CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

4(h)

DATE: May 3, 2021

ITEM: Motion – Approval of Artist Agreements – 2021 WDMurals Exhibit

FINANCIAL IMPACT: Expense of $6,000 for the artist stipends ($1,000 per work of art) and $300 for the Best in Show award for a total of $6,300. This amount is included in the FY 20-21 Public Art budget.

SYNOPSIS: The Commission is sponsoring the first, temporary WDMurals exhibit from May of 2021 through March of 2022. The WDMurals Selection Committee meeting was held on Thursday, April 8, to review and score twelve proposals that were submitted by seven artists/artist groups from Iowa.

The selection committee members included: Diane Boyd (Commission member), Amenda Tate (Commission member), Aaron Sewell (Parks & Recreation Advisory Board member), David Ball (Citizen), and Tricia Kubicek (Citizen, Artist).

Six entries were selected to be installed on three trail underpass entrance/exit walls. The committee's recommendations include:

Entry Name	Artist Name
Grow Love	Damen LaPalm
Fresh Air	Jacob Kuperman
Respect Your Mother	Ally Frame
Natural Iowa	Samantha Goss
Interacting with Nature	WDMCS Art Teachers
Wild Flower Wonderland	Christine Hilbert

The six proposals and the 2021 WDMurals Call for Artists are attached for your information. A map of the proposed locations is included as part of each artist contract and is part of the recommendation. The Public Arts Advisory Commission approved the selection committee's recommendation on April 22, 2021.

OUTSTANDING ISSUES (if any): None

RECOMMENDATION: That the Council approve the agreements as recommended by the Public Arts Advisory Commission for the 2021 WDMurals exhibit.

Lead Staff Member: Allison Ullestad, Arts, Culture and Enrichment Supervisor

STAFF REVIEWS

Department Director	Sally Ortgies, Director of Parks and Recreation
Appropriations/Finance	Tim Stiles, Finance Director
Legal	Richard Scieszinski, City Attorney
Agenda Acceptance	

PUBLICATION(S) (if applicable)

Published In	N/A
Dates(s) Published	

SUBCOMMITTEE REVIEW (if applicable)

Committee	Public Arts Advisory Commission		
Date Reviewed	4/22/21		
Recommendation	Yes	No	Split

THE CITY OF
West Des Moines.
Public Arts
Advisory Commission

WDMURALS

CITY OF WEST DES MOINES, IOWA

CALL FOR ARTISTS: WDMurals

A NEW, TEMPORARY PUBLIC ART EXHIBIT ALONG WEST DES MOINES TRAILS

ARE YOU INTERESTED?

SUBMIT YOUR MURAL PROPOSAL ONLINE AT
WWW.WDM.IOWA.GOV/CALLFORARTISTS
BY **MARCH 31, 2021**, AT **5 PM** CT

WDMurals Overview

The West Des Moines Public Arts Advisory Commission and Parks and Recreation Department invite **Iowa artists** to submit a Mural Proposal to participate in the new WDMurals public art exhibit. WDMurals is a temporary, outdoor exhibit that includes murals painted on the entrance and exit walls for three (3) underpasses along trails in West Des Moines.

Exhibit Details

- Selected artists will be paid a **$1,000 stipend** to cover all artist costs.
- A selection panel will blind score mural proposals to choose **5 original Artist mural proposals** and **1 original School-Group mural proposal**.
- A **Best in Show** mural will be selected and publicized. The selected mural will remain in place for two (2) years after the end of the current year's exhibit. The Best in Show artist or school-group will receive a **$300 award**.
- The WDMurals exhibit will be promoted on-site and in the local media*. Marketing efforts will include but not be limited to:
  1. An identification plaque listing the artist's name, mural title, and mural description will be placed at each mural site.
  2. An article in WDM Magazine (direct mailed to all WDM households and businesses)
  3. News and information on the City of WDM website (www.wdm.iowa.gov)
  4. WDM Parks and Recreation Department's Facebook and Instagram accounts
- The WDMurals exhibit is a listed feature on the **Otocast app**, a mobile audio guide. Selected artists are required to work with Otocast staff to record a short narrative about their mural.

*The City of West Des Moines reserves the right to photograph and reproduce images of the murals on exhibit for promotional and educational purposes.

Installation of Artwork

Artists are responsible for all supplies, equipment, and labor necessary for the installation of their mural. The City of West Des Moines will not provide labor, supplies, or equipment for install. Public trail access must remain available during installation. Care must be taken to ensure the safety of trail users during installation.

Approximate single wall size: 10' (H) x 30'(L)

Please use the dimensions in the mock-up on page 5 when submitting your mural proposals. Further wall measurement will be required upon proposal acceptance.

Mural Criteria

All proposed murals must be the original work of the artist in concept, composition, and execution. Artists' proposals will be selected by a selection panel* comprised of WDM Public Arts Advisory Commission members and local citizens, artists, and/or business representatives. The following criteria will be used in the selection process:

- Mural proposals that speak to the theme of **NATURE**
- Mural proposals that are suitable for public viewing
- Mural proposals that create a sense of discovery, surprise, imagination, and emotional connection
- Mural proposals that are aesthetically and photographically pleasing
- Murals must be created using only spray, acrylic based, and/or exterior paint

*Decisions by the selection panel are final and not open to negotiation. The City of West Des Moines does not discriminate on the basis of age, race, religion, creed, color, sex, sexual orientation, gender identity, national origin, or disability.

Submission Details

- Please complete one application per mural proposal submitted.
- There is no limit to the number of mural proposals submitted by an artist.
- 1-4 full-color sketches or design concepts using the relative dimensions at the bottom of page 2 are required per mural proposal submitted.
  (5 MB max; .gif, .jpg, .png, .doc, .docx, .xls, .xlsx, .rtf, .pdf, .txt)
- A mural description is required with each proposal submission.

Mural proposals must be submitted online at www.wdm.iowa.gov/CallforArtists by 5 pm on March 31, 2021.

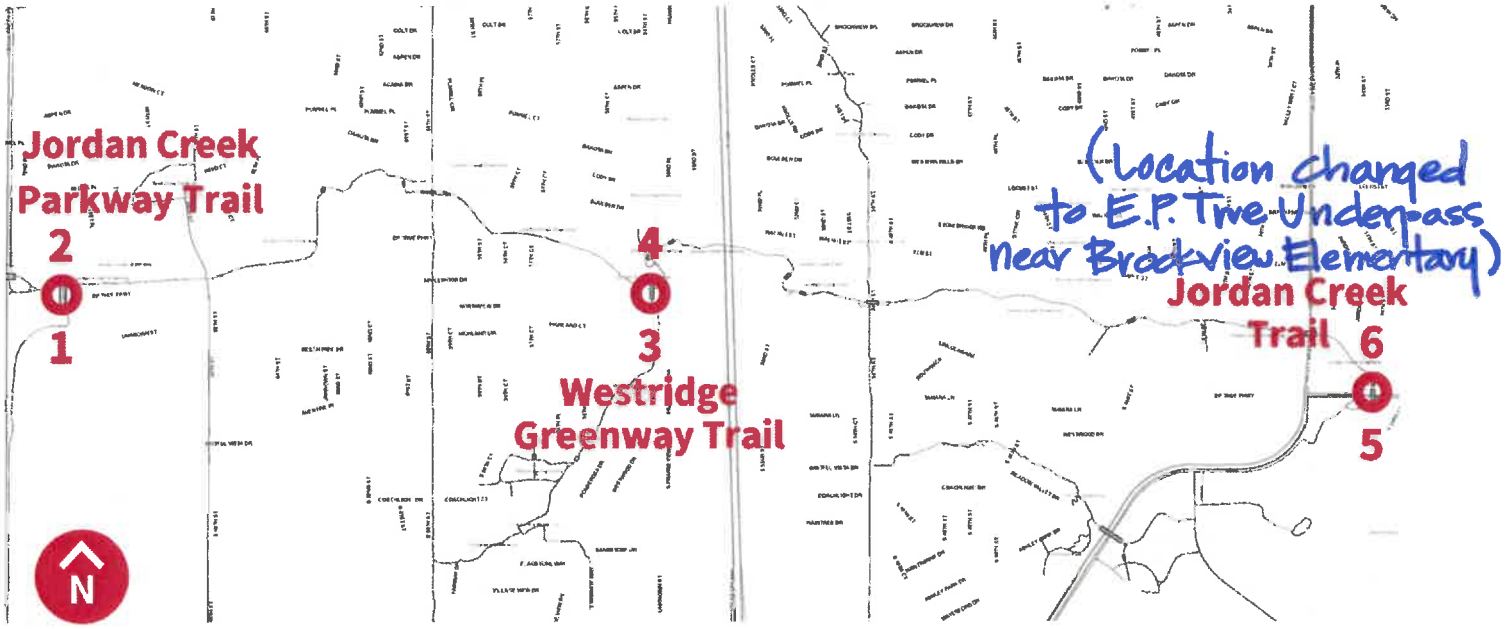
WDMural Exhibit Timeline

Call for Artists issued	March 1, 2021
Mural Proposals due	March 31, 2021
Selection panel meets	April 1-15, 2021
Notification of selection to artists	By April 30, 2021
Artists create murals	May 1-15, 2021
WDMurals exhibit viewable	May 15, 2021-March 31, 2022
Murals painted over	April 2022

*The City of West Des Moines reserves the right to change the project timeline.

Contact Allison Ullestad (Arts, Culture, and Enrichment Supervisor) at 515-222-3455 or allison.ullestad@wdm.iowa.gov with questions.

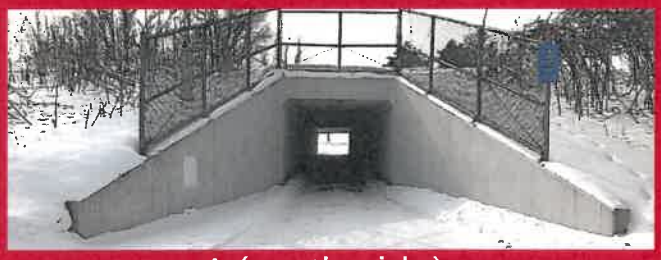
Exhibit Locations

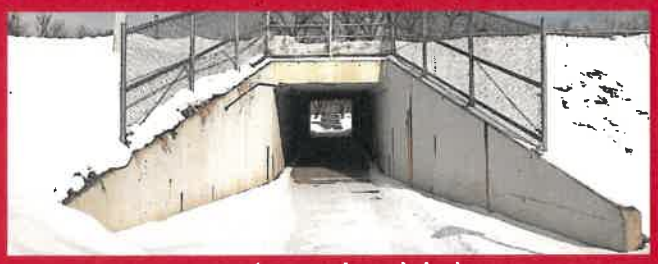


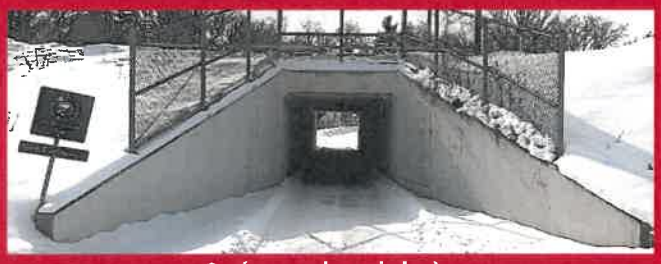
1 (south side)

2 (north side)

3 (south side)


4 (north side)


5 (south side)


6 (north side)

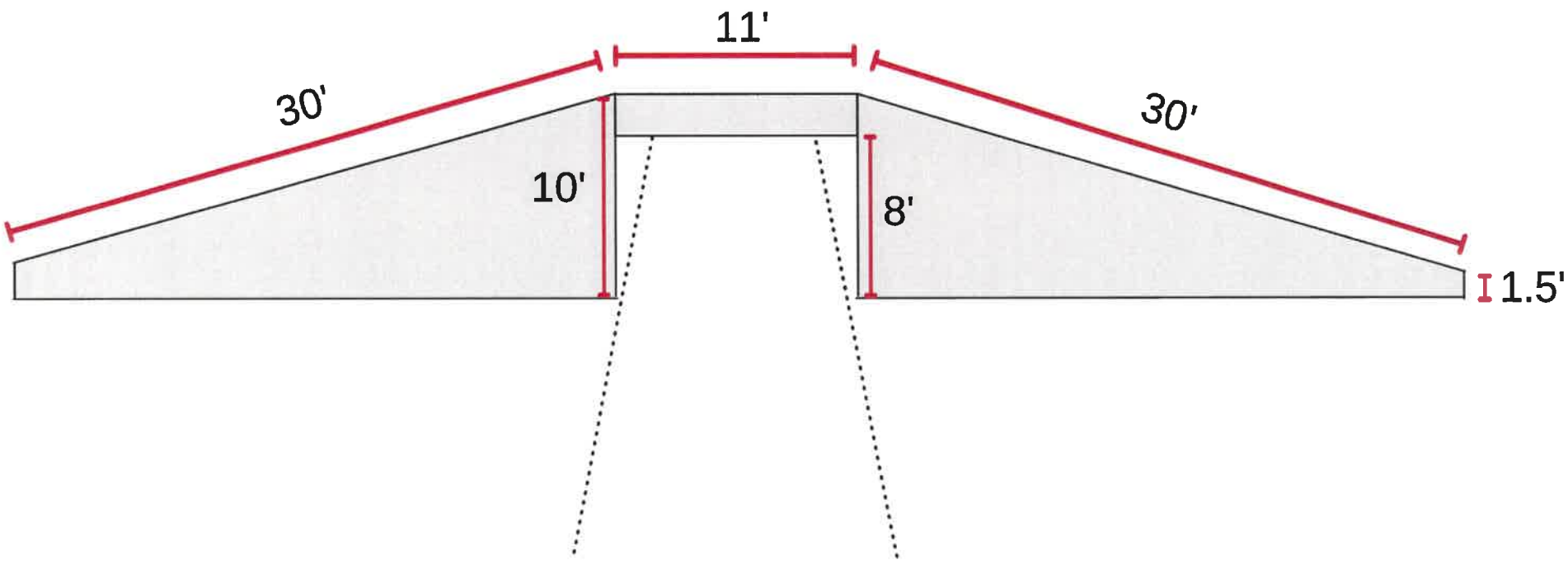
*The City of West Des Moines reserves the right to choose the specific location where each accepted proposal will be exhibited.

