

**AGREEMENT FOR DESIGN AND PAINTING OF A MURAL ON THE
WASHOE COUNTY PARKING GARAGE LOCATED AT 220 S. CENTER STREET
IN RENO, NEVADA AND WAIVER OF RIGHTS UNDER THE VISUAL ARTISTS
RIGHTS ACT OF 1990**

THIS AGREEMENT, is made and entered into this ____ day of _____, 2019, by and between COUNTY OF WASHOE, CENTER & PINE INVESTMENTS, LLC, and ERIK BURKE, for the painting of a mural on the north side of the Washoe County parking garage located at 220 S. Center Street in Downtown Reno, Nevada.

RECITALS

WHEREAS, County of Washoe ("County") is the owner of a building located at 220 S. Center Street in Downtown Reno ("the Building") and is willing to allow a mural ("the Mural") to be painted on the north side of said building; and

WHEREAS, Center & Pine Investments, LLC ("C&P Investments") is the owner of a property adjacent to the Building and is willing to allow the property to be used as a staging area for painting the Mural; and

WHEREAS, C&P Investments is willing to contribute the sum of \$10,000 toward the Mural of which \$9,420 will go towards renting lift equipment and associated costs necessary for creating the mural; and

WHEREAS, the City of Reno's Arts, Culture, & Events ("City of Reno") is willing to contribute the sum of \$10,000 toward the Mural; and

WHEREAS, the Board of Commissioners of Washoe County passed a resolution on June 25, 2019 authorizing a \$5,000 grant to Sierra Arts Foundation for the mural on Washoe County's parking garage at 220 S. Center St.; and

WHEREAS, artist Erik Burke ("Artist") is ready, willing, and able to design and paint the Mural for consideration in the amount of \$15,580 and on the terms set forth below;

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, and subject to all terms and conditions of this Agreement, County, C&P Investments and Artist hereby agree as follows:

SECTION 1: SCOPE OF WORK

1.1 For services rendered herein, C&P Investments shall pay Artist a sum of \$15,580 of which the City of Reno is contributing \$10,000 for work performed on the Mural, Sierra Arts Foundation is contributing \$5000 donated by the Board of Commissioners of Washoe County for the Mural, and C&P Investments is contributing \$580.

1.2 C&P Investments shall also contribute \$9,420.00 for equipment and associated cost of equipment to paint mural.

- 1.3 The Scope of Work divides Artist's services into two phases: Phase 1 shall cover the cost of all initial supplies and start-up costs and shall total \$5,580. Phase 2 shall be the actual painting of the Mural, upon the completion of which, Artist will receive the sum of \$10,000 from C&P Investments. In the event that Artist should need more than \$5,580 worth of supplies prior to the completion of the Mural, the needed additional amount shall be advanced to him as needed. Artist agrees that any additional amounts shall be deducted from the \$10,000 payment due at the completion of phase 2, and in no event will Artist receive more than a total of \$15,580 for the Mural inclusive of all costs, supplies, labor and the purchase of the Mural.
- 1.4 Artist shall begin work under the Phase 1 Scope of Work within 30 days after execution of this Agreement by all parties hereto. Artist shall not begin work under the Phase 2 Scope of Work until a written Notice to Proceed has been issued.
- 1.5 Artist shall paint the mural as generally depicted in the design attached as Exhibit B. The design shall be such that it generally covers the entire height and width of the north wall of the Building.

SECTION 2: CHANGES IN SCOPE AND ADDITIONAL WORK

- 2.1 Artist shall, whenever required during the term of this Agreement, present to County and C&P Investments, in writing, drawing or other appropriate media for review and approval in advance of any significant changes in the scope, design, color, size, material, utility and support requirements, texture or location of the site of the Mural.
- 2.2 Artist shall provide no services which shall require additional compensation beyond the \$15,580 called for by this Agreement without prior written authorization of County and C&P Investments.

SECTION 3: RESPONSIBILITIES OF ARTIST

- 3.1 Artist agrees that an essential element of this Agreement is the skill and creativity of Artist. Artist shall not assign the creative or artistic portions of the Mural to another party for the production of the Mural without the written consent of County and C&P Investments. Failure to conform to this provision constitutes cause for termination of this Agreement at the sole discretion of County and C&P Investments.
- 3.2 Artist shall be responsible for painting a mural on the north side of the Building. Artist shall be responsible for designing the artwork so it can be constructed without exceeding the approved overall budget for the project. Artist shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in the Mural, and shall be responsible, at no additional cost to County or C&P Investments, for maintaining the Mural, i.e. paint over graffiti, etc. for a period of three (3) years from the date of completion.

