committee has selected the Artist for the design and installation of the Mural at the Property; and

WHEREAS, the Agency, at the recommendation of the Committee, approves Artist to install the Mural for inclusion in the Program; and

WHEREAS, the Artist and Agency have agreed upon a detailed sketch or digital rendering of the proposed Mural design including color and visual representation within the dimensions of the assigned wall and a brief written description of the proposed Mural (hereinafter referred to as the "Proposal"), attached as **Exhibit D**; 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 Artist Agreement, the Parties agree as follows:

1. **Scope of Services.** Upon execution of this Agreement, the Artist shall manage and complete the installation of the Mural on the exterior west-facing wall of the parking garage located on the Property as shown in Exhibit A of the Owner Agreement. The Artist agrees that installation of the Mural will begin no later than thirty (30) days after execution of this Agreement, and the Artist will complete and install the Mural at the Property on or before October 10, 2024.

a) The Artist represents, warrants, and covenants that:

- i. the Mural will be the original creation of the Artist;
- ii. the Mural will be unique and an edition of one;
- iii. no identical or substantially similar Mural of whatever size or any additional or duplicate reproductions of the Mural will be created by the Artist and the Artist may not grant permission to others to do so;
- iv. the Mural will not infringe upon any copyright, trademark or other property or personal right;
- v. the Mural will remain free and clear of liens or encumbrances from any third parties;
- vi. the Artist is not and will not be subject to any adverse claim to the Mural;
- vii. installation of the Mural must be performed within the parameters of the approved Proposal, the final design approval, and the provisions of this Artist Agreement; and
- viii. the Mural must follow Midvale City Public Art Guidelines, attached as **Exhibit B** to this Agreement;

b) Notwithstanding clause (iii) of this Section 1 (a), the Agency shall not prohibit the Artist from using depictions of the Mural in personal promotional materials such as portfolios and resumes.

c) The Artist represents, warrants, and covenants that the Mural, 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 Mural. The Parties acknowledge and agree that the Mural is intended to be in place for a minimum of ten years. The Artist understands that the Agency cannot guarantee that the Mural will remain in place for the minimum ten-year period. Vandalism, weather, deterioration or destruction of the Property, actions of the Owner, 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 minimum ten-year period. Removal of the Mural by the Owner shall be governed by the Owner Agreement, Section 6.a (**Exhibit C**).

d) If the Mural is determined, in the Agency's sole discretion, to be defective in workmanship or materials, in such a way that removal or repair before ten years is necessary, the removal or repair shall be at the expense of the Artist. In such event, the Agency shall determine whether the Mural is repaired or removed.

e) In the event the Mural 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, as determined by the Agency in the Agency's sole discretion, the removal

or repair shall be at the expense of the Agency.

- f) If the Mural needs repair for reasons described in Subsections 1.d or 1.e, the Agency shall determine in its sole discretion whether the Mural can be restored or repaired. If the Agency determines that the Agency cannot restore or repair the Mural, the Agency may notify the Artist that the Artist has 30 days to submit a proposal to the Owner and Agency to restore or repair the Mural. The Artist shall advise in writing the Owner and the Agency within 30 days of receipt of notice from the Owner and Agency whether the Artist will restore or repair the Mural. The Artist shall provide a date agreeable to the Agency by when the Artist will restore or repair the Mural. If the Artist does not respond to the Agency within 30 days of the Agency's notice or the Agency determines in its discretion that the Artist is unable to restore or repair the Mural within an agreed timeframe, the Agency may contract with another individual or entity to repair, replace, or remove the Mural.
2. **Compensation.** The purchase price to be paid to the Artist for the Mural is \$50,000.00 ("Purchase Price"), which shall include all costs related to the Project such as Artist's fees and expenses for design, supplies, equipment rental, insurance, and installation. Any fees incurred for assistance from contractors or agreements between Artist and any other outside parties shall be the responsibility of the Artist. The Agency shall pay the Artist the Purchase Price in the following installments:

a) **Payments**

The Agency will pay 50% of the Purchase Price to the Artist after execution of this Agreement and within 30 days of the Artist delivering an invoice to the Agency. The Agency will pay the other 50% of the Purchase Price upon completion and acceptance of the Mural and within 30 days of the Artist delivering an invoice to the Agency. The invoice must be in form and substance satisfactory to the Agency in its sole discretion. The first invoice shall not be submitted prior to execution of this Agreement, and the second invoice shall not be submitted prior to completion and written acceptance of the Mural by the Agency, which shall not be unreasonably withheld.

As a condition to receiving payment of an invoice, the Artist must submit a completed W-9 form to the Agency. The invoice must include the Purchase Price of the Mural. The Agency shall pay the Artist for all approved items included in the invoice within 30 days after the Agency's receipt of a complete invoice.