Contact Allison Ullestad (Arts, Culture, and Enrichment Supervisor) at 515-222-3455 or allison.ullestad@wdm.iowa.gov with questions.

WDMURALS

West Des Moines. Public Arts Advisory Commission

TOP



MURAL AREA TO BE PAINTED

CITY OF WEST DES MOINES PUBLIC ART PROGRAM
2021 WDMurals – Art Exhibition
AGREEMENT BY AND BETWEEN CITY AND ARTIST

This Agreement, made by and between the City of West Des Moines, a municipal corporation organized and existing under the laws of the State of Iowa, ("City") and Damen LaPalm ("Artist").

WITNESSETH:

WHEREAS, the City desires to hold an art exhibit which will include a certain work of art described in Exhibit A attached hereto and incorporated herein by this reference ("Art Work"), which has been conceived and designed by Artist, to be installed on the City's property, Jordan Creek Trail at Brookview Elementary underpass - south wall, ("Site"), West Des Moines, Iowa.

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

ARTICLE 1: SCOPE OF SERVICES

1.1 General

a) The Artist shall perform all services and furnish all supplies, materials, and equipment as deemed necessary for the completion, transportation, and installation of the Art Work at the Site.
b) The Artist shall inspect the existing substrate and construction of the concrete walls to which the Art Work is to be attached and notify the City of any issues.
c) The Artist shall meet with the City as deemed necessary to coordinate the installation and removal of the Art Work.
d) The Artist shall agree to fully participate in the creation process of a mobile audio guide which the City will use to further enhance and promote the WDMurals exhibit. This creation process may include, but is not limited to, the following: Artist spoken interview, providing photographs of Art Work, and disclosing Artist contact information.

1.2 Artwork Installation

a) The Artist shall notify the City when the Artist is ready to install the Art Work at the Site designated by the City.
b) The Artist agrees to notify the City no fewer than seven (7) days prior to the Artist's intended time of installation to determine the exact schedule of installation.
c) The Artist shall install the completed Art Work at the Site after May 3, 2021, and no later than May 15, 2021.
d) The City shall be responsible for closure of the trail at the Site for the installation of the Art Work.
e) The Artist shall be responsible for all expenses, labor, supplies, materials, and equipment necessary for the installation of the Art Work.

1.3 Term of Agreement

a) The term of this Agreement shall be from May 3, 2021 through March 31, 2022. At the end of the term, the Artist agrees that the Artwork will be painted over and cease to exist at the Site.

1.4 Risk of Loss

a) The risk of loss or damage to the Art Work shall be borne by the Artist throughout the exhibition period. Should the Art Work be damaged by natural elements, an Act of God, vandalism or other process or action, the City may, at its sole option (1) contract with the Artist to repair the Art Work for an additional cost; (2) repair the Art Work itself; or (3) paint over or remove the Art Work prior to March 31, 2022. No damages will be due to the Artist for any alterations made to or removal of the Art Work prior to March 31, 2022.

1.5 Indemnity

a) The Artist agrees to indemnify and hold harmless the City from any liabilities, willful or non-willful acts of negligence by the Artist or the Artist's agents, or any or all elements of loss, mutilation, vandalism or other damage (including those caused by acts of God) that may befall the Art Work during any activities related to the planning, creation, or installation of the Art Work.

b) Upon installation of the Art Work, the City shall indemnify and hold harmless the Artist from claims or liabilities relating to the maintenance of the Site at which the Art Work is installed, which claims or liabilities arise from and after the date of installation of the Art Work.

c) The Artist shall indemnify and hold the City harmless from any and all costs, claims, liabilities or damages in any manner related to the Artist's breach of the representations and warranties set forth in Article 4 of this Agreement.

ARTICLE 2: COMPENSATION AND PAYMENT SCHEDULE

2.1 Fixed Fee

a) The City shall pay the Artist a stipend of $1,000 which shall constitute full compensation for all fees, services, expenses, supplies, and materials to be performed and furnished by the Artist under this Agreement. The fee shall be paid in full within thirty (30) days after final installation of the Art Work at the Site.

2.2 Artist's Expenses

a) The Artist shall be responsible for the costs of all travel by the Artist and the Artist's agents and employees necessary for the proper performance of the services required under this Agreement.

2.3 Invoices

a) The Artist shall submit an invoice to the City for payment as described in section 2.1. The invoice may be submitted electronically and shall be signed and dated by the Artist.

ARTICLE 3: TIME OF PERFORMANCE

3.1 Duration

a) The services to be required of the Artist as set forth in Article 1 shall be completed in accordance with the schedule for installation of the Art Work as proposed by the Artist and approved by the City pursuant to Section 1.2(c), provided that such time limits may be extended or otherwise modified by written agreement between the Artist and the City.

3.2 Time Extensions

a) The City shall grant a reasonable extension of time to the Artist in the event that there is a delay on the part of the Artist in performing its obligations under this Agreement, or if conditions beyond the Artist's control or Acts of God render timely performance of the Artist's services impossible or unexpectedly burdensome. Likewise, the Artist shall grant a reasonable extension of time to the City in the event that there is a delay on the part of the City in performing its obligations under this Agreement, or if conditions beyond the City's control or Acts of God render timely performance of the City's services impossible or unexpectedly burdensome. Failure to fulfill contractual obligations due to conditions beyond either party's reasonable control will not be considered a breach of contract, provided that such obligations shall be suspended only for the duration of such condition.

ARTICLE 4: WARRANTIES

4.1 Warranties of Title

a) The Artist represents and warrants that:
   1) The Art Work is solely the result of the artistic effort of the Artist;
   2) Except as otherwise disclosed in writing to the City, the Art Work is unique and original and does not infringe upon any copyright;
   3) The Art Work, or a duplicate thereof, has not been accepted for sale elsewhere;
   4) The Art Work is free and clear of any liens from any source.

4.2 Warranties of Quality and Condition

a) The Artist represents and warrants, except as otherwise disclosed to the City in writing in connection with the submission of the Application and pursuant to Article 1, that:
   1) The execution and fabrication of the Art Work will be performed in a workmanlike manner;
   2) The Art Work, as fabricated and installed, will be free of defects in material and workmanship, including any inherent defects or qualities which cause or accelerate deterioration of the Art Work.

ARTICLE 5: INSURANCE

5.1 Artist Insurance

a) The Artist and all employees of the Artist shall maintain insurance to protect the Artist from claims under workers' compensation acts; claims for damages because of bodily injury including personal injury, sickness or disease, or death of any of the Artist's employees or of any person other than the Artist's employees; and from claims for damages because of injury to or destruction of tangible property; including loss of use

resulting there from; and from claims arising out of their performance of professional services caused by errors, omissions, or negligent acts for which the Artist is legally liable.

ARTICLE 6: REPRODUCTION RIGHTS

6.1 General

a) The Artist retains all rights under the Copyright Act of 1976, 17 U.S.C., 101 et. seq., and all other rights in and to the Art Work including ownership and possession. The Artist grants to the City the right to photograph and reproduce images of the Art Work for promotional and educational purposes.

6.2 Notice

a) All reproductions by the City shall contain a credit to the Artist and a copyright notice substantially in the following form: © [Artist's Name], year of publication.

ARTICLE 7: ARTIST'S RIGHTS

7.1 Identification

a) The City shall, at its expense, prepare and install at the Site a plaque identifying the Artist, the title of the Art Work, the year of completion, and the City of West Des Moines Public Art Program; and shall reasonably maintain such notice to the extent as may be practicable.

7.2 Maintenance

a) The City recognizes that maintenance of the Art Work on a regular basis is essential to the integrity of the Art Work. The Artist shall submit reasonable maintenance recommendations to the City, and the City shall take such action to reasonably assure that the Art Work is properly maintained and protected, taking into account the Artist's recommendations.

7.3 Alteration of the Work

a) Except as provided in Section 1.4 of this Agreement, the City agrees that it will not intentionally damage, alter, modify, or change the Art Work without the prior written approval of the Artist during the term of this Agreement. The Artist understands that this is a temporary exhibit and that the Art Work will be painted over and cease to exist at the end of the term of this Agreement or earlier as provided in Section 1.4 of this Agreement.

7.4 Record

a) The City shall maintain a record of this Agreement and the location and disposition of the Art Work.

ARTICLE 8: ARTIST AS INDEPENDENT CONTRACTOR

a) The Artist shall perform all work under this Agreement as an independent contractor and not as an agent or an employee of the City. The Artist shall not be supervised by

any employee or official of the City, nor shall the Artist exercise supervision over any employee or official of the City.

ARTICLE 9: ASSIGNMENTS, TRANSFER, SUBCONTRACTING

9.1 Transfer of Agreement

a) Neither this Agreement nor any interest herein shall be transferred by the Artist.

9.2 Subcontracting by Artist

a) The Artist may subcontract portions of the services to be provided hereunder relating to the installation of the Art Work at the Artist's expense provided that said subcontracting shall not negatively affect the design, appearance, or visual quality of the Art Work and shall be carried out under the personal supervision of the Artist. The Artist must obtain approval from the City prior to hiring any subcontractor who will assist with the installation process. This approval may be achieved via electronic correspondence.

ARTICLE 10: TERMINATION

If either party to this Agreement shall willfully or negligently fail to fulfill in a timely and proper manner, or otherwise violate, any of the covenants, agreements, or stipulations material to this Agreement, the other party shall thereupon have the right to terminate this Agreement by giving written notice to the defaulting party of its intent to terminate specifying the grounds for termination. The defaulting party shall have thirty (30) days after receipt of the notice to cure the default. If the default is not cured, then this Agreement shall terminate. In the event of default by the City, the City shall promptly compensate the Artist for all services performed by the Artist prior to termination. In the event of default by the Artist, all finished and unfinished drawings, sketches, photographs, and other work products prepared and submitted or prepared for submission by the Artist under this Agreement shall at the City's option become its property, provided that no right to fabricate or execute the Art Work shall pass to the City and the City shall compensate the Artist pursuant to Article 2 for all services performed by the Artist prior to termination; or the Artist shall refund all amounts paid by the City in exchange for all finished and unfinished related Art Work. Notwithstanding the previous sentence, the Artist shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Artist, and the City may reasonably withhold payments to the Artist until such time as the exact amount of such damages due the City from the Artist is determined.

ARTICLE 11: COMPLIANCE

a) The Artist shall be required to comply with Federal, State, and City statutes, ordinances, and regulations applicable to the performance of the Artist's services under this Agreement.

ARTICLE 12: NOTICES

a) All notices, requests, demands and other communications which are required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given upon the delivery or receipt thereof, as the case may be, if delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, as follows:

1) if to the City, to:

Allison Ullestad, Arts, Culture & Enrichment Supervisor
City of West Des Moines
P.O. Box 65320
West Des Moines, IA 50265

2) if to the Artist, to:

Damen LaPalm
3000 University Avenue
West Des Moines, IA 50266

ARTICLE 13: MISCELLANEOUS

This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all negotiations, preliminary agreements and all prior and contemporaneous discussions, agreements and understandings of the parties in connection with the subject matter hereof. No amendment, change or modification of any of the terms, provisions or conditions of this Agreement shall be effective unless made in writing and signed or initialed by all parties. Waiver of any provision of this Agreement shall not be deemed a waiver of future compliance therewith and such provision shall remain in full force and effect. In the event any provision of this Agreement is held invalid, illegal or unenforceable, in whole or in part, the remaining provisions of this Agreement shall not be affected thereby and shall continue to be valid and enforceable. This Agreement shall be governed by and construed in accordance with the laws of the State of Iowa. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective legal representatives, heirs, successors and permitted assigns. Nothing in this Agreement, express or implied, is intended to confer upon any party, other than the parties hereto (and their respective heirs, legal representatives, successors and permitted assigns), any rights, remedies, obligations or liabilities under or by reason of this Agreement. In addition to any other remedies available at law or in equity to the parties hereto with respect to a breach hereof, the parties hereto each reserve the right to enforce this Agreement by specific performance. The titles or captions of paragraphs in this Agreement are provided for convenience of reference only, and shall not be considered a part hereof for purposes of interpreting or applying this Agreement and such title or captions do not define, limit, extend, explain or describe the scope or extent of this Agreement or any of its terms or conditions. Words and phrases herein shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender, according to the context. Each of the parties hereto hereby irrevocably waives all right to trial by jury in any action, proceeding or counterclaim arising out of or relating to this Agreement.

