

Munis Contract# 3202753 \_\_\_\_\_

**CITY OF SANTA FE  
AMENDMENT No. 1 TO  
WORK FOR HIRE AGREEMENT  
ITEM#21-0280**

This AMENDMENT No. 1 (the "Amendment") amends the CITY OF SANTA FE WORK FOR HIRE AGREEMENT, dated June 21, 2021 (the "Agreement"), between the City of Santa Fe (the "City") and Make Love Visible, LLC (the "Contractor"). The date of this Amendment shall be the date when it is executed by the City and the Contractor whichever occurs last.

**RECITALS:**

A. Under the terms of the Agreement, Contractor has agreed to provide the services of Artist to provide certain art related services for the City in connection with the Project, including the creation and development of ideas, artwork, designs, plans, documents, concepts, inventions, devices, samples, prototypes, and improvements (Artwork).

B. Pursuant to Article 1 Retention of Artist of the Agreement, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the City and the Contractor agree as follows:

1. TERM:

Article 2(A) Term of the Agreement is hereby extended, so that Article 2(A) reads as follows:

This Agreement shall be effective when signed by the City and shall terminate on March 30, 2022, unless sooner terminated as provided herein.

2. AGREEMENT IN FULL FORCE.

Except as specifically provided in this Amendment, the Agreement remains and shall remain in full force and effect, in accordance with its terms.

IN WITNESS WHEREOF, the parties have executed this Amendment No. 1 to the Agreement as of the dates set forth below. JML

CITY OF SANTA FE:

CONTRACTOR:

Jarel LaPan Hill  
Jarel LaPan Hill (Nov 5, 2021 16:19 MDT)



JAREL LAPAN HILL, CITY MANAGER

Jamie Marshall-Lively aka Tigre Bailando

DATE: Nov 5, 2021

10/07/2021

Make Love Visible, LLC/Artist

DATE: \_\_\_\_\_

CRS# 03-522300-00-6

Registration #230159

ATTEST:

Kristine Bustos Mihelcic  
Kristine Bustos Mihelcic (Oct 5, 2021 09:03 MDT)  
KRISTINE BUSTOS MIHELICIC, CITY CLERK <sup>XIV</sup>/<sub>XIV</sub>

CITY ATTORNEY'S OFFICE:

Marcos Martinez  
Marcos Martinez (Oct 5, 2021 09:03 MDT)

SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

Mary McCoy  
MARY MCCOY, FINANCE DIRECTOR  
3359980/527970 – project code GRT18355B-CONSTRUCT  
Org. Name/Org.#

AJH  
AJH

**WORK-FOR-HIRE AGREEMENT  
BETWEEN THE CITY OF SANTA FE AND THE ARTIST, ABC.**

This is an agreement between the City of Santa Fe (the City) and *Make Love Visible LLC*, 228 Las Mananitas St. Santa Fe, NM 87501 (Artist).

**RECITALS**

WHEREAS, the City desires to retain the services of Artist to develop certain artwork for an Urban Trails Public Art Project (Project) as described in greater detail in Schedule "A" attached hereto;

WHEREAS, Artist is willing and able to provide such art services to and develop such artwork for the City in accordance with the terms recited herein.

WHEREAS, under New Mexico law, the provisions of the procurement code shall not apply to works of art for museums or for display in public buildings or places. NMSA 1978, sec. 13-1-98(T)(2019).

NOW, THEREFORE, in consideration of the premises and of the mutual promises and covenants herein contained, the parties hereto agree as follows:

**1. RETENTION OF ARTIST**

A. The City hereby retains the services of Artist to provide certain art related services for the City in connection with the Project, including the creation and development of ideas, artwork, designs, plans, documents, concepts, inventions, devices, samples, prototypes, and improvements (Artwork).

B. Artist is an independent contractor and not an employee of the City. Unless otherwise expressly agreed to in writing, Artist shall not be entitled to or eligible for any benefits or programs otherwise given by the City to its employees.

**2. TERM OF THE AGREEMENT**

A. This Agreement shall commence on *date of contract execution* and extend through and including *November 30, 2021* (Term) unless sooner terminated as provided herein.