- 3.3 Other than paint, nothing shall be affixed to the Building, nor shall there be any penetration of the surface of the Building without the prior written permission of the County.

SECTION 4: COPYRIGHTS AND LIMITED WAIVER OF VISUAL ARTISTS RIGHTS
ACT "VARA" RIGHTS

- 4.1 The Artist shall retain all copyright and all other rights in and to any artwork(s) created under this Agreement, provided the Artist grants to the City, Washoe County, and C & P and its agents, representatives, and successors in interest an irrevocable license to graphically depict the artwork in any non-commercial manner whatsoever. For the purpose of this limitation, the graphic or photographic depiction of the artwork(s) on materials designed to market or promote the City, County, or C & P or any other function or property of the City, County, or C & P shall be deemed to be a non-commercial use.
- 4.2 Pursuant to 17 USC §113A(d)(1)(B), the Parties hereto agree the Mural is a work of art which will be installed on the façade of a building and that installation of the Mural may subject the Mural to destruction, distortion, mutilation, or other modification by reason of its removal. The Parties further agree the County may at any time, and in its sole discretion, remove the Mural with or without prior notice to Artist.
- 4.3 If for any reason the installation of the Art Component is not implemented, all rights to the proposed artwork shall be retained by the Artist.
- 4.4 The Artist agrees that all work performed under this Agreement shall comply with all applicable patent, trademark and copyright laws, rules, regulations and codes of the United States. The Artist further agrees that the Work will not utilize any protected patent, trademark or copyright unless the artist has obtained proper permission and all releases and other necessary documentation. If the Artist specifies any material, equipment, process or procedure which is protected, the Artist shall disclose such patents, trademarks, and copyrights in the construction drawings and technical specifications.
- 4.5 The Artist agrees to release, indemnify and hold harmless, the County, its officers and employees from any and all claims, damages, suits, costs, expenses, liabilities, actions or proceedings of any kind resulting from the performance of work under this Agreement which infringes upon any patent, trademark or copyright that is protected by law.
- 4.6 Artist may reproduce the Mural or its design without prior written consent of County or C & P.

SECTION 5: RESPONSIBILITIES AND RIGHTS OF COUNTY AND C&P
INVESTMENTS

- 5.1 County and C&P Investments shall arrange for reasonable access to the Building as required for Artist to perform services under this Agreement. County and C&P Investments hereby grants to Artist a revocable license to enter on to their

respective properties as may be reasonably necessary to carry out the duties under this Agreement. This license may be revoked for any reason deemed in the best interest of the County or C&P Investments including, without limitation, security of the Building.

- 5.2 In addition to paint, supplies and equipment as described herein, C&P Investments shall, at its expense, prepare and install at appropriate locations, after consultation with Artist and County, plaques or signs identifying Artist, the title of the Mural and the year of completion, and shall reasonably maintain such signs in good repair against damages due to normal wear and tear over time, vandalism and the elements. The installation of any plaques or signs or other fixtures of any kind on the Building or other County property requires the prior permission of the County.

SECTION 6: WARRANTIES / STANDARDS

- 6.1 Artist shall guarantee the Mural to be free from faults of material and workmanship for a period of three years after completion, and shall perform any and all repairs, at his sole cost, necessary to cure any such faults of material or workmanship during the warranty term.
- 6.2 Artist shall deliver the Mural free and clear of any liens from any source whatsoever.
- 6.3 Artist shall faithfully perform the work required under this Agreement in accordance with standards of care, skill, training, diligence and judgment provided by highly competent professionals who perform work of a similar nature to the Mural described in this agreement.

SECTION 7: COMPENSATION AND TIME OF PERFORMANCE

- 7.1 Artist shall complete the Mural no later than December 1, 2019, unless an extension of time is granted in writing by County and C&P Investments.
- 7.2 Artist shall be paid for services satisfactorily rendered as described in Section 1. Such payment shall be full compensation for work performed and services rendered, for all supervision, labor, supplies, materials, equipment or use thereof, taxes, including sales taxes, and for all other necessary incidentals. Artist agrees to provide County and C&P Investments with any documentation County and C&P Investments may require including documentation regarding the payment of sales tax.
- 7.3 In the event Artist incurs costs in excess of the Total Price, Artist shall pay such excess from his own funds, and the other parties shall not be required to apply any part of such excess, and Artist shall have no claim against the other parties on account thereof.
- 7.4 No payment to Artist for any work performed or services rendered shall constitute a waiver or release by the other parties of any claims, rights or remedies it may have against Artist under this Agreement or by law, nor shall such payment

constitute a waiver, remission or discharge by County or C&P Investments of any failure or fault of Artist to satisfactorily perform the work as required under this Agreement.