Remainder of Page Left Blank – Signatures on following page.

ARTIST

Damen LaPalm

04/22/21
Date

CITY

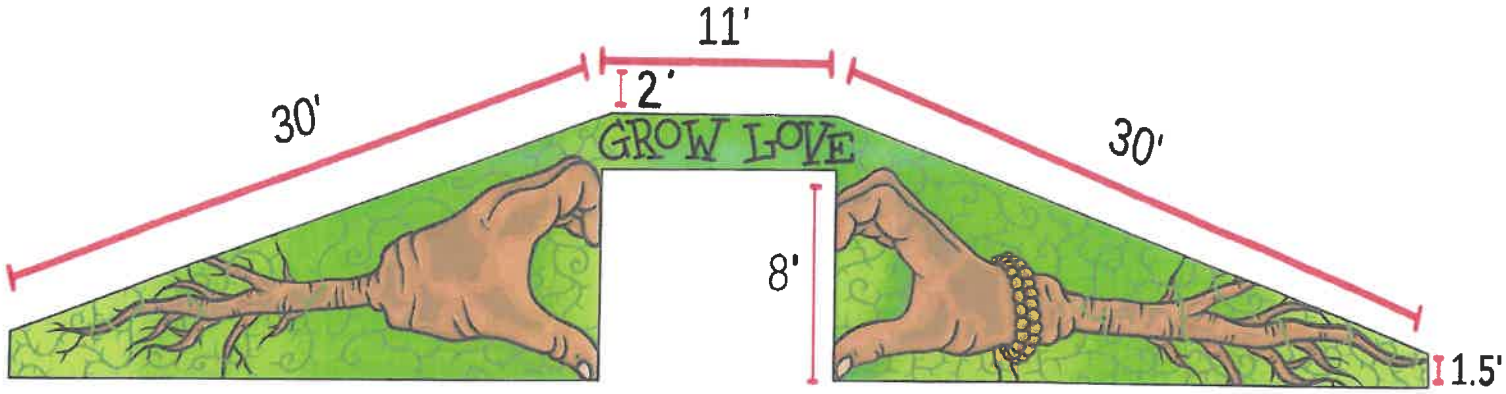
Sally Ortgies, Director of Parks and Recreation Department
City of West Des Moines

Date

Exhibit A

Grow Love

A mural with the message of community to demonstrate the ability to grow love and compassion through and with one another.



Underpass location: Jordan Creek Trail @ Brookview Elementary (South wall)

CITY OF WEST DES MOINES PUBLIC ART PROGRAM
2021 WDMurals – Art Exhibition
AGREEMENT BY AND BETWEEN CITY AND ARTIST

This Agreement, made by and between the City of West Des Moines, a municipal corporation organized and existing under the laws of the State of Iowa, ("City") and Jacob Kuperman ("Artist").

WITNESSETH:

WHEREAS, the City desires to hold an art exhibit which will include a certain work of art described in Exhibit A attached hereto and incorporated herein by this reference ("Art Work"), which has been conceived and designed by Artist, to be installed on the City's property, Jordan Creek Trail at Brookview Elementary underpass - north wall, ("Site"), West Des Moines, Iowa.

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

ARTICLE 1: SCOPE OF SERVICES

1.1 General

a) The Artist shall perform all services and furnish all supplies, materials, and equipment as deemed necessary for the completion, transportation, and installation of the Art Work at the Site.
b) The Artist shall inspect the existing substrate and construction of the concrete walls to which the Art Work is to be attached and notify the City of any issues.
c) The Artist shall meet with the City as deemed necessary to coordinate the installation and removal of the Art Work.
d) The Artist shall agree to fully participate in the creation process of a mobile audio guide which the City will use to further enhance and promote the WDMurals exhibit. This creation process may include, but is not limited to, the following: Artist spoken interview, providing photographs of Art Work, and disclosing Artist contact information.

1.2 Artwork Installation

a) The Artist shall notify the City when the Artist is ready to install the Art Work at the Site designated by the City.
b) The Artist agrees to notify the City no fewer than seven (7) days prior to the Artist's intended time of installation to determine the exact schedule of installation.
c) The Artist shall install the completed Art Work at the Site after May 3, 2021, and no later than May 15, 2021.
d) The City shall be responsible for closure of the trail at the Site for the installation of the Art Work.
e) The Artist shall be responsible for all expenses, labor, supplies, materials, and equipment necessary for the installation of the Art Work.

1.3 Term of Agreement

a) The term of this Agreement shall be from May 3, 2021 through March 31, 2022. At the end of the term, the Artist agrees that the Artwork will be painted over and cease to exist at the Site.

1.4 Risk of Loss

a) The risk of loss or damage to the Art Work shall be borne by the Artist throughout the exhibition period. Should the Art Work be damaged by natural elements, an Act of God, vandalism or other process or action, the City may, at its sole option (1) contract with the Artist to repair the Art Work for an additional cost; (2) repair the Art Work itself; or (3) paint over or remove the Art Work prior to March 31, 2022. No damages will be due to the Artist for any alterations made to or removal of the Art Work prior to March 31, 2022.

1.5 Indemnity

a) The Artist agrees to indemnify and hold harmless the City from any liabilities, willful or non-willful acts of negligence by the Artist or the Artist's agents, or any or all elements of loss, mutilation, vandalism or other damage (including those caused by acts of God) that may befall the Art Work during any activities related to the planning, creation, or installation of the Art Work.

b) Upon installation of the Art Work, the City shall indemnify and hold harmless the Artist from claims or liabilities relating to the maintenance of the Site at which the Art Work is installed, which claims or liabilities arise from and after the date of installation of the Art Work.

c) The Artist shall indemnify and hold the City harmless from any and all costs, claims, liabilities or damages in any manner related to the Artist's breach of the representations and warranties set forth in Article 4 of this Agreement.

ARTICLE 2: COMPENSATION AND PAYMENT SCHEDULE

2.1 Fixed Fee

a) The City shall pay the Artist a stipend of $1,000 which shall constitute full compensation for all fees, services, expenses, supplies, and materials to be performed and furnished by the Artist under this Agreement. The fee shall be paid in full within thirty (30) days after final installation of the Art Work at the Site.

2.2 Artist's Expenses

a) The Artist shall be responsible for the costs of all travel by the Artist and the Artist's agents and employees necessary for the proper performance of the services required under this Agreement.

2.3 Invoices

a) The Artist shall submit an invoice to the City for payment as described in section 2.1. The invoice may be submitted electronically and shall be signed and dated by the Artist.

ARTICLE 3: TIME OF PERFORMANCE

3.1 Duration

a) The services to be required of the Artist as set forth in Article 1 shall be completed in accordance with the schedule for installation of the Art Work as proposed by the Artist and approved by the City pursuant to Section 1.2(c), provided that such time limits may be extended or otherwise modified by written agreement between the Artist and the City.

3.2 Time Extensions

a) The City shall grant a reasonable extension of time to the Artist in the event that there is a delay on the part of the Artist in performing its obligations under this Agreement, or if conditions beyond the Artist's control or Acts of God render timely performance of the Artist's services impossible or unexpectedly burdensome. Likewise, the Artist shall grant a reasonable extension of time to the City in the event that there is a delay on the part of the City in performing its obligations under this Agreement, or if conditions beyond the City's control or Acts of God render timely performance of the City's services impossible or unexpectedly burdensome. Failure to fulfill contractual obligations due to conditions beyond either party's reasonable control will not be considered a breach of contract, provided that such obligations shall be suspended only for the duration of such condition.

ARTICLE 4: WARRANTIES

4.1 Warranties of Title

a) The Artist represents and warrants that:
   1) The Art Work is solely the result of the artistic effort of the Artist;
   2) Except as otherwise disclosed in writing to the City, the Art Work is unique and original and does not infringe upon any copyright;
   3) The Art Work, or a duplicate thereof, has not been accepted for sale elsewhere;
   4) The Art Work is free and clear of any liens from any source.

4.2 Warranties of Quality and Condition

a) The Artist represents and warrants, except as otherwise disclosed to the City in writing in connection with the submission of the Application and pursuant to Article 1, that:
   1) The execution and fabrication of the Art Work will be performed in a workmanlike manner;
   2) The Art Work, as fabricated and installed, will be free of defects in material and workmanship, including any inherent defects or qualities which cause or accelerate deterioration of the Art Work.

ARTICLE 5: INSURANCE

5.1 Artist Insurance

a) The Artist and all employees of the Artist shall maintain insurance to protect the Artist from claims under workers' compensation acts; claims for damages because of bodily injury including personal injury, sickness or disease, or death of any of the Artist's employees or of any person other than the Artist's employees; and from claims for damages because of injury to or destruction of tangible property; including loss of use

resulting there from; and from claims arising out of their performance of professional services caused by errors, omissions, or negligent acts for which the Artist is legally liable.

ARTICLE 6: REPRODUCTION RIGHTS

6.1 General

a) The Artist retains all rights under the Copyright Act of 1976, 17 U.S.C., 101 et. seq., and all other rights in and to the Art Work including ownership and possession. The Artist grants to the City the right to photograph and reproduce images of the Art Work for promotional and educational purposes.

6.2 Notice

a) All reproductions by the City shall contain a credit to the Artist and a copyright notice substantially in the following form: © [Artist's Name], year of publication.

ARTICLE 7: ARTIST'S RIGHTS

7.1 Identification

a) The City shall, at its expense, prepare and install at the Site a plaque identifying the Artist, the title of the Art Work, the year of completion, and the City of West Des Moines Public Art Program; and shall reasonably maintain such notice to the extent as may be practicable.

7.2 Maintenance

a) The City recognizes that maintenance of the Art Work on a regular basis is essential to the integrity of the Art Work. The Artist shall submit reasonable maintenance recommendations to the City, and the City shall take such action to reasonably assure that the Art Work is properly maintained and protected, taking into account the Artist's recommendations.

7.3 Alteration of the Work

a) Except as provided in Section 1.4 of this Agreement, the City agrees that it will not intentionally damage, alter, modify, or change the Art Work without the prior written approval of the Artist during the term of this Agreement. The Artist understands that this is a temporary exhibit and that the Art Work will be painted over and cease to exist at the end of the term of this Agreement or earlier as provided in Section 1.4 of this Agreement.

7.4 Record

a) The City shall maintain a record of this Agreement and the location and disposition of the Art Work.

ARTICLE 8: ARTIST AS INDEPENDENT CONTRACTOR

a) The Artist shall perform all work under this Agreement as an independent contractor and not as an agent or an employee of the City. The Artist shall not be supervised by

any employee or official of the City, nor shall the Artist exercise supervision over any employee or official of the City.

ARTICLE 9: ASSIGNMENTS, TRANSFER, SUBCONTRACTING

9.1 Transfer of Agreement

a) Neither this Agreement nor any interest herein shall be transferred by the Artist.

9.2 Subcontracting by Artist

a) The Artist may subcontract portions of the services to be provided hereunder relating to the installation of the Art Work at the Artist's expense provided that said subcontracting shall not negatively affect the design, appearance, or visual quality of the Art Work and shall be carried out under the personal supervision of the Artist. The Artist must obtain approval from the City prior to hiring any subcontractor who will assist with the installation process. This approval may be achieved via electronic correspondence.

ARTICLE 10: TERMINATION

If either party to this Agreement shall willfully or negligently fail to fulfill in a timely and proper manner, or otherwise violate, any of the covenants, agreements, or stipulations material to this Agreement, the other party shall thereupon have the right to terminate this Agreement by giving written notice to the defaulting party of its intent to terminate specifying the grounds for termination. The defaulting party shall have thirty (30) days after receipt of the notice to cure the default. If the default is not cured, then this Agreement shall terminate. In the event of default by the City, the City shall promptly compensate the Artist for all services performed by the Artist prior to termination. In the event of default by the Artist, all finished and unfinished drawings, sketches, photographs, and other work products prepared and submitted or prepared for submission by the Artist under this Agreement shall at the City's option become its property, provided that no right to fabricate or execute the Art Work shall pass to the City and the City shall compensate the Artist pursuant to Article 2 for all services performed by the Artist prior to termination; or the Artist shall refund all amounts paid by the City in exchange for all finished and unfinished related Art Work. Notwithstanding the previous sentence, the Artist shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Artist, and the City may reasonably withhold payments to the Artist until such time as the exact amount of such damages due the City from the Artist is determined.

ARTICLE 11: COMPLIANCE

a) The Artist shall be required to comply with Federal, State, and City statutes, ordinances, and regulations applicable to the performance of the Artist's services under this Agreement.