If the Artist fails to perform under this Artist Agreement, the Artist shall reimburse the Agency for any monies paid to the Artist under this Artist Agreement. This includes, but is not limited to, failing to completely install the Mural by the agreed completion date; installing a mural that deviates materially from the Proposal and the provisions of this Artist Agreement; or failing to coordinate and cooperate with the Agency and Owner. This paragraph is exempt from Section 14 of the Agreement, and the Agency may pursue any available remedy to enforce the terms contained in this paragraph. The Artist shall reimburse the Agency and Owner for any legal or attorneys' fees incurred by the Owner or Agency to enforce the terms of this paragraph.

b) **Anti-Graffiti**

The Mural is required to receive an anti-graffiti coating applied by the Artist upon completion of the Mural.

c) **Lifts and Ladders**

The Artist shall provide lift and ladder equipment for use in installing the Mural. The Artist shall be responsible for the cost of renting and delivering the lift or ladder, as well as for any associated setup and removal fees. The Artist shall be responsible for using the equipment safely and in accordance with all applicable laws and regulations.

3. **Termination.** Except as provided in this Agreement, the Agency has the right to terminate this Artist Agreement at any time if Artist materially breaches the Agreement or if the Agency determines that the Mural does not or will not fulfill or comply with the Agency's requirements or specifications as provided for in the RFQ and Artist's approved Proposal. Upon such termination, the Artist retains all rights to the concept, design, and visual representation of the proposed mural, including the right to complete (in some other location), exhibit, and sell an image of the Mural. If installation of the Mural is incomplete, then the Artist shall remove any part already installed, and the removal of any part of the mural already installed will be at the expense of the Artist. The Artist shall reimburse the Agency the amount paid under Section 2 of this Artist Agreement in the event the Artist fails to complete the Mural pursuant to the terms of the approved Proposal and the terms of this Artist Agreement. Non-payment of the reimbursable amount within 30 days shall result in accrual of interest at 1.5% per month on the portion not reimbursed to the Agency, including post-judgment, and the Artist shall be responsible for all collections costs. The Agency, in its sole discretion, may agree to accept portions of the incomplete Mural and may provide Artist with a proportional reimbursement requirement or payment which reflects the value of the completed work.

If the Property is sold or transferred, this Agreement may be terminated if the Owner Agreement is terminated pursuant to Section 6.b of the Owner Agreement; provided, however, the Artist shall be paid for any work performed before the sale or transfer upon receipt of an invoice by the Agency.

4. **Ownership.**

Upon complete installation of the Mural, all rights, title, and interest the Artist has in the Mural, including, without limitation, any and all rights under the Copyright Act of 1976, 17 U.S.C. § 101 et seq. belonging to the Artist shall transfer to the Agency as sole owner the rights, title, and interest, including copyright, for the duration of the copyright and for the duration of the existence of the Mural.

The Agency hereby grants to the Artist a worldwide, royalty-free license to make digital copies of, migrate the copies to a new format, take pictures and/or video of the Mural and display, exhibit, promote, and dispose of said copies for personal promotional, non-commercial purposes, such as portfolios and resumes. For purposes of this license, commercial purposes shall include, but not be limited to, selling or distributing copies, photos, videos, or other visual representations of the Mural for financial gain.

The Artist hereby waives any and all copyright infringement claims against Agency and Owner or any future owners of the Mural or the Property, and its agents, officers and employees.

The Artist hereby acknowledges the existence of his or her statutory moral rights under 17 U.S.C. 106A and other moral rights in the Mural, which is to be used as a work of visual art, and Artist hereby expressly and forever waives all such rights. Artist further understands and agrees that the installation of the Artwork on the building at the Property may subject it to destruction, distortion, mutilation, or other modification, by reason of its removal or other acts at a later date, and Artist hereby waives all claims for such action occurring.

All provisions under this Section shall survive termination of this Agreement.

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:

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

Artist:
Erik Burke

775 Shangri La Dr

Reno, NV 89509

6. **Indemnification.** The Artist agrees to protect, defend, release, indemnify and hold harmless the Owner, the Agency, and Midvale City and their officials, officers, employees, volunteers, 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 Mural or anything made, used, sold, or otherwise disposed of, in or as a result of this Artist 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 Artist 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 Artist Agreement. This provision shall survive termination of this Agreement.

7. **Insurance.** The Artist, at his or her own cost and expense and throughout the duration of this Agreement, must secure and maintain Comprehensive General Liability Insurance with the Agency, Midvale City, and Owner as named insureds in the minimum amount of \$1,000,000.00 in the aggregate and \$500,000.00 per occurrence. Insurance under this Section is required to be primary, noncontributory, and not in excess of any insurance or self-insurance policies available to or maintained by the Agency or other named insureds. The policy must provide that coverage

will not be canceled or reduced without at least 30 days' prior written notice to the Agency. Certificates evidencing such insurance coverage must be filed with the Agency prior to execution of this Artist Agreement. The cost of this insurance coverage is an eligible expense to be included in the Artist's invoice to the Agency. Failure to maintain constant coverage as described is a material breach of this Agreement and may result in termination.

