CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

DATE: April 17, 2023

ITEM: Motion – Approval of Artists and Artwork Locations – 2023 WDMurals

FINANCIAL IMPACT: Expense of $18,000 for the artist stipends ($2,000 per new mural) and $300 for the Best in Show award for a total of $18,300. This amount is included in the FY 21-22 public art fund.

SYNOPSIS: The Commission is sponsoring the third, temporary WDMurals exhibit from May 2023 through March 2024. The WDMurals Selection Committee meeting was held on Tuesday, March 7, to review and score 24 proposals that were submitted by 20 artists/artist groups from Iowa. For comparison, 37 proposals by 21 artists/artist groups were submitted for the 2022 WDMurals exhibit.

The selection committee members included: Diane Boyd (Commission member), Ryan Crane (Commission member), Missy Berg (Bicycle Advisory Commission member), Joe Moose (WDM Engineering Department), and Tricia Kubicek (Citizen, Artist).

Nine entries were selected to be installed on trail underpass entrance/exit walls. *The mural "Escape" won the 2022 Best in Show Award and will remain in place for the duration of the 2023 WDMurals exhibit. Therefore, five trail underpasses will be the location of 10 (9 new, 1 old) total murals. The committee's recommendations include:

Entry Name	Artist Name	Mural Location
Connection	Lauren Pesta	1
We Are the Fire	Damen LaPalm	2
Murmuration	Ebisu	3
Escape*	Brandon Hopper	4
Winds of Community	Lindsay Drew	5
I'll Be There for You	Ally Frame	6
Communal Space	Emily Lawson/Ally Frame	7
Our Community	Dani Awesome/Cat Rocketship	8
The Power to Change an Inner World	Kathleen Roling	9
Patchwork	Brandon Hopper	10

BACKGROUND: The seven contracts are attached for your information. A map of the proposed locations is also included and is part of the recommendation. The artists will paint their murals May 1-30, 2023.

OUTSTANDING ISSUES (if any): None

RECOMMENDATION: The Commission approves the recommendation of the 2023 WDMurals selection committee.

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

STAFF REVIEWS

Department Director	Ryan Penning, Director of Parks and Recreation RP
Appropriations/Finance	Tim Stiles, Finance Director
	Richard Scieszinski, City Attorney
Agenda Acceptance	

PUBLICATION(S) (if applicable)

Published In	
Dates(s) Published	

SUBCOMMITTEE REVIEW (if applicable)

Committee	PAAC		
Date Reviewed	March 23, 2023		
Recommendation	Yes	No	Split

CITY OF WEST DES MOINES PUBLIC ART PROGRAM
2023 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 Lauren Pesta ("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 1, 2023, and no later than May 30, 2023.
d) 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 1, 2023 through March 31, 2024. 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, 2024. No damages will be due to the Artist for any alterations made to or removal of the Art Work prior to March 31, 2024.

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 $2,000 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 conditions.

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:

Lauren Pesta
2615 Center Street
Des Moines, IA 50312

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 neutral 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

Lauren Pesta
Lauren Pesta

04.11.2023
Date

CITY

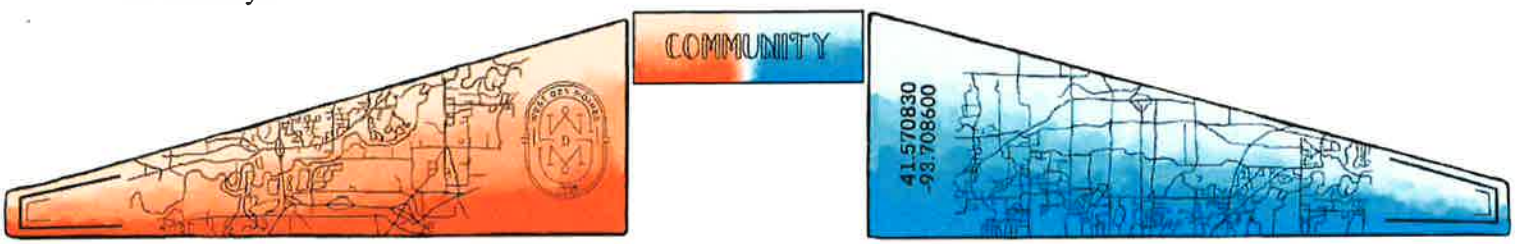
Ryan Penning, Director of Parks and Recreation Department
City of West Des Moines