ARTICLE 12: NOTICES

a) All notices, requests, demands and other communications which are required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given upon the delivery or receipt thereof, as the case may be, if delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, as follows:

1) if to the City, to:

Allison Ullestad, Arts, Culture & Enrichment Supervisor
City of West Des Moines
P.O. Box 65320
West Des Moines, IA 50265

2) if to the Artist, to:

Jacob Kuperman
3724 Forest Ave.
Des Moines, IA 50311

ARTICLE 13: MISCELLANEOUS

This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all negotiations, preliminary agreements and all prior and contemporaneous discussions, agreements and understandings of the parties in connection with the subject matter hereof. No amendment, change or modification of any of the terms, provisions or conditions of this Agreement shall be effective unless made in writing and signed or initialed by all parties. Waiver of any provision of this Agreement shall not be deemed a waiver of future compliance therewith and such provision shall remain in full force and effect. In the event any provision of this Agreement is held invalid, illegal or unenforceable, in whole or in part, the remaining provisions of this Agreement shall not be affected thereby and shall continue to be valid and enforceable. This Agreement shall be governed by and construed in accordance with the laws of the State of Iowa. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective legal representatives, heirs, successors and permitted assigns. Nothing in this Agreement, express or implied, is intended to confer upon any party, other than the parties hereto (and their respective heirs, legal representatives, successors and permitted assigns), any rights, remedies, obligations or liabilities under or by reason of this Agreement. In addition to any other remedies available at law or in equity to the parties hereto with respect to a breach hereof, the parties hereto each reserve the right to enforce this Agreement by specific performance. The titles or captions of paragraphs in this Agreement are provided for convenience of reference only, and shall not be considered a part hereof for purposes of interpreting or applying this Agreement and such title or captions do not define, limit, extend, explain or describe the scope or extent of this Agreement or any of its terms or conditions. Words and phrases herein shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender, according to the context. Each of the parties hereto hereby irrevocably waives all right to trial by jury in any action, proceeding or counterclaim arising out of or relating to this Agreement.

Remainder of Page Left Blank – Signatures on following page.

ARTIST

Jacob Kuperman

4/23/21

Jacob Kuperman

Date

CITY

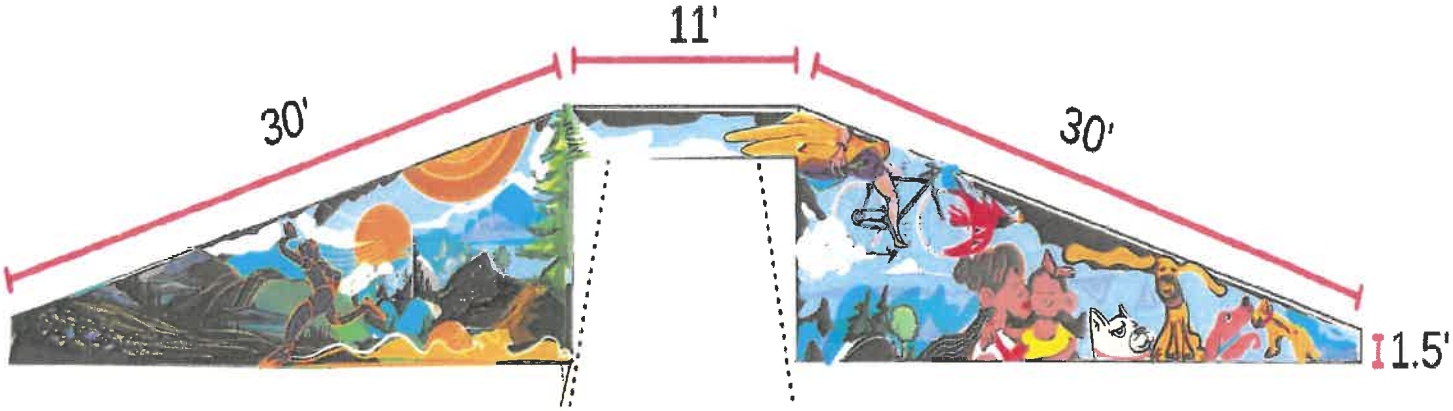
Sally Ortgies, Director of Parks and Recreation Department
City of West Des Moines

Date

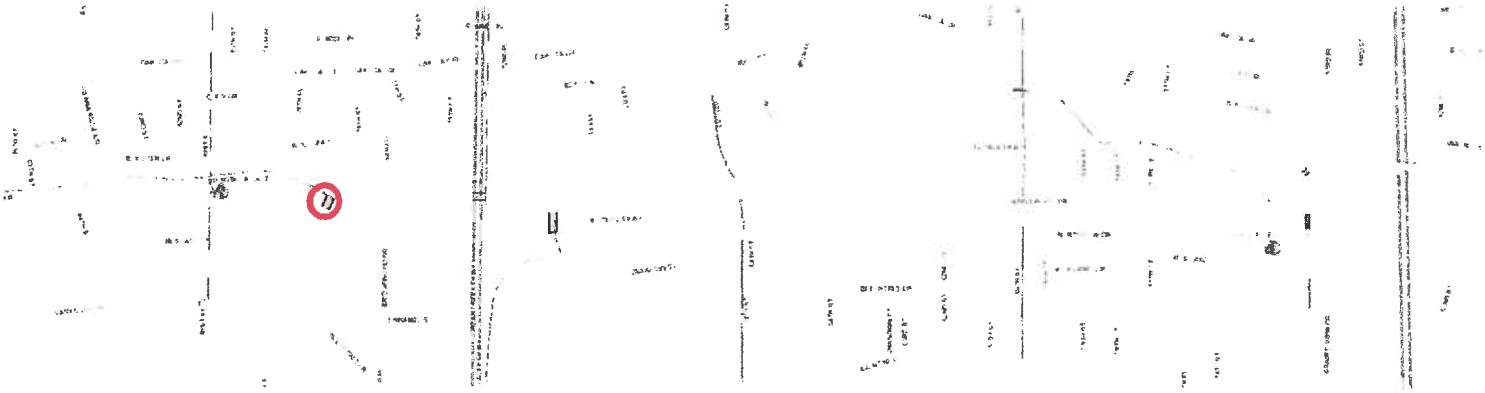
Exhibit A

Fresh Air

The mural moves to capture just that, movements and moments from the trail traffic, which varies greatly, and yet the trail simply exists to provide an avenue to connect, disconnect, and reconnect.



Underpass location: Jordan Creek Trail @ Brookview Elementary (North wall)



CITY OF WEST DES MOINES PUBLIC ART PROGRAM
2021 WDMurals – Art Exhibition
AGREEMENT BY AND BETWEEN CITY AND ARTIST

This Agreement, made by and between the City of West Des Moines, a municipal corporation organized and existing under the laws of the State of Iowa, ("City") and Ally Frame ("Artist").

WITNESSETH:

WHEREAS, the City desires to hold an art exhibit which will include a certain work of art described in Exhibit A attached hereto and incorporated herein by this reference ("Art Work"), which has been conceived and designed by Artist, to be installed on the City's property, Jordan Creek Parkway underpass - south wall, ("Site"), West Des Moines, Iowa.

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

ARTICLE 1: SCOPE OF SERVICES

1.1 General

a) The Artist shall perform all services and furnish all supplies, materials, and equipment as deemed necessary for the completion, transportation, and installation of the Art Work at the Site.
b) The Artist shall inspect the existing substrate and construction of the concrete walls to which the Art Work is to be attached and notify the City of any issues.
c) The Artist shall meet with the City as deemed necessary to coordinate the installation and removal of the Art Work.
d) The Artist shall agree to fully participate in the creation process of a mobile audio guide which the City will use to further enhance and promote the WDMurals exhibit. This creation process may include, but is not limited to, the following: Artist spoken interview, providing photographs of Art Work, and disclosing Artist contact information.

1.2 Artwork Installation

a) The Artist shall notify the City when the Artist is ready to install the Art Work at the Site designated by the City.
b) The Artist agrees to notify the City no fewer than seven (7) days prior to the Artist's intended time of installation to determine the exact schedule of installation.
c) The Artist shall install the completed Art Work at the Site after May 3, 2021, and no later than May 15, 2021.
d) The City shall be responsible for closure of the trail at the Site for the installation of the Art Work.
e) The Artist shall be responsible for all expenses, labor, supplies, materials, and equipment necessary for the installation of the Art Work.

1.3 Term of Agreement

a) The term of this Agreement shall be from May 3, 2021 through March 31, 2022. At the end of the term, the Artist agrees that the Artwork will be painted over and cease to exist at the Site.

1.4 Risk of Loss

a) The risk of loss or damage to the Art Work shall be borne by the Artist throughout the exhibition period. Should the Art Work be damaged by natural elements, an Act of God, vandalism or other process or action, the City may, at its sole option (1) contract with the Artist to repair the Art Work for an additional cost; (2) repair the Art Work itself; or (3) paint over or remove the Art Work prior to March 31, 2022. No damages will be due to the Artist for any alterations made to or removal of the Art Work prior to March 31, 2022.

1.5 Indemnity

a) The Artist agrees to indemnify and hold harmless the City from any liabilities, willful or non-willful acts of negligence by the Artist or the Artist's agents, or any or all elements of loss, mutilation, vandalism or other damage (including those caused by acts of God) that may befall the Art Work during any activities related to the planning, creation, or installation of the Art Work.

b) Upon installation of the Art Work, the City shall indemnify and hold harmless the Artist from claims or liabilities relating to the maintenance of the Site at which the Art Work is installed, which claims or liabilities arise from and after the date of installation of the Art Work.

c) The Artist shall indemnify and hold the City harmless from any and all costs, claims, liabilities or damages in any manner related to the Artist's breach of the representations and warranties set forth in Article 4 of this Agreement.

ARTICLE 2: COMPENSATION AND PAYMENT SCHEDULE

2.1 Fixed Fee

a) The City shall pay the Artist a stipend of $1,000 which shall constitute full compensation for all fees, services, expenses, supplies, and materials to be performed and furnished by the Artist under this Agreement. The fee shall be paid in full within thirty (30) days after final installation of the Art Work at the Site.

2.2 Artist's Expenses

a) The Artist shall be responsible for the costs of all travel by the Artist and the Artist's agents and employees necessary for the proper performance of the services required under this Agreement.

2.3 Invoices

a) The Artist shall submit an invoice to the City for payment as described in section 2.1. The invoice may be submitted electronically and shall be signed and dated by the Artist.

ARTICLE 3: TIME OF PERFORMANCE

3.1 Duration

a) The services to be required of the Artist as set forth in Article 1 shall be completed in accordance with the schedule for installation of the Art Work as proposed by the Artist and approved by the City pursuant to Section 1.2(c), provided that such time limits may be extended or otherwise modified by written agreement between the Artist and the City.

3.2 Time Extensions

a) The City shall grant a reasonable extension of time to the Artist in the event that there is a delay on the part of the Artist in performing its obligations under this Agreement, or if conditions beyond the Artist's control or Acts of God render timely performance of the Artist's services impossible or unexpectedly burdensome. Likewise, the Artist shall grant a reasonable extension of time to the City in the event that there is a delay on the part of the City in performing its obligations under this Agreement, or if conditions beyond the City's control or Acts of God render timely performance of the City's services impossible or unexpectedly burdensome. Failure to fulfill contractual obligations due to conditions beyond either party's reasonable control will not be considered a breach of contract, provided that such obligations shall be suspended only for the duration of such condition.

ARTICLE 4: WARRANTIES

4.1 Warranties of Title

a) The Artist represents and warrants that:
   1) The Art Work is solely the result of the artistic effort of the Artist;
   2) Except as otherwise disclosed in writing to the City, the Art Work is unique and original and does not infringe upon any copyright;
   3) The Art Work, or a duplicate thereof, has not been accepted for sale elsewhere;
   4) The Art Work is free and clear of any liens from any source.

4.2 Warranties of Quality and Condition

a) The Artist represents and warrants, except as otherwise disclosed to the City in writing in connection with the submission of the Application and pursuant to Article 1, that:
   1) The execution and fabrication of the Art Work will be performed in a workmanlike manner;
   2) The Art Work, as fabricated and installed, will be free of defects in material and workmanship, including any inherent defects or qualities which cause or accelerate deterioration of the Art Work.

ARTICLE 5: INSURANCE

5.1 Artist Insurance

a) The Artist and all employees of the Artist shall maintain insurance to protect the Artist from claims under workers' compensation acts; claims for damages because of bodily injury including personal injury, sickness or disease, or death of any of the Artist's employees or of any person other than the Artist's employees; and from claims for damages because of injury to or destruction of tangible property; including loss of use

resulting there from; and from claims arising out of their performance of professional services caused by errors, omissions, or negligent acts for which the Artist is legally liable.

ARTICLE 6: REPRODUCTION RIGHTS

6.1 General

a) The Artist retains all rights under the Copyright Act of 1976, 17 U.S.C., 101 et. seq., and all other rights in and to the Art Work including ownership and possession. The Artist grants to the City the right to photograph and reproduce images of the Art Work for promotional and educational purposes.

6.2 Notice

a) All reproductions by the City shall contain a credit to the Artist and a copyright notice substantially in the following form: © [Artist's Name], year of publication.