SECTION 8: TIME FOR PERFORMANCE

The provisions of this Section 8 and the various rates of compensation for Artist's services provided for elsewhere in this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Project.

SECTION 9: TERMINATION

- 9.1 Any party may terminate this Agreement with or without cause by providing thirty (30) days notice, in writing, to the other party. Upon the expiration date of said notice, this Agreement shall become of no further force or effect whatsoever and each of the parties shall be relieved and discharged herefrom.
- 9.2 In the event that the Agreement is terminated by Artist without cause, Artist shall promptly reimburse C&P Investments for all payments made under this Agreement prior to the termination by Artist.
- 9.3 In the event that County and C&P Investments determines Artist has substantially failed to fulfill his obligations as provided under this Agreement, they shall provide Artist with written notice detailing the specific obligations which they claim Artist has failed to fulfill, and notify Artist that he is deemed to be in breach of this Agreement. Artist shall have 10 days to cure the breach to the satisfaction of County and C & P Investments. If the breach is not cured or if County and C&P Investments and Artist cannot agree on a schedule for curing the breach, the Agreement will be deemed terminated on the date specified by County and C&P Investments, which will be no sooner than ten (10) business days from the date of issuance of the notice. If this Agreement is terminated by County and C&P Investments for a breach of the Agreement, Artist shall promptly reimburse County and C&P Investments for all payments made under this Agreement prior to the termination.
- 9.4 If, because of the death, unavailability, or any other occurrence not due to the acts of any Party to this Agreement, it becomes impossible for Artist to render services or perform work under this Agreement, the Agreement shall be deemed terminated.

SECTION 10: INSURANCE / SELF-INSURANCE

Artist shall at all times during the term of this Agreement, maintain in full force and effect those insurance policies as designated in the attached Exhibit A, and will comply with all those requirements as stated herein. In addition, Artist agrees to hold County and C&P Investments harmless from any and all liability resulting from injury to himself and any third-party and from any and all liability resulting from damage to property resulting from any of Artist's activities relating to the Mural.

SECTION 11: MISCELLANEOUS

11.1 INDEPENDENT CONTRACTOR

Artist is an independent contractor under this Agreement. Personnel services provided by Artist shall be by employees of Artist, and not as officers, employees, or agents of County or C&P Investments, or of any other party. Personnel policies, tax responsibilities, social security and health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to the activities of Artist shall continue to be the sole responsibility of Artist as an independent contractor.

11.2 SUBCONTRACTORS

In the event Artist, during the course of the work under this Agreement, requires the service of any subcontractors or other professional associates in connection with services or activities covered by this Agreement, Artist must secure the prior written approval of County and C&P Investments.

11.3 ASSIGNMENT

County and C&P Investments shall have the right to assign or transfer from time-to-time any and all rights acquired pursuant to this Agreement.

11.4 ENTIRE AGREEMENT, ALL PRIOR AGREEMENTS SUPERCEDED

The parties agree that this Agreement is the complete expression of the terms hereto and incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein; and all the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

11.5 MODIFICATIONS

No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

11.6 CONFORMITY WITH LAW AND SAFETY

Artist shall, at Artist's expense, observe and comply with all applicable laws, ordinances, codes and regulations of government agencies, including all provisions of the Occupational Safety and Health Act of 1979 and all amendments thereto, and all applicable Federal, State, municipal and local safety regulations. All services performed by Artist must be in accordance with these laws, ordinances, codes and regulations. Artist shall indemnify, defend and hold County, Center and C&P Investments harmless from any and all

liability, fines, penalties, and consequences from any noncompliance or violations of such laws, ordinances, codes and regulations.

Accidents: If death, serious personal injury or substantial property damage occurs in connection with the performance of this Agreement, Artist shall immediately notify County and C&P Investments by telephone. Artist shall promptly submit to County and C&P Investments a written report, in such form as may be required by County, of all accidents which occur in connection with this Agreement. This report must include the following information: (1) Name and address of the injured or deceased person(s); (2) Name and address of Artist's subcontractors, if any; (3) Name and address of Artist's liability insurance carrier; and (4) A detailed description of the accident and whether any of County or C&P Investments' equipment, tools, material or staff were involved.

11.7 CONFLICT OF INTEREST

No officer, member or employee of County, C&P Investments and no member of their governing boards, councils or commissions shall have any pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof. Any violation of this provision shall be considered a material breach of this Agreement.

11.8 USE OF AGENCY OR CITY PROPERTY

Artist shall not use County, C&P Investments premises, property (including equipment, instruments and supplies) or personnel for any purpose other than the performance of obligations under this Agreement.