8. Relationship of Parties. For purposes of this Artist Agreement, it is understood that the Artist is an independent contractor. No other legal relationship has been formed by this Artist 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 as provided herein. 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 Artist Agreement inures to the benefit of third parties except as acknowledged herein. All negotiations relative to this Agreement and the transactions contemplated by and under this Artist 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 Artist Agreement for a finder's fee, brokerage commission, or other like payment.

9. Force Majeure. Neither Party to this Artist Agreement will be held responsible for delay or default caused by reason of a fire, flood, earthquake, act of terrorism, pandemic, war, riot, strike, labor trouble, other act of God, or any other cause beyond the reasonable control of such Party (financial inability excepted). The Parties may terminate this Artist Agreement or extend timelines required by this Agreement by mutual written agreement after determining such delay will prevent successful performance of this Artist Agreement.

10. Severability. In the event that any provision of this Artist 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 Artist Agreement.

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

12. Entire Agreement. This Agreement contains all the representations and the entire agreement between the Parties with respect to the Program and installation of the Mural. Except as otherwise specified in this Artist Agreement, any prior correspondence, memoranda, agreements, warranties, or representations are superseded in total by this Artist Agreement. This Artist 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 Artist 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 local 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 this Artist Agreement is terminated under this Section, the Agency shall reimburse the Artist for any work approved and properly performed in relation to the Mural 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 Artist 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 the course of resolving the dispute arising under or relating to this Artist Agreement, the prevailing Party may recover such fees and costs.

The list of remedies under this Section is not exhaustive or exclusive. 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. Either Party may use any combination of remedies available.

15. **Laws and Regulations.** At all times during this Artist Agreement, the Artist and Agency shall 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.

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 with a certification of its compliance with this requirement prior to performing work under this Agreement.

17. **Government Records Access and Management Act.** The Agency and Midvale City are governmental entities and are 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, and therefore, the Agency cannot guarantee the confidentiality of any information provided by the Artist. 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 of this Artist Agreement.

18. **Time.** For the completion of the Mural, 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 install the Mural and perform obligations required under this Agreement.

19. **Conflicts of Interest.**

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 Midvale City, its affiliate, 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, Midvale City, or their affiliates who could influence 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, Midvale City, or their affiliates who could influence 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.

21. **Subcontractors.** Performance of the work associated with the Mural under this Artist Agreement may not be subcontracted to another individual or entity without the Agency's prior written consent. The Agency may withhold its consent in its sole discretion. If a subcontractor is permitted to perform the work associated with the Mural under this Artist Agreement, the Artist is responsible for the subcontractor's performance. The subcontractor is subject to all of the terms of this Artist Agreement that apply to the Artist except for invoices and payments. The Agency will accept invoices only from the Artist and will make payments only to the Artist.

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

23. **Publicity.** The Artist must submit all advertising and publicity matters relating to this Artist Agreement to the Agency for Agency's written approval in its sole discretion. The provision survives termination of this Agreement.

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 Artist Agreement. These records shall be retained by the 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 Artist Agreement available to the Agency or to third parties upon the Agency's request. This provision will survive termination of this Agreement.

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

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

27. **Default.** In the event of a default under this Agreement, the non-defaulting Party may:

- A. Suspend the Artist's performance under this Agreement until the default is corrected;
- B. Withhold payment until the default is corrected;
- C. Charge 1.5% interest monthly, compounded monthly, on any unpaid amount until the amount is paid in full; and
- D. Terminate this Agreement in accordance with Section 3.

The list of remedies under this Section is not exhaustive or exclusive. 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. Either Party may use any combination of remedies available.

27. **Survival.** Termination of this Artist Agreement does not extinguish or prejudice the Agency's right to enforce this Artist Agreement with respect to any default or defect in the Mural that has not been cured or any term that is intended to survive the termination of this Artist Agreement.

28. **Third Party Beneficiaries.** The Parties acknowledge and agree that Midvale City and Owner are intended third-party beneficiaries of this Agreement.

29. **Government Immunity.** The Agency advises that it is a governmental entity in the State of Utah and is bound by the provisions of the Utah Governmental Immunity Act (Title 63G, Chapter 7 of Utah Code Ann., as amended). The Agency does not waive any procedural or substantive defense or benefit provided by the Governmental Immunity Act or comparable legislative enactment, including without limitation, the provisions of Utah Code Ann. § 63G-7-604 regarding the limitation of judgments. Any indemnity and insurance obligations incurred by the Agency under this Agreement are expressly limited to the amounts identified in the Act.

Signature Page Follows

The Agency and Artist have read and understand the terms of this Agreement for Artist's Commissioned Work located at Zions Bancorporation Midvale Technology Center, 7860 S Bingham Junction, Midvale, UT 84047. Both Parties have demonstrated their willingness to enter into the Agreement as of the date above by signing below.