ARTICLE 7: ARTIST'S RIGHTS

7.1 Identification

a) The City shall, at its expense, prepare and install at the Site a plaque identifying the Artist, the title of the Art Work, the year of completion, and the City of West Des Moines Public Art Program; and shall reasonably maintain such notice to the extent as may be practicable.

7.2 Maintenance

a) The City recognizes that maintenance of the Art Work on a regular basis is essential to the integrity of the Art Work. The Artist shall submit reasonable maintenance recommendations to the City, and the City shall take such action to reasonably assure that the Art Work is properly maintained and protected, taking into account the Artist's recommendations.

7.3 Alteration of the Work

a) Except as provided in Section 1.4 of this Agreement, the City agrees that it will not intentionally damage, alter, modify, or change the Art Work without the prior written approval of the Artist during the term of this Agreement. The Artist understands that this is a temporary exhibit and that the Art Work will be painted over and cease to exist at the end of the term of this Agreement or earlier as provided in Section 1.4 of this Agreement.

7.4 Record

a) The City shall maintain a record of this Agreement and the location and disposition of the Art Work.

ARTICLE 8: ARTIST AS INDEPENDENT CONTRACTOR

a) The Artist shall perform all work under this Agreement as an independent contractor and not as an agent or an employee of the City. The Artist shall not be supervised by

any employee or official of the City, nor shall the Artist exercise supervision over any employee or official of the City.

ARTICLE 9: ASSIGNMENTS, TRANSFER, SUBCONTRACTING

9.1 Transfer of Agreement

a) Neither this Agreement nor any interest herein shall be transferred by the Artist.

9.2 Subcontracting by Artist

a) The Artist may subcontract portions of the services to be provided hereunder relating to the installation of the Art Work at the Artist's expense provided that said subcontracting shall not negatively affect the design, appearance, or visual quality of the Art Work and shall be carried out under the personal supervision of the Artist. The Artist must obtain approval from the City prior to hiring any subcontractor who will assist with the installation process. This approval may be achieved via electronic correspondence.

ARTICLE 10: TERMINATION

If either party to this Agreement shall willfully or negligently fail to fulfill in a timely and proper manner, or otherwise violate, any of the covenants, agreements, or stipulations material to this Agreement, the other party shall thereupon have the right to terminate this Agreement by giving written notice to the defaulting party of its intent to terminate specifying the grounds for termination. The defaulting party shall have thirty (30) days after receipt of the notice to cure the default. If the default is not cured, then this Agreement shall terminate. In the event of default by the City, the City shall promptly compensate the Artist for all services performed by the Artist prior to termination. In the event of default by the Artist, all finished and unfinished drawings, sketches, photographs, and other work products prepared and submitted or prepared for submission by the Artist under this Agreement shall at the City's option become its property, provided that no right to fabricate or execute the Art Work shall pass to the City and the City shall compensate the Artist pursuant to Article 2 for all services performed by the Artist prior to termination; or the Artist shall refund all amounts paid by the City in exchange for all finished and unfinished related Art Work. Notwithstanding the previous sentence, the Artist shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Artist, and the City may reasonably withhold payments to the Artist until such time as the exact amount of such damages due the City from the Artist is determined.

ARTICLE 11: COMPLIANCE

a) The Artist shall be required to comply with Federal, State, and City statutes, ordinances, and regulations applicable to the performance of the Artist's services under this Agreement.

ARTICLE 12: NOTICES

a) All notices, requests, demands and other communications which are required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given upon the delivery or receipt thereof, as the case may be, if delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, as follows:

1) if to the City, to:

Allison Ullestad, Arts, Culture & Enrichment Supervisor
City of West Des Moines
P.O. Box 65320
West Des Moines, IA 50265

2) if to the Artist, to:

Ally Frame
300 SW 5th Street B507
Des Moines, IA 50309

ARTICLE 13: MISCELLANEOUS

This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all negotiations, preliminary agreements and all prior and contemporaneous discussions, agreements and understandings of the parties in connection with the subject matter hereof. No amendment, change or modification of any of the terms, provisions or conditions of this Agreement shall be effective unless made in writing and signed or initialed by all parties. Waiver of any provision of this Agreement shall not be deemed a waiver of future compliance therewith and such provision shall remain in full force and effect. In the event any provision of this Agreement is held invalid, illegal or unenforceable, in whole or in part, the remaining provisions of this Agreement shall not be affected thereby and shall continue to be valid and enforceable. This Agreement shall be governed by and construed in accordance with the laws of the State of Iowa. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective legal representatives, heirs, successors and permitted assigns. Nothing in this Agreement, express or implied, is intended to confer upon any party, other than the parties hereto (and their respective heirs, legal representatives, successors and permitted assigns), any rights, remedies, obligations or liabilities under or by reason of this Agreement. In addition to any other remedies available at law or in equity to the parties hereto with respect to a breach hereof, the parties hereto each reserve the right to enforce this Agreement by specific performance. The titles or captions of paragraphs in this Agreement are provided for convenience of reference only, and shall not be considered a part hereof for purposes of interpreting or applying this Agreement and such title or captions do not define, limit, extend, explain or describe the scope or extent of this Agreement or any of its terms or conditions. Words and phrases herein shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender, according to the context. Each of the parties hereto hereby irrevocably waives all right to trial by jury in any action, proceeding or counterclaim arising out of or relating to this Agreement.

Remainder of Page Left Blank – Signatures on following page.

ARTIST

Ally Frame _____ Date 04/20/21

CITY

_____ _____

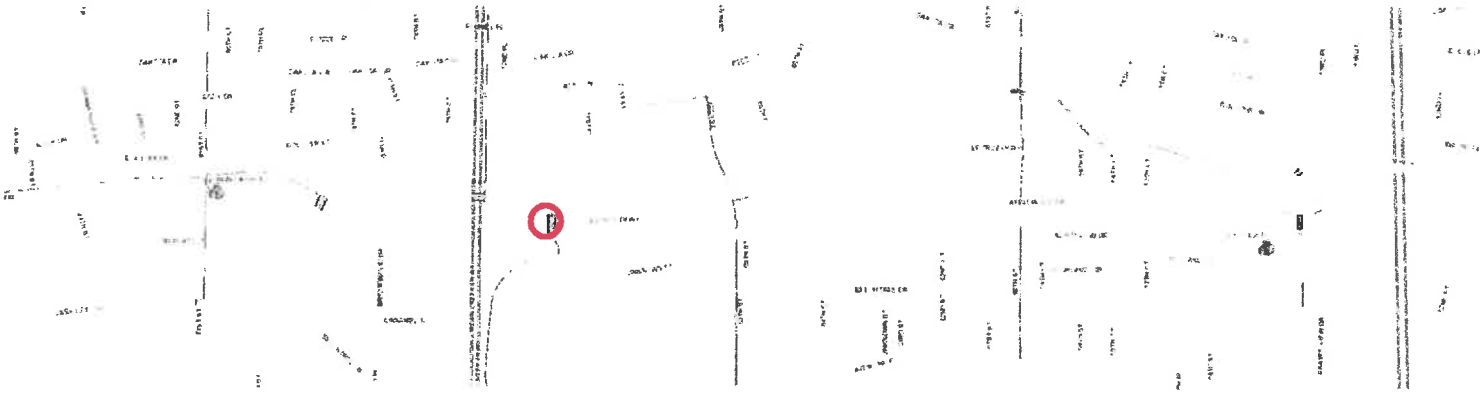
Sally Ortgies, Director of Parks and Recreation Department Date
City of West Des Moines

Exhibit A

Respect Your Mother

Respect Your Mother is designed to spark dialogue about how we treat our planet. It features a woman reaching out and holding the earth as if she is trying to catch it and save it. With climate change on the rise, this mural will serve as a reminder to treat the place giving us life with a little more compassion. This mural will be created using acrylic based paints.

Underpass location: Jordan Creek Parkway (South wall)



CITY OF WEST DES MOINES PUBLIC ART PROGRAM
2021 WDMurals – Art Exhibition
AGREEMENT BY AND BETWEEN CITY AND ARTIST

This Agreement, made by and between the City of West Des Moines, a municipal corporation organized and existing under the laws of the State of Iowa, ("City") and Samantha Goss ("Artist").

WITNESSETH:

WHEREAS, the City desires to hold an art exhibit which will include a certain work of art described in Exhibit A attached hereto and incorporated herein by this reference ("Art Work"), which has been conceived and designed by Artist, to be installed on the City's property, Jordan Creek Parkway underpass - north wall, ("Site"), West Des Moines, Iowa.

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

ARTICLE 1: SCOPE OF SERVICES

1.1 General

a) The Artist shall perform all services and furnish all supplies, materials, and equipment as deemed necessary for the completion, transportation, and installation of the Art Work at the Site.
b) The Artist shall inspect the existing substrate and construction of the concrete walls to which the Art Work is to be attached and notify the City of any issues.
c) The Artist shall meet with the City as deemed necessary to coordinate the installation and removal of the Art Work.
d) The Artist shall agree to fully participate in the creation process of a mobile audio guide which the City will use to further enhance and promote the WDMurals exhibit. This creation process may include, but is not limited to, the following: Artist spoken interview, providing photographs of Art Work, and disclosing Artist contact information.

1.2 Artwork Installation

a) The Artist shall notify the City when the Artist is ready to install the Art Work at the Site designated by the City.
b) The Artist agrees to notify the City no fewer than seven (7) days prior to the Artist's intended time of installation to determine the exact schedule of installation.
c) The Artist shall install the completed Art Work at the Site after May 3, 2021, and no later than May 15, 2021.
d) The City shall be responsible for closure of the trail at the Site for the installation of the Art Work.
e) The Artist shall be responsible for all expenses, labor, supplies, materials, and equipment necessary for the installation of the Art Work.

1.3 Term of Agreement

a) The term of this Agreement shall be from May 3, 2021 through March 31, 2022. At the end of the term, the Artist agrees that the Artwork will be painted over and cease to exist at the Site.

1.4 Risk of Loss

a) The risk of loss or damage to the Art Work shall be borne by the Artist throughout the exhibition period. Should the Art Work be damaged by natural elements, an Act of God, vandalism or other process or action, the City may, at its sole option (1) contract with the Artist to repair the Art Work for an additional cost; (2) repair the Art Work itself; or (3) paint over or remove the Art Work prior to March 31, 2022. No damages will be due to the Artist for any alterations made to or removal of the Art Work prior to March 31, 2022.

1.5 Indemnity

a) The Artist agrees to indemnify and hold harmless the City from any liabilities, willful or non-willful acts of negligence by the Artist or the Artist's agents, or any or all elements of loss, mutilation, vandalism or other damage (including those caused by acts of God) that may befall the Art Work during any activities related to the planning, creation, or installation of the Art Work.

b) Upon installation of the Art Work, the City shall indemnify and hold harmless the Artist from claims or liabilities relating to the maintenance of the Site at which the Art Work is installed, which claims or liabilities arise from and after the date of installation of the Art Work.

c) The Artist shall indemnify and hold the City harmless from any and all costs, claims, liabilities or damages in any manner related to the Artist's breach of the representations and warranties set forth in Article 4 of this Agreement.

ARTICLE 2: COMPENSATION AND PAYMENT SCHEDULE

2.1 Fixed Fee

a) The City shall pay the Artist a stipend of $1,000 which shall constitute full compensation for all fees, services, expenses, supplies, and materials to be performed and furnished by the Artist under this Agreement. The fee shall be paid in full within thirty (30) days after final installation of the Art Work at the Site.

2.2 Artist's Expenses

a) The Artist shall be responsible for the costs of all travel by the Artist and the Artist's agents and employees necessary for the proper performance of the services required under this Agreement.

2.3 Invoices

a) The Artist shall submit an invoice to the City for payment as described in section 2.1. The invoice may be submitted electronically and shall be signed and dated by the Artist.

ARTICLE 3: TIME OF PERFORMANCE

3.1 Duration

a) The services to be required of the Artist as set forth in Article 1 shall be completed in accordance with the schedule for installation of the Art Work as proposed by the Artist and approved by the City pursuant to Section 1.2(c), provided that such time limits may be extended or otherwise modified by written agreement between the Artist and the City.

3.2 Time Extensions

a) The City shall grant a reasonable extension of time to the Artist in the event that there is a delay on the part of the Artist in performing its obligations under this Agreement, or if conditions beyond the Artist's control or Acts of God render timely performance of the Artist's services impossible or unexpectedly burdensome. Likewise, the Artist shall grant a reasonable extension of time to the City in the event that there is a delay on the part of the City in performing its obligations under this Agreement, or if conditions beyond the City's control or Acts of God render timely performance of the City's services impossible or unexpectedly burdensome. Failure to fulfill contractual obligations due to conditions beyond either party's reasonable control will not be considered a breach of contract, provided that such obligations shall be suspended only for the duration of such condition.

ARTICLE 4: WARRANTIES

4.1 Warranties of Title

a) The Artist represents and warrants that:
   1) The Art Work is solely the result of the artistic effort of the Artist;
   2) Except as otherwise disclosed in writing to the City, the Art Work is unique and original and does not infringe upon any copyright;
   3) The Art Work, or a duplicate thereof, has not been accepted for sale elsewhere;
   4) The Art Work is free and clear of any liens from any source.