B. The City shall have the option of renewing the subject Agreement for an additional *one-month* period (Extended Term) on the same terms and conditions as provided for herein by providing Artist written notice of its intention to renew this Agreement at least *30* days prior to the

expiration of the Term.

### **3. RESPONSIBILITIES OF ARTIST**

Artist agrees to create, develop, and provide Artwork for the City in accordance with the Delivery Schedule provided for in Schedule A attached hereto. This is a material provision of the Agreement.

### **4. COMPENSATION**

A. In full consideration for the services performed by Artist under the terms of this Agreement, the City agrees to compensate Artist as provided for in Schedule A.

B. Artist's agreed-to compensation as provided for in Schedule A will be full payment for any Artwork Artist generates, and Artist will not be entitled to any royalties or proceeds received by the City from the commercialization in any manner of Artwork or Project.

### **5. OWNERSHIP RIGHTS**

A. Except as otherwise expressly provided by this Agreement, the Artist shall retain all rights to the Artwork pursuant to the Copyright Act of 1976 (17 U.S.C. 101 et seq. as amended, and any successor act), except that as to the City, its agents and contractors, the Artist hereby waives any rights under the Visual Artists Rights Act ("VARA") as codified in 17 U.S.C. sections 106, 106A(a), 113. Artist also waives any other rights under the Copyright Act of 1976 which are expressly waived and/or granted to the City in this Agreement. Except as otherwise expressly provided by this Agreement, all other rights in and to the Artwork concerning any continuing interest the Artist may have in the maintenance or modification of the Artwork, are expressly waived by the Artist and, insofar as such rights are transferable, are assigned to the City.

B. The Artist shall, at Artist's sole expense, cause to be registered with the United States Register of Copyrights a copyright of the Artwork in the Artist's name, and shall provide the City with a copy of the application for registration, the registration number and the effective date of the registration, and agrees to enforce and defend any attempt(s) to infringe upon Artist's copyright. Artist expressly assigns to the City Artist's right to enforce and defend the copyright in the event Artist does not act within a reasonable time after written notice from the City to do so. In the event either Artist or City does not elect to participate in any action related to the work the non-participating party may be entitled to its equitable share of any recovery, based upon its level of participation or cooperation.

C. Artist and City acknowledge that ownership and possession of the physical Artwork shall be transferred to City. Artist retains ownership of the copyright in the Artwork.

D. Artist hereby grants to the City an irrevocable and exclusive worldwide license to reproduce,

distribute, and/or display two-dimensional reproductions of the Artwork for any non-commercial purpose including, without limitation, advertising, brochures, postcards, media publicity, and catalogues or similar publications. All such reproductions shall bear a copyright notice in Artist's name. Artist hereby grants to the City the right to reproduce and retain copies of the design plans and drawings produced and used by the Artist in the design and installation of the Artwork for the purposes of (1) fulfilling its responsibilities as owner of the Artwork and (2) public exhibition related to the display of the Artwork.

If the City wishes to make reproductions of the Artwork for commercial purposes, including, but not limited to tee shirts, posters or other reproductions for sale, the Parties shall execute a separate agreement to address the terms of the license granted by the Artist and the royalty the Artist shall receive.

E. Because the Artwork will be unique, Artist waives the right to make or to authorize others to make two or three-dimensional reproductions of the Artwork, or to make derivative works based on the copyrighted Artwork, except with prior written permission by the City. City shall not unreasonably withhold permission for such commercial reproductions.

F. Artist agrees that in any public showing under Artist's control of reproductions and/or derivative works of the Artwork, Artist shall provide public written acknowledgement that the City is the owner of the Artwork.

G. The City agrees that unless the Artist requests otherwise in writing, the City shall give Artist public, written authorship credit for the Artwork or any authorized reproduction thereof.

H. The terms of this Section 5 shall survive the expiration or termination of this Agreement.

## **6. MORAL RIGHTS**

A. The City and Artist recognize the importance of Artist's moral rights of attribution and integrity, as identified in the Visual Artists Rights Act ("VARA") as codified in 17 U.S.C. sections 106, 106A(a), 113. Artist and City hereby agree to advance those statutory goals by private contract as provided for herein.