ARTIST:

Signature

Erik Burke

Artist Print Name

REDEVELOPMENT AGENCY OF MIDVALE CITY:

By: _____
Marcus Stevenson
Chief Administrative Officer

By: _____
Matt Dahl
Executive Director

Exhibit A
Property



Exhibit B
Midvale City Public Art Guidelines

MIDVALE CITY PUBLIC ART GUIDELINES

A Mural is comprised of any part of a Mural painted or applied directly on a wall or other permanent surface. Murals are intended to deter graffiti and vandalism and to enhance the community. Midvale City and the Redevelopment Agency of Midvale City support this endeavor and have created the following criteria to ensure consistency and appropriate results:

- Murals are encouraged to be located on wall surfaces having a history of graffiti, vandalism or propensity for graffiti and/or vandalism.
- The Mural work shall be of exceptional quality and provide enduring value to the Agency and Midvale City. The work shall be relevant to the site or Midvale City, its values, culture and/or people. It shall enhance the aesthetic experience within Midvale City.
- The Mural's imagery shall not reflect partisan politics, or contain sexual or religious content, or express a commercial aspect through use of logos, slogans or other advertising messages.
- The Mural shall be designed for all viewpoints, i.e. pedestrians, moving vehicles, seated audiences, etc.
- Wall surfaces used shall be suitable to receive the proposed Mural materials and enable technical detailing. Exposure to weathering elements shall be considered to minimize fading and damage to the Mural. Appropriate measures shall be taken to prepare wall surfaces before Mural work commences.

Exhibit C
Owner Agreement



CONTRACT NO: _____
(RECORDER ONLY)

CONTRACT APPROVAL COVER SHEET

Contract Title: Zions Center of Excellence LLC and RDA Agreement for
Commissioned Artist Work

Approval Signatures Required:

Contract Analyst:	DocuSigned by: <u>Melissa Strasburg</u> 8AAC1FE331D8432...	Date:	<u>9/12/2024</u>
City Attorney's Office:	Signed by: <u>Garrett Wikoy</u> CEAD4CCFE78246B...	Date:	<u>9/12/2024</u>
Department Head:	Signed by: <u>Adam Olsen</u> 643C55CDCA37449...	Date:	<u>9/12/2024</u>
City Manager:	DocuSigned by: <u>Matt Dahl</u> 886E05BB3D05476...	Date:	<u>9/12/2024</u>

Requesting Department: RDA
City Contact Name: Aubrey Ruiz
Project/Contract Name: Zions Center of Excellence LLC Commissioned Artist Work
Budget Amount: \$0

Bid Information:

Bid Type: n/a
Bid Exception: Professional Services
(i.e.: Sole Source, Professional Services, etc.)

Bid/Exception Date: _____

☐ Bid Selection Scoring Sheet/Bid Exception Approval Attached (If Required)

Council Approval Date: _____ **Resolution No.** _____

Party/Vendor Information:

Name: Zions Center of Excellence LLC
Contact: Facilities Management
Telephone: _____
Email: _____
Purpose: Mural on Zions building
Begin Date: September 11, 2024
Termination Date: No fewer than 10 years from execution
Renewal Option: no
Other Documents Required: _____
Due Date: _____

Vendor Signature:

The Party/Vendor needs to execute the contract before the City. What method will they be using?

☐ Physical Signature ☐ City DocuSign ☒ Other: **Signed**

DocuSign Signer Name (If Applicable): _____

DocuSign Signer Email Address (If Applicable): _____

Required Documents:

If your contract requires certain documents before it can be executed, please check the boxes next to the required documents and attach them with your contract for review.

☐ Certificate of Insurance ☐ Status Verification Certificate ☐ Boycott Affidavit
☐ Performance Bond ☐ Payment Bond ☐ Other: _____

CONTRACT APPROVAL COVER SHEET
Page 2

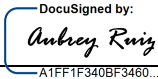
RECORDER ONLY

DATE RECEIVED: _____

DATE SCANNED TO ONBASE: _____ INDEX: _____

APPLICANT CERTIFICATION:

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 certify that the draft agreement is complete and includes all exhibits, attachments, and pages. I certify that all of the documents required for execution of the contract are attached, and I have reviewed them to confirm that they meet the requirements of the agreement.

Signed:  _____ Date: 9/12/2024
Name: Aubrey Ruiz
Title: Community Development Executive Assistant

**AGREEMENT BETWEEN ZIONS BANCORPORATION,
N.A. AND THE REDEVELOPMENT AGENCY OF
MIDVALE CITY
FOR THE PLACEMENT OF ARTIST'S COMMISSIONED WORK**

THIS AGREEMENT FOR THE PLACEMENT OF ARTIST'S COMMISSIONED WORK ("Agreement"), made and entered into as of MAY 13, 2024 (the "Effective Date"), by and between Zions Center of Excellence, LLC, a wholly-owned subsidiary of Zions Bancorporation, N.A. (collectively, Zions), and the Redevelopment Agency of Midvale City ("Midvale RDA", "the RDA"), a public agency (each a "Party" and collectively the "Parties").