4.2 Warranties of Quality and Condition

a) The Artist represents and warrants, except as otherwise disclosed to the City in writing in connection with the submission of the Application and pursuant to Article 1, that:
   1) The execution and fabrication of the Art Work will be performed in a workmanlike manner;
   2) The Art Work, as fabricated and installed, will be free of defects in material and workmanship, including any inherent defects or qualities which cause or accelerate deterioration of the Art Work.

ARTICLE 5: INSURANCE

5.1 Artist Insurance

a) The Artist and all employees of the Artist shall maintain insurance to protect the Artist from claims under workers' compensation acts; claims for damages because of bodily injury including personal injury, sickness or disease, or death of any of the Artist's employees or of any person other than the Artist's employees; and from claims for damages because of injury to or destruction of tangible property; including loss of use

resulting there from; and from claims arising out of their performance of professional services caused by errors, omissions, or negligent acts for which the Artist is legally liable.

ARTICLE 6: REPRODUCTION RIGHTS

6.1 General

a) The Artist retains all rights under the Copyright Act of 1976, 17 U.S.C., 101 et. seq., and all other rights in and to the Art Work including ownership and possession. The Artist grants to the City the right to photograph and reproduce images of the Art Work for promotional and educational purposes.

6.2 Notice

a) All reproductions by the City shall contain a credit to the Artist and a copyright notice substantially in the following form: © [Artist's Name], year of publication.

ARTICLE 7: ARTIST'S RIGHTS

7.1 Identification

a) The City shall, at its expense, prepare and install at the Site a plaque identifying the Artist, the title of the Art Work, the year of completion, and the City of West Des Moines Public Art Program; and shall reasonably maintain such notice to the extent as may be practicable.

7.2 Maintenance

a) The City recognizes that maintenance of the Art Work on a regular basis is essential to the integrity of the Art Work. The Artist shall submit reasonable maintenance recommendations to the City, and the City shall take such action to reasonably assure that the Art Work is properly maintained and protected, taking into account the Artist's recommendations.

7.3 Alteration of the Work

a) Except as provided in Section 1.4 of this Agreement, the City agrees that it will not intentionally damage, alter, modify, or change the Art Work without the prior written approval of the Artist during the term of this Agreement. The Artist understands that this is a temporary exhibit and that the Art Work will be painted over and cease to exist at the end of the term of this Agreement or earlier as provided in Section 1.4 of this Agreement.

7.4 Record

a) The City shall maintain a record of this Agreement and the location and disposition of the Art Work.

ARTICLE 8: ARTIST AS INDEPENDENT CONTRACTOR

a) The Artist shall perform all work under this Agreement as an independent contractor and not as an agent or an employee of the City. The Artist shall not be supervised by

any employee or official of the City, nor shall the Artist exercise supervision over any employee or official of the City.

ARTICLE 9: ASSIGNMENTS, TRANSFER, SUBCONTRACTING

9.1 Transfer of Agreement

a) Neither this Agreement nor any interest herein shall be transferred by the Artist.

9.2 Subcontracting by Artist

a) The Artist may subcontract portions of the services to be provided hereunder relating to the installation of the Art Work at the Artist's expense provided that said subcontracting shall not negatively affect the design, appearance, or visual quality of the Art Work and shall be carried out under the personal supervision of the Artist. The Artist must obtain approval from the City prior to hiring any subcontractor who will assist with the installation process. This approval may be achieved via electronic correspondence.

ARTICLE 10: TERMINATION

If either party to this Agreement shall willfully or negligently fail to fulfill in a timely and proper manner, or otherwise violate, any of the covenants, agreements, or stipulations material to this Agreement, the other party shall thereupon have the right to terminate this Agreement by giving written notice to the defaulting party of its intent to terminate specifying the grounds for termination. The defaulting party shall have thirty (30) days after receipt of the notice to cure the default. If the default is not cured, then this Agreement shall terminate. In the event of default by the City, the City shall promptly compensate the Artist for all services performed by the Artist prior to termination. In the event of default by the Artist, all finished and unfinished drawings, sketches, photographs, and other work products prepared and submitted or prepared for submission by the Artist under this Agreement shall at the City's option become its property, provided that no right to fabricate or execute the Art Work shall pass to the City and the City shall compensate the Artist pursuant to Article 2 for all services performed by the Artist prior to termination; or the Artist shall refund all amounts paid by the City in exchange for all finished and unfinished related Art Work. Notwithstanding the previous sentence, the Artist shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Artist, and the City may reasonably withhold payments to the Artist until such time as the exact amount of such damages due the City from the Artist is determined.

ARTICLE 11: COMPLIANCE

a) The Artist shall be required to comply with Federal, State, and City statutes, ordinances, and regulations applicable to the performance of the Artist's services under this Agreement.

ARTICLE 12: NOTICES

a) All notices, requests, demands and other communications which are required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given upon the delivery or receipt thereof, as the case may be, if delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, as follows:

1) if to the City, to:

Allison Ullestad, Arts, Culture & Enrichment Supervisor
City of West Des Moines
P.O. Box 65320
West Des Moines, IA 50265

2) if to the Artist, to:

Samantha Goss
1711 Forest Ave.
Waterloo, IA 50702

ARTICLE 13: MISCELLANEOUS

This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all negotiations, preliminary agreements and all prior and contemporaneous discussions, agreements and understandings of the parties in connection with the subject matter hereof. No amendment, change or modification of any of the terms, provisions or conditions of this Agreement shall be effective unless made in writing and signed or initialed by all parties. Waiver of any provision of this Agreement shall not be deemed a waiver of future compliance therewith and such provision shall remain in full force and effect. In the event any provision of this Agreement is held invalid, illegal or unenforceable, in whole or in part, the remaining provisions of this Agreement shall not be affected thereby and shall continue to be valid and enforceable. This Agreement shall be governed by and construed in accordance with the laws of the State of Iowa. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective legal representatives, heirs, successors and permitted assigns. Nothing in this Agreement, express or implied, is intended to confer upon any party, other than the parties hereto (and their respective heirs, legal representatives, successors and permitted assigns), any rights, remedies, obligations or liabilities under or by reason of this Agreement. In addition to any other remedies available at law or in equity to the parties hereto with respect to a breach hereof, the parties hereto each reserve the right to enforce this Agreement by specific performance. The titles or captions of paragraphs in this Agreement are provided for convenience of reference only, and shall not be considered a part hereof for purposes of interpreting or applying this Agreement and such title or captions do not define, limit, extend, explain or describe the scope or extent of this Agreement or any of its terms or conditions. Words and phrases herein shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender, according to the context. Each of the parties hereto hereby irrevocably waives all right to trial by jury in any action, proceeding or counterclaim arising out of or relating to this Agreement.

Remainder of Page Left Blank – Signatures on following page.

ARTIST

Samantha Goss

4/21/2021

Samantha Goss

Date

CITY

Sally Ortgies, Director of Parks and Recreation Department
City of West Des Moines

Date

Exhibit A

Natural Iowa

I found inspiration from native plants as I have been researching how I can support pollinators in my own yard. I wanted the flowers to be very noticeable from far away to attract people to come see the mural. Once there they can interact with the large scale flowers when taking photographs. These may also be plants that they would see when walking the trails. I believe the image would scale well to fit the sloping wall. These same flowers can be used for the smaller portion about the walkway.

Underpass location: Jordan Creek Parkway (North wall)

CITY OF WEST DES MOINES PUBLIC ART PROGRAM
2021 WDMurals – Art Exhibition
AGREEMENT BY AND BETWEEN CITY AND ARTIST

This Agreement, made by and between the City of West Des Moines, a municipal corporation organized and existing under the laws of the State of Iowa, ("City") and Christie Engelbert, Sarah Petersen, Tory DeVries, Katie Leeper, Chelsea Hayes, and Jim Cook ("Artist").

WITNESSETH:

WHEREAS, the City desires to hold an art exhibit which will include a certain work of art described in Exhibit A attached hereto and incorporated herein by this reference ("Art Work"), which has been conceived and designed by Artist, to be installed on the City's property, Jordan Creek Trail @ Westridge Elementary underpass - south wall, ("Site"), West Des Moines, Iowa.

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

ARTICLE 1: SCOPE OF SERVICES

1.1 General

a) The Artist shall perform all services and furnish all supplies, materials, and equipment as deemed necessary for the completion, transportation, and installation of the Art Work at the Site.
b) The Artist shall inspect the existing substrate and construction of the concrete walls to which the Art Work is to be attached and notify the City of any issues.
c) The Artist shall meet with the City as deemed necessary to coordinate the installation and removal of the Art Work.
d) The Artist shall agree to fully participate in the creation process of a mobile audio guide which the City will use to further enhance and promote the WDMurals exhibit. This creation process may include, but is not limited to, the following: Artist spoken interview, providing photographs of Art Work, and disclosing Artist contact information.

1.2 Artwork Installation

a) The Artist shall notify the City when the Artist is ready to install the Art Work at the Site designated by the City.
b) The Artist agrees to notify the City no fewer than seven (7) days prior to the Artist's intended time of installation to determine the exact schedule of installation.
c) The Artist shall install the completed Art Work at the Site after May 3, 2021, and no later than May 15, 2021.
d) The City shall be responsible for closure of the trail at the Site for the installation of the Art Work.
e) The Artist shall be responsible for all expenses, labor, supplies, materials, and equipment necessary for the installation of the Art Work.

1.3 Term of Agreement

a) The term of this Agreement shall be from May 3, 2021 through March 31, 2022. At the end of the term, the Artist agrees that the Artwork will be painted over and cease to exist at the Site.

1.4 Risk of Loss

a) The risk of loss or damage to the Art Work shall be borne by the Artist throughout the exhibition period. Should the Art Work be damaged by natural elements, an Act of God, vandalism or other process or action, the City may, at its sole option (1) contract with the Artist to repair the Art Work for an additional cost; (2) repair the Art Work itself; or (3) paint over or remove the Art Work prior to March 31, 2022. No damages will be due to the Artist for any alterations made to or removal of the Art Work prior to March 31, 2022.

1.5 Indemnity

a) The Artist agrees to indemnify and hold harmless the City from any liabilities, willful or non-willful acts of negligence by the Artist or the Artist's agents, or any or all elements of loss, mutilation, vandalism or other damage (including those caused by acts of God) that may befall the Art Work during any activities related to the planning, creation, or installation of the Art Work.

b) Upon installation of the Art Work, the City shall indemnify and hold harmless the Artist from claims or liabilities relating to the maintenance of the Site at which the Art Work is installed, which claims or liabilities arise from and after the date of installation of the Art Work.

c) The Artist shall indemnify and hold the City harmless from any and all costs, claims, liabilities or damages in any manner related to the Artist's breach of the representations and warranties set forth in Article 4 of this Agreement.

ARTICLE 2: COMPENSATION AND PAYMENT SCHEDULE

2.1 Fixed Fee

a) The City shall pay the Artist a stipend of $1,000 which shall constitute full compensation for all fees, services, expenses, supplies, and materials to be performed and furnished by the Artist under this Agreement. The fee shall be paid in full within thirty (30) days after final installation of the Art Work at the Site.

2.2 Artist's Expenses

a) The Artist shall be responsible for the costs of all travel by the Artist and the Artist's agents and employees necessary for the proper performance of the services required under this Agreement.

2.3 Invoices

a) The Artist shall submit an invoice to the City for payment as described in section 2.1. The invoice may be submitted electronically and shall be signed and dated by the Artist.

ARTICLE 3: TIME OF PERFORMANCE

3.1 Duration

a) The services to be required of the Artist as set forth in Article 1 shall be completed in accordance with the schedule for installation of the Art Work as proposed by the Artist and approved by the City pursuant to Section 1.2(c), provided that such time limits may be extended or otherwise modified by written agreement between the Artist and the City.

3.2 Time Extensions

a) The City shall grant a reasonable extension of time to the Artist in the event that there is a delay on the part of the Artist in performing its obligations under this Agreement, or if conditions beyond the Artist's control or Acts of God render timely performance of the Artist's services impossible or unexpectedly burdensome. Likewise, the Artist shall grant a reasonable extension of time to the City in the event that there is a delay on the part of the City in performing its obligations under this Agreement, or if conditions beyond the City's control or Acts of God render timely performance of the City's services impossible or unexpectedly burdensome. Failure to fulfill contractual obligations due to conditions beyond either party's reasonable control will not be considered a breach of contract, provided that such obligations shall be suspended only for the duration of such condition.

ARTICLE 4: WARRANTIES

4.1 Warranties of Title

a) The Artist represents and warrants that:
   1) The Art Work is solely the result of the artistic effort of the Artist;
   2) Except as otherwise disclosed in writing to the City, the Art Work is unique and original and does not infringe upon any copyright;
   3) The Art Work, or a duplicate thereof, has not been accepted for sale elsewhere;
   4) The Art Work is free and clear of any liens from any source.