B. Artist shall have the following moral rights:

- i. Artist shall have the right to claim authorship of the Artwork.
- ii. Artist shall have the right to prevent the use of his or her name as the author of the work of visual art in the event of any physical defacement, mutilation, alteration, or destruction of the Artwork.
- iii. Artist shall have the right, subject to the notice provisions of section 11 below, to prevent any intentional defacement, mutilation, alteration or destruction of the Artwork.

## **7. REPRESENTATIONS AND WARRANTIES**

- A. Artist represents and warrants to the City that it is free to enter into this Agreement and that its performance thereunder will not conflict with any other Agreement to which Artist may be a party.
- B. Artist represents and warrants to The City that Artwork is unique and original, is clear of any claims or encumbrances, and does not infringe on the rights of any third parties.

## **8. INDEMNIFICATION**

Artist agrees to defend, indemnify, and hold the City, its officers, directors, agents, and employees, harmless against all costs, expenses, and losses (including reasonable attorney fees and costs) incurred through claims of third parties against the City based on a breach by Artist of any representation and warranty made in this Agreement.

Any liability incurred by the City, its employees, or agents is limited by the privileges and immunities of the New Mexico Tort Claims Act, NMSA 1978, sections 41-4-1 through 41-4-30.

## **9. INFRINGEMENTS**

- A. The City shall have the right, in its sole discretion, to prosecute lawsuits against third parties for infringement of its rights in the Work. Any lawsuit shall be prosecuted solely at the City's expense and all sums recovered shall be retained by the City.
- B. Artist agrees to fully cooperate with the City in the prosecution of any such suit, and The City shall reimburse Artist for any previously approved expenses that it might incur as a result of such cooperation.

## **10. TERMINATION**

- A. The City shall have the absolute right to terminate this Agreement on no notice to Artist should Artist fail to deliver the Artwork to the City in a form acceptable to the City on or before the dates recited in the Delivery Schedule.
- B. Either party may terminate this Agreement on *thirty* days' written notice to the other party in the event of a breach of any provision of this Agreement by the other party, provided that, during the *thirty* day period, the breaching party fails to cure such breach.
- C. In the event that this Agreement is terminated as a result of a breach of this Agreement by Artist, the City shall have the right, in addition to any other claims that it might otherwise have

against Artist, to complete Artwork either itself or through the services of a third-party artist and charge back to Artist any costs incurred.

## **11. NOTICES**

Any notice required to be given pursuant to this Agreement shall be in writing and mailed by certified or registered mail, return receipt requested, or delivered by a national overnight express service such as Federal Express, or by telefax communication with an acknowledgment by the recipient.

## **12. JURISDICTION AND DISPUTES**

A. This Agreement shall be governed by the laws of the State of New Mexico.

B. All disputes hereunder shall be resolved in the applicable state or federal courts of New Mexico. The parties consent to the jurisdiction of such courts, agree to accept service of process by mail, and waive any jurisdictional or venue defenses otherwise available.

## **14. AGREEMENT BINDING ON SUCCESSORS**

This Agreement shall be binding on and shall inure to the benefit of the parties hereto, and their heirs, administrators, successors, and assigns.

## **15. WAIVER**

No waiver by either party of any default shall be deemed as a waiver of any prior or subsequent default of the same or other provisions of this Agreement.

## **16. SEVERABILITY**

If any provision hereof is held invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other provision and such invalid provision shall be deemed to be severed from the Agreement.

## **17. ASSIGNABILITY**

This Agreement and the rights and obligations thereunder with respect to Artist are personal to Artist and may not be assigned by any act of Artist or by operation of law without the prior written consent of the City. The City shall have the unfettered right to assign this Agreement to a successor to the City or to the purchaser of any of the assets of the City.

## **18. INSURANCE**

If the services contemplated under this Agreement will be performed on or in City facilities or property, the Artist shall maintain in force during the entire term of this Agreement, the following insurance coverage(s), naming the City as additional insured.

A. Commercial General Liability insurance shall be written on an occurrence basis and be as broad as ISO Form CG 00 01 with limits not less than \$2,000,000 per occurrence and \$2,000,000 in the aggregate for claims against bodily injury, personal and advertising injury, and property damage. Said policy shall include broad form Contractual Liability coverage and be endorsed to name the City of Santa Fe their officials, officers, employees, and agents as additional insureds.