WITNESSETH:

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

WHEREAS, Zions is the owner of certain property within the Bingham Junction Project Area;
and

WHEREAS, Midvale RDA is interested in the installation of artwork ("the Artwork") on the exterior west-facing wall of the parking garage owned by Zions located at 7860 South Bingham Junction Blvd., Midvale, Utah (as more particularly depicted in Exhibit A attached hereto, the "Location"); and

WHEREAS, Zions is interested in providing the Location for the installation of the Artwork;
and

WHEREAS, Midvale RDA is willing and able to seek out artists for proposals on the Artwork's design, creation, and installation;

NOW, THEREFORE, in consideration of the mutual covenants set forth in this Agreement, Zions and Midvale RDA hereby agree as follows:

AGREEMENT

1. Responsibilities of Midvale RDA.

- a. **Artist Contract.** The Midvale RDA is responsible for drafting, releasing, and advertising a call for artists to submit concept proposals for Artwork at the Location. As set forth in Section 2.a. below, Zions will provide up to three themes and general color schematics upon which the Artwork may be based ("Themes") and identify specific areas within the Location where the Artwork may be installed. The artist whose submission is selected by the Design Advisory Board (as defined below) and approved by Midvale RDA's Board will enter into a contract with the Midvale RDA for the creation of the Artwork.
- b. **Design Advisory Board.** The Midvale RDA is solely responsible for establishing selection criteria and organizing and assembling an advisory board, which will advise the Midvale RDA with respect to the design of the Artwork (the "Design Advisory Board"). Per the terms of the Bingham Junction Public Art Program, the Design Advisory Board will

consist of the following 5 members: (1) a representative from the Midvale RDA, appointed by the Midvale RDA in its sole discretion; (2) the Midvale City Planner or designee; (3) a Member of the Midvale City Council; (4) a representative of the local arts community, appointed by the Midvale RDA in its sole discretion; and (5) a representative from Zions (the "Zions Representative"). Each concept proposal shall be consistent with one of the Themes. The Zions Representative will have and may exercise veto power over any and all concept proposals for the Artwork that are presented for consideration to the Design Advisory Board. The Design Advisory Board will meet and select a winning concept proposal and a backup concept proposal. Following review of all proposals for the Artwork, the Design Advisory Board shall submit its recommendation of the selected artist for commissioning the Artwork (the "Recommendation") to the Midvale RDA's Board for consideration. Notwithstanding anything to the contrary set forth in this Agreement, the Midvale RDA's Board shall have full authority to: (a) approve the Recommendation; (b) reject the Recommendation but approve a backup recommendation (if a backup recommendation was submitted with the Recommendation); (c) reject the Recommendation and request a new Recommendation from the Design Advisory Board; or (d) reject the Recommendation and determine to end consideration of Artwork at the Location and terminate this Agreement.

- c. **Costs.** Midvale RDA is responsible for the commission and installation costs up to \$50,000.00. In no event shall the Midvale RDA be obligated to incur costs and/or expenses in excess of \$50,000.00 in connection with commissioning and installing the Artwork. In no event shall Zions be obligated to incur any costs or expenses in connection with commissioning and installing the Artwork.
- d. **Appropriate.** The Bingham Junction Public Art Program's Design Advisory Board is responsible for assuring that the subject matter of the Artwork is appropriate for the community based on the guidelines adopted by the Midvale RDA's Board in the Bingham Junction Public Art Program and the call for artists.

2. Responsibilities of Zions.

- a. **Themes.** Zions shall provide the Themes to the Design Advisory Board for its review and approval prior to commissioning the Artwork. In the event the Design Advisory Board does not approve any of the Themes, the Parties shall cooperate to identify an acceptable Theme. If they are unable to do so within thirty (30) days of their rejection of the initial Themes, either Party can end consideration of the Artwork at the Location and terminate this Agreement.
- c. **Permissions & Access to Location.** As of the commencement of the project, Zions will provide the Midvale RDA and the contracted artist all reasonably necessary permissions and access for the installation, inspection, and maintenance of the Artwork at the Location. The selected artist and Midvale RDA will use best efforts to minimize the impact of the installation on the use of the parking garage and related premises by Zions and other tenants.
- d. **Design Advisory Board Representative.** Zions will designate a representative to

participate in the selection process on the Design Advisory Board.

3. Ownership.

The terms of the agreement between the Midvale RDA and the artist selected to produce the Artwork (the "Artwork Contract") shall provide that the Midvale RDA will be the owner of the Artwork. Among other things, the Artwork Contract shall provide that the artist will be required to sign over any and all rights, title, and interest the artist has in and to the Artwork, including, without limitation, any and all rights of copyright. Furthermore, the Artwork Contract shall require the artist to sign an express acknowledgment and waiver of any and all rights in and to the Artwork afforded to the artist under Section 106A(a) of Title 17 of the U.S. Code (The Visual Artists Rights Act of 1990), and any other rights of the same nature granted by other federal, state, local, or foreign laws. The Midvale RDA will grant a license to use depictions of the Mural to Zions.