4.2 Warranties of Quality and Condition

a) The Artist represents and warrants, except as otherwise disclosed to the City in writing in connection with the submission of the Application and pursuant to Article 1, that:
   1) The execution and fabrication of the Art Work will be performed in a workmanlike manner;
   2) The Art Work, as fabricated and installed, will be free of defects in material and workmanship, including any inherent defects or qualities which cause or accelerate deterioration of the Art Work.

ARTICLE 5: INSURANCE

5.1 Artist Insurance

a) The Artist and all employees of the Artist shall maintain insurance to protect the Artist from claims under workers' compensation acts; claims for damages because of bodily injury including personal injury, sickness or disease, or death of any of the Artist's employees or of any person other than the Artist's employees; and from claims for damages because of injury to or destruction of tangible property; including loss of use

resulting there from; and from claims arising out of their performance of professional services caused by errors, omissions, or negligent acts for which the Artist is legally liable.

ARTICLE 6: REPRODUCTION RIGHTS

6.1 General

a) The Artist retains all rights under the Copyright Act of 1976, 17 U.S.C., 101 et. seq., and all other rights in and to the Art Work including ownership and possession. The Artist grants to the City the right to photograph and reproduce images of the Art Work for promotional and educational purposes.

6.2 Notice

a) All reproductions by the City shall contain a credit to the Artist and a copyright notice substantially in the following form: © [Artist's Name], year of publication.

ARTICLE 7: ARTIST'S RIGHTS

7.1 Identification

a) The City shall, at its expense, prepare and install at the Site a plaque identifying the Artist, the title of the Art Work, the year of completion, and the City of West Des Moines Public Art Program; and shall reasonably maintain such notice to the extent as may be practicable.

7.2 Maintenance

a) The City recognizes that maintenance of the Art Work on a regular basis is essential to the integrity of the Art Work. The Artist shall submit reasonable maintenance recommendations to the City, and the City shall take such action to reasonably assure that the Art Work is properly maintained and protected, taking into account the Artist's recommendations.

7.3 Alteration of the Work

a) Except as provided in Section 1.4 of this Agreement, the City agrees that it will not intentionally damage, alter, modify, or change the Art Work without the prior written approval of the Artist during the term of this Agreement. The Artist understands that this is a temporary exhibit and that the Art Work will be painted over and cease to exist at the end of the term of this Agreement or earlier as provided in Section 1.4 of this Agreement.

7.4 Record

a) The City shall maintain a record of this Agreement and the location and disposition of the Art Work.

ARTICLE 8: ARTIST AS INDEPENDENT CONTRACTOR

a) The Artist shall perform all work under this Agreement as an independent contractor and not as an agent or an employee of the City. The Artist shall not be supervised by

any employee or official of the City, nor shall the Artist exercise supervision over any employee or official of the City.

ARTICLE 9: ASSIGNMENTS, TRANSFER, SUBCONTRACTING

9.1 Transfer of Agreement

a) Neither this Agreement nor any interest herein shall be transferred by the Artist.

9.2 Subcontracting by Artist

a) The Artist may subcontract portions of the services to be provided hereunder relating to the installation of the Art Work at the Artist's expense provided that said subcontracting shall not negatively affect the design, appearance, or visual quality of the Art Work and shall be carried out under the personal supervision of the Artist. The Artist must obtain approval from the City prior to hiring any subcontractor who will assist with the installation process. This approval may be achieved via electronic correspondence.

ARTICLE 10: TERMINATION

If either party to this Agreement shall willfully or negligently fail to fulfill in a timely and proper manner, or otherwise violate, any of the covenants, agreements, or stipulations material to this Agreement, the other party shall thereupon have the right to terminate this Agreement by giving written notice to the defaulting party of its intent to terminate specifying the grounds for termination. The defaulting party shall have thirty (30) days after receipt of the notice to cure the default. If the default is not cured, then this Agreement shall terminate. In the event of default by the City, the City shall promptly compensate the Artist for all services performed by the Artist prior to termination. In the event of default by the Artist, all finished and unfinished drawings, sketches, photographs, and other work products prepared and submitted or prepared for submission by the Artist under this Agreement shall at the City's option become its property, provided that no right to fabricate or execute the Art Work shall pass to the City and the City shall compensate the Artist pursuant to Article 2 for all services performed by the Artist prior to termination; or the Artist shall refund all amounts paid by the City in exchange for all finished and unfinished related Art Work. Notwithstanding the previous sentence, the Artist shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Artist, and the City may reasonably withhold payments to the Artist until such time as the exact amount of such damages due the City from the Artist is determined.

ARTICLE 11: COMPLIANCE

a) The Artist shall be required to comply with Federal, State, and City statutes, ordinances, and regulations applicable to the performance of the Artist's services under this Agreement.

ARTICLE 12: NOTICES

a) All notices, requests, demands and other communications which are required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given upon the delivery or receipt thereof, as the case may be, if delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, as follows:

1) if to the City, to:

Allison Ullestad, Arts, Culture & Enrichment Supervisor
City of West Des Moines
P.O. Box 65320
West Des Moines, IA 50265

2) if to the Artist, to:

Christie Engelbert
4712 Aspen Drive
West Des Moines, IA 50265

ARTICLE 13: MISCELLANEOUS

This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all negotiations, preliminary agreements and all prior and contemporaneous discussions, agreements and understandings of the parties in connection with the subject matter hereof. No amendment, change or modification of any of the terms, provisions or conditions of this Agreement shall be effective unless made in writing and signed or initialed by all parties. Waiver of any provision of this Agreement shall not be deemed a waiver of future compliance therewith and such provision shall remain in full force and effect. In the event any provision of this Agreement is held invalid, illegal or unenforceable, in whole or in part, the remaining provisions of this Agreement shall not be affected thereby and shall continue to be valid and enforceable. This Agreement shall be governed by and construed in accordance with the laws of the State of Iowa. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective legal representatives, heirs, successors and permitted assigns. Nothing in this Agreement, express or implied, is intended to confer upon any party, other than the parties hereto (and their respective heirs, legal representatives, successors and permitted assigns), any rights, remedies, obligations or liabilities under or by reason of this Agreement. In addition to any other remedies available at law or in equity to the parties hereto with respect to a breach hereof, the parties hereto each reserve the right to enforce this Agreement by specific performance. The titles or captions of paragraphs in this Agreement are provided for convenience of reference only, and shall not be considered a part hereof for purposes of interpreting or applying this Agreement and such title or captions do not define, limit, extend, explain or describe the scope or extent of this Agreement or any of its terms or conditions. Words and phrases herein shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender, according to the context. Each of the parties hereto hereby irrevocably waives all right to trial by jury in any action, proceeding or counterclaim arising out of or relating to this Agreement.

Remainder of Page Left Blank – Signatures on following page.

ARTIST

Christie Engelbert — 4-22-21
Christie Engelbert — Date

Sarah Petersen — 4.23.21
Sarah Petersen — Date

Tory DeVries — 4-22-21
Tory DeVries — Date

~~Stephanie Nelson~~ — ~~Date~~

~~Deb Leventhal~~ — ~~Date~~

Katie Leeper — 4-23-21
Katie Leeper — Date

Chelsea Hayes — 4/26/21
Chelsea Hayes — Date

Jim Cook — 4/23/21
Jim Cook — Date

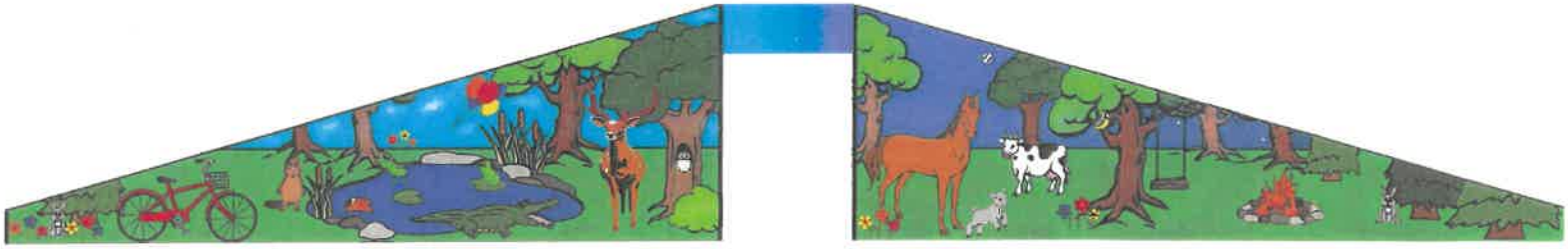
CITY

Sally Ortgies, Director of Parks and Recreation Department — Date
City of West Des Moines

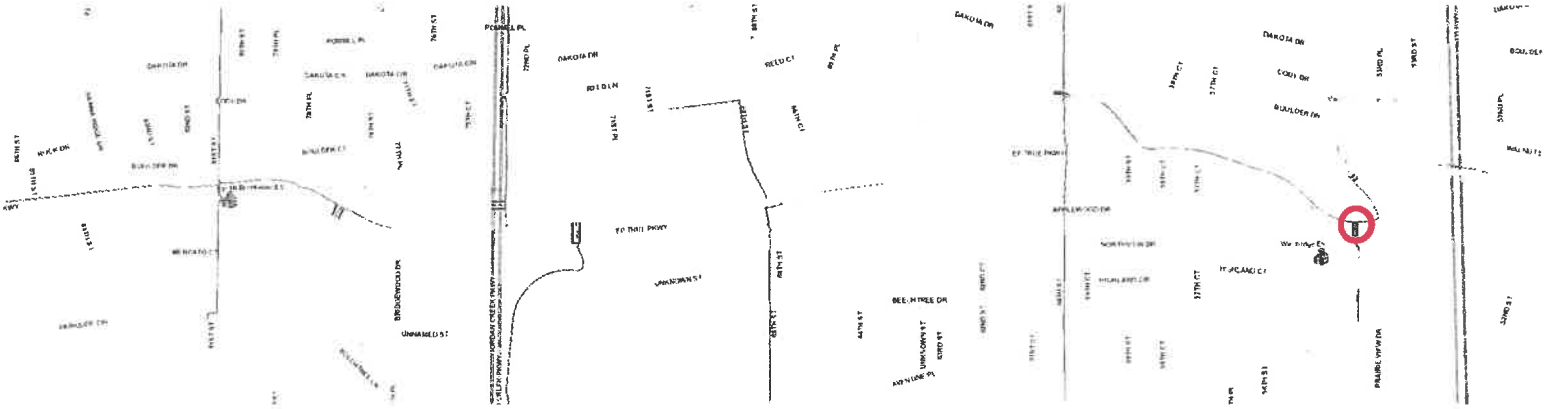
Exhibit A

Interacting with Nature

We wanted this mural to be interactive so people can walk or bike by, stop and take their photo. For instance, someone could reach up and make it look like they are hanging on to the balloons. They could also bend down and have the kissing frog kiss their cheek. We tried to create many photo moments for people to pick from including fishing, making smores, and I'm sure people will come up with their own ideas. We even thought that if WDM wanted to create a hashtag, we could include that somewhere in the mural so people could post pictures with that hashtag.



Underpass location: Jordan Creek Trail @ Westridge Elementary (South wall)



CITY OF WEST DES MOINES PUBLIC ART PROGRAM
2021 WDMurals – Art Exhibition
AGREEMENT BY AND BETWEEN CITY AND ARTIST

This Agreement, made by and between the City of West Des Moines, a municipal corporation organized and existing under the laws of the State of Iowa, ("City") and Christine Hilbert ("Artist").

WITNESSETH:

WHEREAS, the City desires to hold an art exhibit which will include a certain work of art described in Exhibit A attached hereto and incorporated herein by this reference ("Art Work"), which has been conceived and designed by Artist, to be installed on the City's property, Jordan Creek Trail @ Westridge Elementary underpass - north wall, ("Site"), West Des Moines, Iowa.

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

ARTICLE 1: SCOPE OF SERVICES

1.1 General

a) The Artist shall perform all services and furnish all supplies, materials, and equipment as deemed necessary for the completion, transportation, and installation of the Art Work at the Site.
b) The Artist shall inspect the existing substrate and construction of the concrete walls to which the Art Work is to be attached and notify the City of any issues.
c) The Artist shall meet with the City as deemed necessary to coordinate the installation and removal of the Art Work.
d) The Artist shall agree to fully participate in the creation process of a mobile audio guide which the City will use to further enhance and promote the WDMurals exhibit. This creation process may include, but is not limited to, the following: Artist spoken interview, providing photographs of Art Work, and disclosing Artist contact information.

1.2 Artwork Installation

a) The Artist shall notify the City when the Artist is ready to install the Art Work at the Site designated by the City.
b) The Artist agrees to notify the City no fewer than seven (7) days prior to the Artist's intended time of installation to determine the exact schedule of installation.
c) The Artist shall install the completed Art Work at the Site after May 3, 2021, and no later than May 15, 2021.
d) The City shall be responsible for closure of the trail at the Site for the installation of the Art Work.
e) The Artist shall be responsible for all expenses, labor, supplies, materials, and equipment necessary for the installation of the Art Work.