B. Business Automobile Liability insurance for all owned, non-owned automobiles, with a combined single limit not less than \$1,000,000 per accident.

C. Broader Coverage and Limits. The insurance requirements under this Agreement shall be the greater of (1) the minimum coverage and limits specified in this Agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the Named Insured. It is agreed that these insurance requirements shall not in any way act to reduce coverage that is broader or that includes higher limits than the minimums required herein. No representation is made that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of Contractor hereunder.

D. The Artist shall maintain the above insurance for the term of this Agreement and name the City as an additional insured and provide for 30 days cancellation notice on any Certificate of Insurance form furnished by the Artist. Such certificate shall also specifically state the coverage provided under the policy is primary over any other valid and collectible insurance and provide a waiver of subrogation.

## **19. APPROPRIATIONS**

The City may terminate this Agreement if required by changes in State or federal law, or so ordered by a court of competent jurisdiction, or due to insufficient appropriations made available by the Governing Body. The City's determination concerning whether sufficient appropriations are available will be deemed fully accepted by Artist and will be final.

## **20. INTEGRATION**

This Agreement constitutes the entire understanding of the parties, and revokes and supersedes all prior agreements between the parties and is intended as a final expression of their Agreement. It shall not be modified or amended except in writing signed by the parties hereto and specifically referring to this Agreement. This Agreement shall take precedence over any other documents that may be in conflict therewith.



IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have each caused to be affixed hereto its or his or her hand and seal the day indicated.

**CITY OF SANTA FE**

By: *Jarel LaPan Hill*  
Jarel LaPan Hill (Jun 21, 2021 10:57 MDT)  
Jarel LaPan Hill, City Manager

Date: Jun 21, 2021

Attest:

By: *Kristine Mihelcic*  
Kristine Mihelcic (Jun 21, 2021 11:39 MDT)  
Kristine Bustos Mihelcic, City Clerk <sup>XIV</sup>/<sub>XIV</sub>

Approved as to form and legal sufficiency by  
City Attorney's Office

By: *Marcos Martinez*  
Marcos Martinez (May 25, 2021 10:35 MDT)  
Marcos Martinez, Senior Assistant City Attorney

Approved for Finances:

By: *Alexis Lotero, Assistant Finance Director*  
Alexis Lotero, Assistant Finance Director (Jun 15, 2021 14:58 MDT)  
Mary McCoy, Finance Director

3359980/527970 (project code: GRT18355B) <sup>AJH</sup>/<sub>AJH</sub>  
Org Name/Org#

Approved:  
Make Love Visible LLC

By: *[Signature]*  
Tigre Bailando (May 27, 2021 13:23 MDT)  
Jamie Marshall-Lively aka Tigre Bailando  
Artist  
CRS 03-522300-00-6

Business License 230159

**SCHEDULE A**  
**TO**  
**ARTIST WORK-FOR-HIRE AGREEMENT**  
*on Contract Execution*

**BETWEEN THE CITY OF SANTA FE AND *Make Love Visible, LLC***

**PROJECT(S):**

1. TITLE: *Urban Trails Public Art Project*

2. TASK

Sculpture “Coyote Song” made of metal in the shape of a coyote approximately 10 feet tall x 7 feet wide to be displayed on the Urban Trails network.

3. SCHEDULE

Developed design artwork to be submitted by *November 15, 2021* with Final Artwork to be submitted by *December 30, 2021 and closing documents by March 30, 2022*

4. FEE

Flat fee of *twenty-five thousand* dollars (\$25,000) payable as follows:

a. *Five thousand* dollars (\$5,000) upon execution of this Agreement

b. *Fifteen thousand* dollars (\$15,000) upon approval by the City of the final artwork design and issuance of the Notice to Proceed with fabrication

c. *Five thousand* dollars (\$5,000) upon submittal of Closing Documentation (Appendix A) and approval and acceptance by the City of the final artwork

This agreement is structured as a fixed-fee agreement as opposed to a royalty-bearing one.