4. Maintenance.

The Midvale RDA will be responsible for the regular maintenance of the Artwork at the Midvale RDA's expense. This will begin with the call for artists. Preference will be given to artists who commit to using durable paints and a protective finish over their Artwork. The Midvale RDA will require artists to include in their responses how much it will cost to have them maintain their work on an annual and biannual basis. The Midvale RDA will conduct annual inspections for the first five years and biannual (twice a year) inspections during years six through ten. Zions must notify the RDA of any damage, vandalism, or deterioration of the Artwork, and Zions must take all reasonable precautions to not cause damage to the Artwork. The Midvale RDA will contract with the artist (or another artist mutually acceptable to the Design Advisory Board) on an as-need basis to help maintain and touch up the Artwork. If Zions becomes concerned that the Artwork is not being reasonably and properly maintained by the Midvale RDA, Zions may formally request the Midvale RDA perform additional inspections and allocate more funding to support the Artwork's maintenance. If the RDA determines that it cannot clean or repair the mural, it may remove the mural at its sole discretion. Zions understands that the RDA cannot guarantee that the Artwork will remain installed for the ten-year period. Vandalism, weather, deterioration or destruction of the Location, actions of Zions and its invitees, and other events outside of the control of the RDA may result in the Artwork being removed partially or in whole before the end of the ten-year period. If Zions's concerns regarding maintenance are not alleviated after 60 days from submitting a formal request, it may resolve the issue with the Midvale RDA through the dispute resolution process outlined in Section 13. Similarly, RDA acknowledges that while Zions uses commercially reasonable efforts to provide security for the Location, Zions cannot control or be responsible for vandalism, public use or misuse, deterioration or destruction of the Location, including actions of Zions and its invitees, except for actions by Zions or its agents acting in their official capacity which acts are intended to result in the Artwork being removed or permanently damaged in which case Paragraph 6 shall apply. Zions shall not be liable to the RDA, under 8.b of this Agreement or otherwise, for any damage to the Artwork as a result thereof.

5. Effective Date and Duration.

This Agreement is effective as of the date it is executed by both parties ("Effective Date"), as indicated on the signature lines below. Unless otherwise terminated pursuant to 1.b., 2.a., or Section 6 below, this Agreement shall continue for a period of 10 years following the Effective Date or until

the RDA determines it cannot repair or clean the Artwork and elects to remove it.

6. Termination

- a. **Removal of Artwork.** Zions agrees to allow the Artwork to remain at the Location for no fewer than 10 years following the Effective Date. In the event the Artwork is removed by Zions from the Location sooner than 10 years from the Effective Date of this Agreement, Zions will reimburse the Midvale RDA \$5,000 times 10, less the number of years the mural was in place. For example, If Zions removed the Artwork after it being in place for 8 years, Zions would be obligated to pay the Midvale RDA \$10,000 ($\$5,000 * 2 [10 \text{ years} - 8 \text{ years}]$). This assumes that the full \$50,000 budget is expended to commission the Artwork. The \$5,000 figure will be adjusted based on the actual cost for the Artwork by dividing the actual cost for the commission and installation of the Artwork by 10. For example, if the Artwork costs the Agency \$40,000 to commission, the \$5,000 figure would be adjusted to \$4,000. Zions, however, need not reimburse the Midvale RDA if the Artwork is removed sooner than 10 years if the reason for which the Artwork is removed is listed in Section 6.a.i (each an "Exception" and collectively "Exceptions") or if the RDA determines it cannot repair or clean the Artwork and elects to remove it.
 - i. **Exceptions.** Removal of Artwork Exceptions include public relation concerns and legal liability as it relates to the mural, its content, or the artist. To qualify as an Exception, Zions must present to Midvale RDA reasonably convincing evidence supporting the notion that the presence of the Artwork, due to its location, content and/or creator, creates harm to Zions's public image or is likely to give rise to or support litigation against Zions.
- b. **Change of Location Ownership.** In the event Zions intends to sell the Location, Zions will notify the Midvale RDA as soon as reasonably practicable. The notice will include the following information about the Location's new owner:
 - i. Name
 - ii. Address
 - iii. Phone number

Upon the closing of the sale, this Agreement between the Agency and Zions will be assigned to the new owner. Notwithstanding anything to the contrary set forth herein, Zions or the new owner may elect to terminate the Agreement and remove the Artwork upon or in connection with the sale of the Location, subject to Section 6.a., including 6.a.i.