1.3 Term of Agreement

a) The term of this Agreement shall be from May 3, 2021 through March 31, 2022. At the end of the term, the Artist agrees that the Artwork will be painted over and cease to exist at the Site.

1.4 Risk of Loss

a) The risk of loss or damage to the Art Work shall be borne by the Artist throughout the exhibition period. Should the Art Work be damaged by natural elements, an Act of God, vandalism or other process or action, the City may, at its sole option (1) contract with the Artist to repair the Art Work for an additional cost; (2) repair the Art Work itself; or (3) paint over or remove the Art Work prior to March 31, 2022. No damages will be due to the Artist for any alterations made to or removal of the Art Work prior to March 31, 2022.

1.5 Indemnity

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b) Upon installation of the Art Work, the City shall indemnify and hold harmless the Artist from claims or liabilities relating to the maintenance of the Site at which the Art Work is installed, which claims or liabilities arise from and after the date of installation of the Art Work.

c) The Artist shall indemnify and hold the City harmless from any and all costs, claims, liabilities or damages in any manner related to the Artist's breach of the representations and warranties set forth in Article 4 of this Agreement.

ARTICLE 2: COMPENSATION AND PAYMENT SCHEDULE

2.1 Fixed Fee

a) The City shall pay the Artist a stipend of $1,000 which shall constitute full compensation for all fees, services, expenses, supplies, and materials to be performed and furnished by the Artist under this Agreement. The fee shall be paid in full within thirty (30) days after final installation of the Art Work at the Site.

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2.3 Invoices

a) The Artist shall submit an invoice to the City for payment as described in section 2.1. The invoice may be submitted electronically and shall be signed and dated by the Artist.

ARTICLE 3: TIME OF PERFORMANCE

3.1 Duration

a) The services to be required of the Artist as set forth in Article 1 shall be completed in accordance with the schedule for installation of the Art Work as proposed by the Artist and approved by the City pursuant to Section 1.2(c), provided that such time limits may be extended or otherwise modified by written agreement between the Artist and the City.

3.2 Time Extensions

a) The City shall grant a reasonable extension of time to the Artist in the event that there is a delay on the part of the Artist in performing its obligations under this Agreement, or if conditions beyond the Artist's control or Acts of God render timely performance of the Artist's services impossible or unexpectedly burdensome. Likewise, the Artist shall grant a reasonable extension of time to the City in the event that there is a delay on the part of the City in performing its obligations under this Agreement, or if conditions beyond the City's control or Acts of God render timely performance of the City's services impossible or unexpectedly burdensome. Failure to fulfill contractual obligations due to conditions beyond either party's reasonable control will not be considered a breach of contract, provided that such obligations shall be suspended only for the duration of such condition.

ARTICLE 4: WARRANTIES

4.1 Warranties of Title

a) The Artist represents and warrants that:
   1) The Art Work is solely the result of the artistic effort of the Artist;
   2) Except as otherwise disclosed in writing to the City, the Art Work is unique and original and does not infringe upon any copyright;
   3) The Art Work, or a duplicate thereof, has not been accepted for sale elsewhere;
   4) The Art Work is free and clear of any liens from any source.

4.2 Warranties of Quality and Condition

a) The Artist represents and warrants, except as otherwise disclosed to the City in writing in connection with the submission of the Application and pursuant to Article 1, that:
   1) The execution and fabrication of the Art Work will be performed in a workmanlike manner;
   2) The Art Work, as fabricated and installed, will be free of defects in material and workmanship, including any inherent defects or qualities which cause or accelerate deterioration of the Art Work.

ARTICLE 5: INSURANCE

5.1 Artist Insurance

a) The Artist and all employees of the Artist shall maintain insurance to protect the Artist from claims under workers' compensation acts; claims for damages because of bodily injury including personal injury, sickness or disease, or death of any of the Artist's employees or of any person other than the Artist's employees; and from claims for damages because of injury to or destruction of tangible property; including loss of use

resulting there from; and from claims arising out of their performance of professional services caused by errors, omissions, or negligent acts for which the Artist is legally liable.

ARTICLE 6: REPRODUCTION RIGHTS

6.1 General

a) The Artist retains all rights under the Copyright Act of 1976, 17 U.S.C., 101 et. seq., and all other rights in and to the Art Work including ownership and possession. The Artist grants to the City the right to photograph and reproduce images of the Art Work for promotional and educational purposes.

6.2 Notice

a) All reproductions by the City shall contain a credit to the Artist and a copyright notice substantially in the following form: © [Artist's Name], year of publication.

ARTICLE 7: ARTIST'S RIGHTS

7.1 Identification

a) The City shall, at its expense, prepare and install at the Site a plaque identifying the Artist, the title of the Art Work, the year of completion, and the City of West Des Moines Public Art Program; and shall reasonably maintain such notice to the extent as may be practicable.

7.2 Maintenance

a) The City recognizes that maintenance of the Art Work on a regular basis is essential to the integrity of the Art Work. The Artist shall submit reasonable maintenance recommendations to the City, and the City shall take such action to reasonably assure that the Art Work is properly maintained and protected, taking into account the Artist's recommendations.

7.3 Alteration of the Work

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7.4 Record

a) The City shall maintain a record of this Agreement and the location and disposition of the Art Work.

ARTICLE 8: ARTIST AS INDEPENDENT CONTRACTOR

a) The Artist shall perform all work under this Agreement as an independent contractor and not as an agent or an employee of the City. The Artist shall not be supervised by

any employee or official of the City, nor shall the Artist exercise supervision over any employee or official of the City.

ARTICLE 9: ASSIGNMENTS, TRANSFER, SUBCONTRACTING

9.1 Transfer of Agreement

a) Neither this Agreement nor any interest herein shall be transferred by the Artist.

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a) The Artist may subcontract portions of the services to be provided hereunder relating to the installation of the Art Work at the Artist's expense provided that said subcontracting shall not negatively affect the design, appearance, or visual quality of the Art Work and shall be carried out under the personal supervision of the Artist. The Artist must obtain approval from the City prior to hiring any subcontractor who will assist with the installation process. This approval may be achieved via electronic correspondence.

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a) All notices, requests, demands and other communications which are required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given upon the delivery or receipt thereof, as the case may be, if delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, as follows:

1) if to the City, to:

Allison Ullestad, Arts, Culture & Enrichment Supervisor
City of West Des Moines
P.O. Box 65320
West Des Moines, IA 50265

2) if to the Artist, to:

Christine Hilbert
310 N 7th Street
Winterset, IA 50273

ARTICLE 13: MISCELLANEOUS

This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all negotiations, preliminary agreements and all prior and contemporaneous discussions, agreements and understandings of the parties in connection with the subject matter hereof. No amendment, change or modification of any of the terms, provisions or conditions of this Agreement shall be effective unless made in writing and signed or initialed by all parties. Waiver of any provision of this Agreement shall not be deemed a waiver of future compliance therewith and such provision shall remain in full force and effect. In the event any provision of this Agreement is held invalid, illegal or unenforceable, in whole or in part, the remaining provisions of this Agreement shall not be affected thereby and shall continue to be valid and enforceable. This Agreement shall be governed by and construed in accordance with the laws of the State of Iowa. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective legal representatives, heirs, successors and permitted assigns. Nothing in this Agreement, express or implied, is intended to confer upon any party, other than the parties hereto (and their respective heirs, legal representatives, successors and permitted assigns), any rights, remedies, obligations or liabilities under or by reason of this Agreement. In addition to any other remedies available at law or in equity to the parties hereto with respect to a breach hereof, the parties hereto each reserve the right to enforce this Agreement by specific performance. The titles or captions of paragraphs in this Agreement are provided for convenience of reference only, and shall not be considered a part hereof for purposes of interpreting or applying this Agreement and such title or captions do not define, limit, extend, explain or describe the scope or extent of this Agreement or any of its terms or conditions. Words and phrases herein shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender, according to the context. Each of the parties hereto hereby irrevocably waives all right to trial by jury in any action, proceeding or counterclaim arising out of or relating to this Agreement.

Remainder of Page Left Blank – Signatures on following page.

ARTIST

Christine Hilbert

4/20/21
Date

CITY

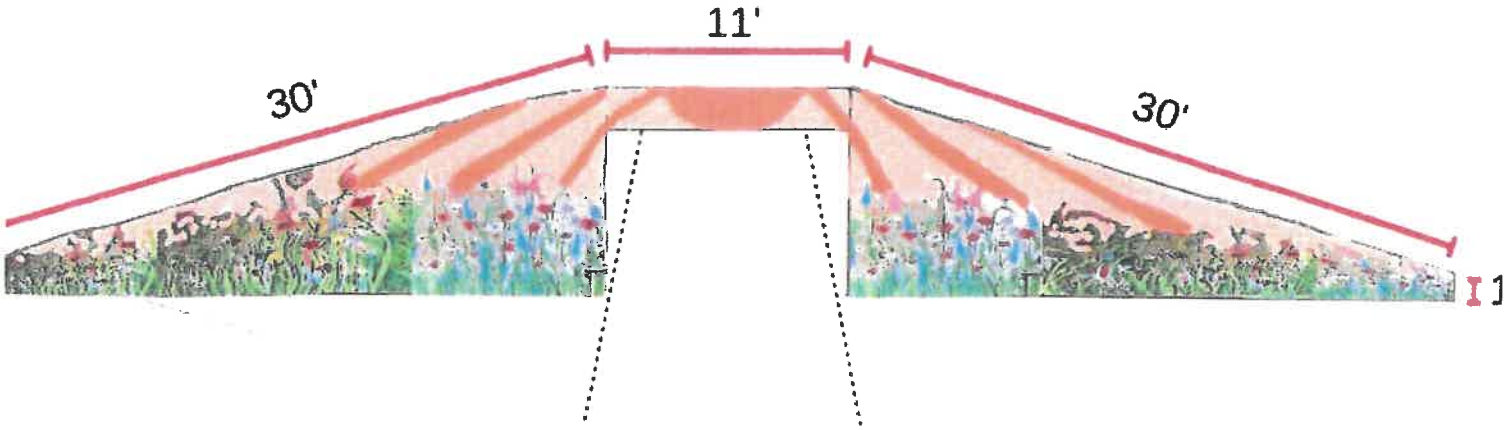
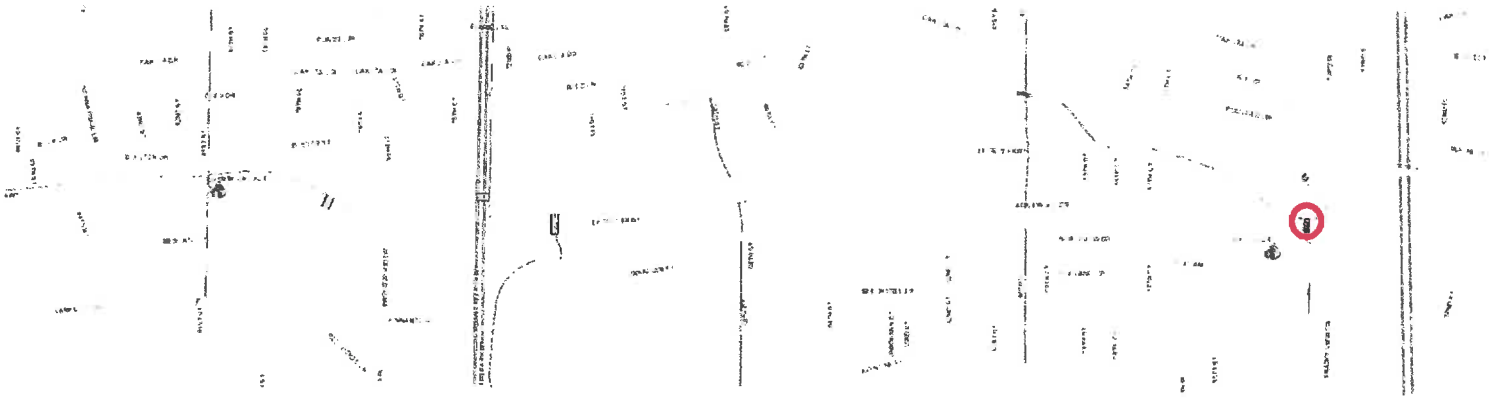
Sally Ortgies, Director of Parks and Recreation Department
City of West Des Moines

Date

Exhibit A

Wildflower Wonderland

This tunnel mural will feature an array of bright and vibrant wildflowers against a background of coral and pink sun rays. Inspired by the natural wildflowers growing along the trails, the mural will offer a joyful backdrop as well as a desirable place to stop for photos or simply rest. The bright and bold flowers will climb between 3-4 feet in height, along with small trees and branches going higher. The entire composition will be on a background of alternating pink and coral rays representing Iowa's stunning summer sunsets. The sunshine will be centered above the tunnel entrance with rays radiating from that central point. There will be various woodland creatures peeking out among the foliage including rabbits, native birds, butterflies, and bees. These add visual interest and surprise as well as creating a fun search-and-find effect for families to stop and experience the mural up close. The mural captures the prairies' natural beauty while bringing it into a more urban setting.



Underpass location: Jordan Creek Trail @ Westridge Elementary (North wall)