11.9 TIME

All parties recognize that time is of the essence in the performance of the provisions of this Agreement.

11.10 WAIVER OF BREACH

Waiver of breach of any provision of this Agreement shall not be deemed a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless contained in a written document executed with the same formality and equal dignity herewith and attached to the original Agreement.

In no event shall any payment to the Artist constitute or be construed as a waiver by County or C & P of any breach of covenant, or any default which may exist on the part of the Artist, and any such payment by County or C & P while any such breach or default continues shall in no way impair or prejudice any right or remedy available to County or C & P in respect to such breach or default.

11.11 SEVERABILITY

If any provision of this Agreement is held to be illegal, invalid, or unenforceable by a court of competent jurisdiction, the parties shall, if possible, agree on a legal, valid, and enforceable substitute provision that is as similar in effect to the deleted provision as possible. The remaining portion of the Agreement not declared illegal, invalid, or unenforceable shall, in any event, remain valid and effective for the term remaining unless the provision found illegal, invalid, or unenforceable goes to the essence of this Agreement.

11.12 GOVERNING LAW / VENUE

All parties agree that the law governing this Agreement shall be that of the State of Nevada. The exclusive venue for any litigation between the parties concerning or arising out of this Agreement shall be the Second Judicial District Court of the State of Nevada or Reno Justice Court, as applicable.

11.13 NO THIRD PARTY BENEFICIARIES.

There are no third party beneficiaries to this agreement. Neither County nor C & P shall be obligated or liable to any party other than the Artist.

11.14 FUNDING OUT CLAUSE.

The County reasonably believes that funds can be obtained sufficiently to make all payments during the term of this Agreement. If the County does not allocate funds to continue the function performed by the Artist under this Agreement, or if, for any reason, the County's funding source is not appropriated or is withdrawn, limited, or impaired, this Agreement shall be terminated when appropriated funds expire, without penalty, charge or sanction to the County.

11.15 NOTICES

All notices and other communications required or permitted to be provided under this Agreement shall be in writing and may be delivered by hand, facsimile transmission with verification of receipt, or by United States mail, postage prepaid and return receipt requested, addressed to the respective parties as follows:

To County of Washoe: Washoe County
CSD Operations Director
1001 East 9th Street
Reno, NV 89512

To Center & Pine Investments, LLC:
Paddy Egan, CCIM
Center & Pine Investments, LLC
550 California Ave
Reno, NV 89509

To Artist:

Erik Burke
775 Shangri La Drive
Reno, NV 89509

Or to such other addresses as any party may designate by notice in accordance with this Section.

Notice shall be deemed given on the date of personal delivery by hand, or the date of receipt of facsimile transmission (with verification of receipt), on the date delivery is refused, if applicable, or on the date of mailing if by U.S. return receipt mail.

IN WITNESS WHEREOF, THE PARTIES HAVE ENTERED INTO THIS AGREEMENT AS OF THE DATE FIRST WRITTEN ABOVE.

THE COUNTY OF WASHOE

By _____
Chair,
Washoe County Commission

CENTER & PINE INVESTMENTS, LLC

By _____
Paddy Egan

ERIK BURKE

By _____

EXHIBIT A INSURANCE

Artist shall purchase and maintain throughout the term of this Agreement insurance from an insurance company acceptable to County, Center and Urban Investments and authorized to do business in the State of Nevada. Such insurance shall include the following:

a) Commercial General Liability insurance covering Bodily Injury and Property Damage with \$1,000,000 per occurrence limit, \$2,000,000 General Aggregate limit, \$1,000,000 Personal Injury and Advertising Injury limit per occurrence and \$2,000,000 Products and Completed Operations Aggregate.

b) If Artist hires any employees for any work under this Agreement, Workers' Compensation Insurance in minimum amounts required in the states where the work will take place.

County, Center and Pine Investments LLC shall be named as additional insured on all such policies. Artist shall furnish County, Center and Center and Pine Investments LLC with Certificates of Insurance. Any insurance or self insurance available to County, Center and Pine Investments shall be excess of and non-contributing with any insurance required of Artist. Artist's policies shall apply on a primary basis.

Until such time as the insurance is no longer required by County, Center and Pine Investments, Artist shall provide County, Center and Urban Investments with renewal or replacement evidence of insurance no less than thirty (30) days before expiration or replacement of the required insurance. Each insurance policy shall be endorsed to specify that without thirty (30) days prior written notice to County, Center and Pine Investments, the policy shall not be cancelled, non-renewal or coverage and/or limits reduced or materially altered, and shall provide that notices required by this paragraph shall be sent by certified mail to the address(es) specified in this Agreement for notices. A copy of this signed endorsement must be attached to the Certificate of Insurance.