7. Default.

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

8. Indemnification.

- a. **RDA's Responsibility.** The Midvale RDA agrees to indemnify, defend, and hold harmless Zions, and its parent, its affiliated and subsidiary companies, and each of its respective directors, officers, employees, and agents from and against any and all claims, liability, loss, expenses, suits, damages, judgements, demands, and costs (including reasonable legal fees and expenses) arising, in whole or in part, out of the installation, maintenance, or removal of the Artwork at the Location except to the extent that such damage was caused by the negligence, recklessness or intentional misconduct of Zions, including:
 - i. the acts or omissions of the Midvale RDA, and its past or present directors, officers, employees, agents, advisors, representatives, or invitees, including the commissioned artist.
 - ii. any accident, injury or death to persons, or loss of or damage of property, or fines and penalties which may result.
- b. **Zions' Responsibility.** Zions agrees to indemnify, defend, and hold harmless the RDA, its affiliates, and each of their respective officials, officers, employees, volunteers, and agents and the commissioned artist from and against any and all claims, liability, loss expenses, suits, damages, judgments demands and costs (including reasonable legal fees and expenses) arising out of the negligence, recklessness, or intentional misconduct of Zions in its performance of this Agreement.
- c. **Costs.** The Midvale RDA will defend and settle, at its sole expense, all suits or proceedings arising out of any occurrence included in Section 8(a) of this Agreement in the event that mediation fails.
- d. **Mediation.** The Midvale RDA will first attempt to resolve all disputes and potential suits or proceedings arising out of any occurrence included in Section 8(a) of this Agreement via mediation. The Midvale RDA will seek to participate in mediation in accordance with the mediation procedures of United States Arbitration & Mediation.
- e. **Duration.** The duty to indemnify, as defined and limited by Section 8(a) and (b) of this Agreement shall survive termination of this Agreement but shall expire on the date that is ten years from the later to occur of the completion or installation of the Artwork.
- f. **Binding.** The duty to indemnify, under this Agreement, is binding upon and inure to the benefit of the Parties, their successors, assigns, and personal agents and representatives. The presence or absence of insurance of either Party shall not affect or determine the liability of Midvale RDA under this Section 8.
- g. **Government Immunity.** Midvale advises that it is a governmental entity in the State of Utah and is bound by the provisions of the Utah Governmental Immunity Act (Title 63G, Chapter 7 of Utah Code Ann., as amended). Midvale does not waive any procedural or substantive defense or benefit provided by the Governmental Immunity Act or comparable legislative enactment, including without limitation, the provisions of Utah Code Ann. §

63G-7-604 regarding the limitation of judgments. Any indemnity and insurance obligations incurred by Midvale under this Agreement are expressly limited to the amounts identified in the Act.

9. Publicity; Complete Agreement; Notices.

Neither Party will make a reference to the other Party in any press release, website posting, marketing or advertising or promotional materials without the prior written consent of the other Party, which may be granted or withheld in such Party's sole discretion.

This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral or written, with respect to such matters, which the Parties acknowledge have been merged into this Agreement.

This Agreement cannot be amended, altered, qualified, assigned or sublet except in writing signed by both Parties, and any amendment, alteration, qualification, assignment, or other such arrangement shall be null and void and shall not be binding upon any Party who has not signed such writing.

Any notice or other communication required or desired to be served, given, or delivered under this Agreement will be given by sending notice in writing via delivery in person, by overnight carrier (signature required) or via email upon evidence of receipt, to the addresses below:

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

For Zions:
Facilities Management
7860 S. Bingham Junction Blvd
Midvale, UT 84047

10. Choice of Law, Venue, and Severability.

This Agreement is governed by, interpreted under and construed and enforced under the laws of the state of Utah, without regard to conflicts of law principles. Any suit arising from this Agreement must be brought within the appropriate court in Salt Lake County, Utah.

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. If 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.

11. 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.

12. Titles and Captions.

The titles of captions of this Agreement are for convenience only and shall not be deemed part of this Agreement and in no way define, limit, augment, extend or describe the scope, content or intent of any part or parts of this Agreement.

13. 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.

14. 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.

15. 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.

16. Conflicts of Interest

a. **Officer or Employee.** Zions represents that none of its officers or employees are elected officials, officers, employees, volunteers, or agents of the RDA or its affiliates, unless Zions has made such disclosure to the RDA prior to execution of this Agreement. Zions 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, officer, employee, volunteer, or agent of the RDA or its affiliates who influences the RDA's procurement process.

b. **Gifts.** Zions represents and warrants that it 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 RDA or its affiliates who influences the RDA's procurement process.

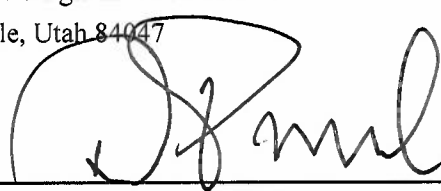
17. Force Majeure. Neither Party to this Agreement will be held responsible for delay or default caused by fire, flood, earthquake, act of terrorism, riot, pandemics, war, or other act of God, which is beyond that Party's reasonable control. Either Party may terminate this Agreement by written notice to the other Party after determining such delay will prevent successful performance of this Agreement.

18. Authorization.

Each of the Parties executing this Agreement represents that it has taken all the steps necessary to make this Agreement binding upon it. Each individual signing this Agreement represents that they have been duly authorized by appropriate action of the governing body of the Party for which they sign to execute and deliver this Agreement in the capacity and for the entity set forth where they sign and that as a result of their signature, this Agreement shall be binding upon that Party for which they sign.

Zions and the Midvale RDA have read and understand the terms of this Agreement for the Placing of Artist's Commissioned Work. Both Parties have demonstrated their willingness to enter into the Agreement as of the date above by having their Authorized representatives sign below.

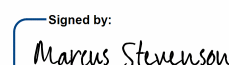
ZIONS CENTER OF EXCELLENCE, LLC
7860 S. Bingham Junction Blvd
Midvale, Utah 84047

By: 

Print Name/Title: D. PENROD - VP

Date signed: 5/13/24

REDEVELOPMENT AGENCY OF MIDVALE CITY

Signed by:
By: 
2CAE71904E8A4B2...
Marcus Stevenson, Chief Administrative Officer

DocuSigned by:
By: 
886E05BB3D05476...
Matt Dahl, Executive Director

Date Signed: 9/16/2024

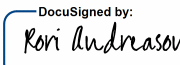
DocuSigned by:
Attested By: 
3D92627CC2F7484...
Rori Andreason, Secretary

Exhibit A: Site and Location of proposed Artwork

The address for Zion's Bancorp Technology Campus is:
7860 South Bingham Junction Blvd., Midvale, Utah 84047
The Artwork is proposed to be located on exterior West-facing wall of the parking garage located at 7860 S Bingham Junction Blvd. The specific wall proposed for the Artwork is highlighted in the image below.

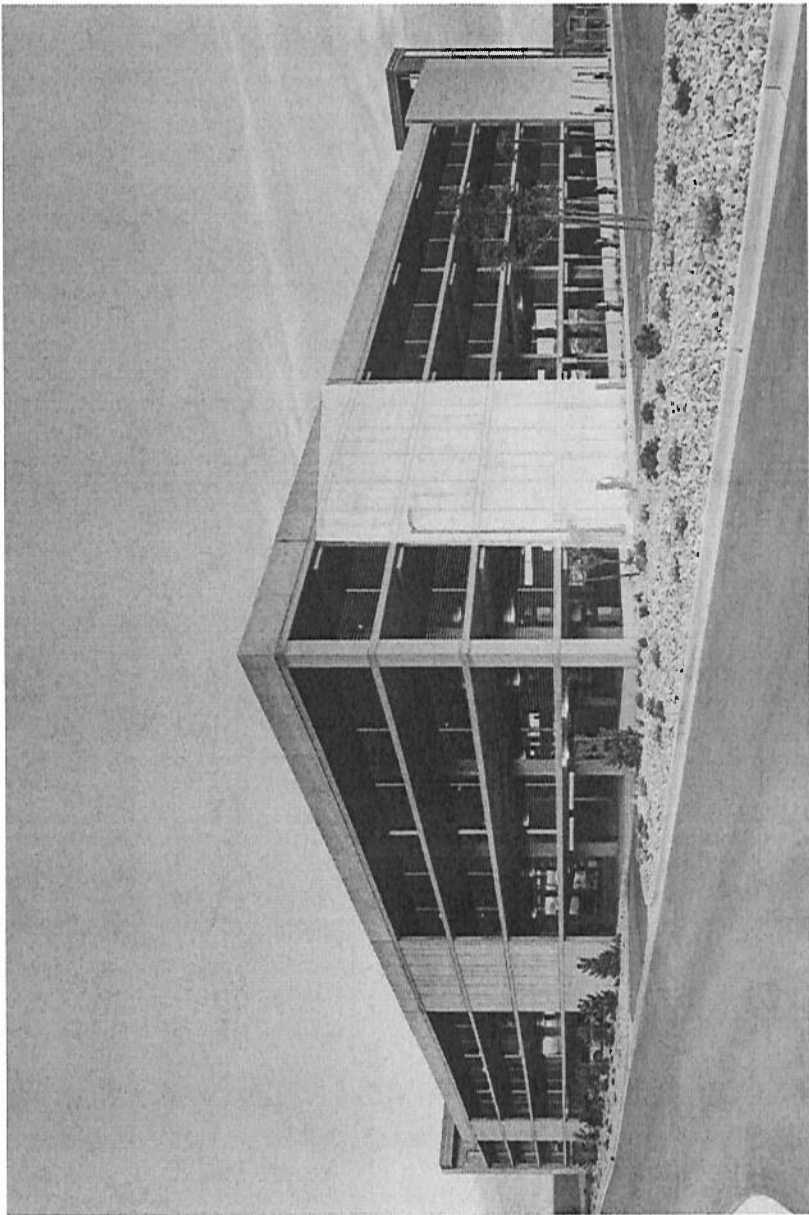


Exhibit D
Proposal