Date

Exhibit A

1 CONNECTION

"The energy that exists between people when they feel seen, heard and valued." Connection, by Brene Brown. Her quote is exactly the feeling behind my mural and a big part of all of my work. A Community is about being connected with each other! Not just geographically but through growth over time through, HISTORY! I chose to use different hues of blues and oranges to represent the water in West Des Moines like Blue Heron Lake and Raccoon River. I used different values of oranges to highlight the beautiful sunsets and sunrises. When researching the history of West Des Moines I found the logo for the historical society I decided to add the date 1938 on the lower section to honor the year the new name of West Des Moines was given. And the latitude and longitude are for the location of 137 5th Street, where the first city hall was constructed in 1905 when it was the city of Valley Junction. The map is of the current geography. I wanted to give a historical reference with the numbers but also show the current roads and waterways to show the connection through the community!



1 **Connection** - Lauren Pesta
2 **We Are the Fire** - Damen LaPalm
3 **Murmuration** - Ebisu
4 **Escape** - Brandon Hopper*
5 **Winds of Community** - Lindsay Dew

6 **I'll Be There for You** – Ally Frame
7 **Communal Space** - Emily Lawson/Ally Frame
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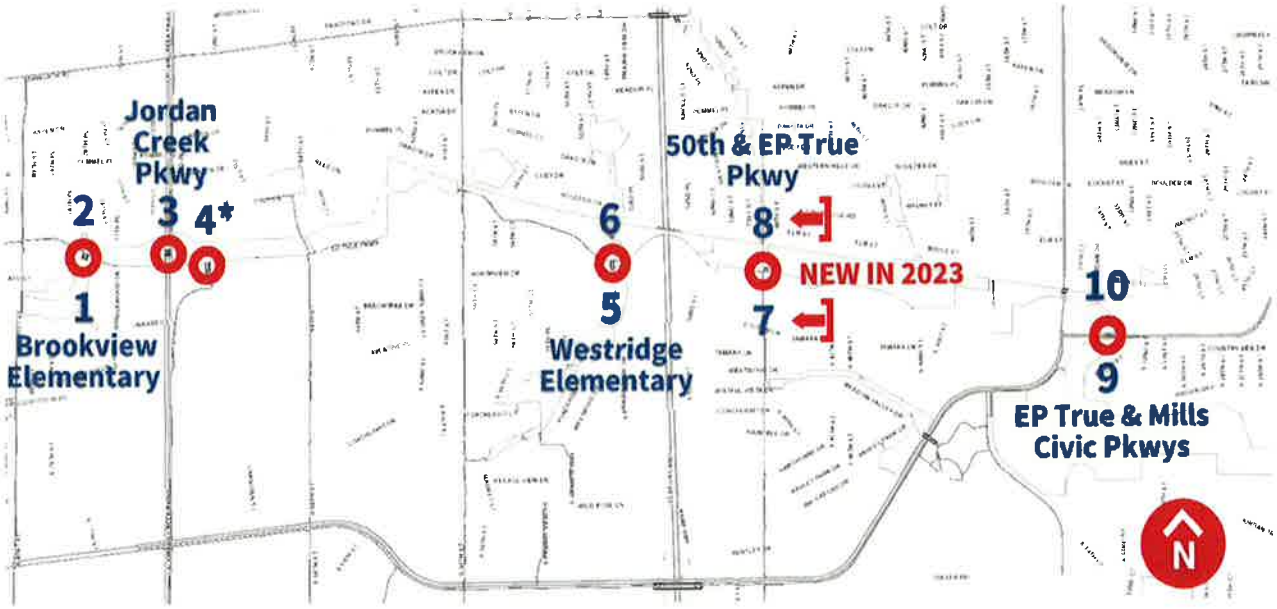
9 **The Power to Change an Inner World** - Kathleen Roling
10 **Patchwork** - Brandon Hopper



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2023 WDMurals – Art Exhibition
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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.

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
4522 University Avenue
Unit #1
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 neutral 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

03/31/23

Date

CITY

Ryan Penning, Director of Parks and Recreation Department
City of West Des Moines

Date

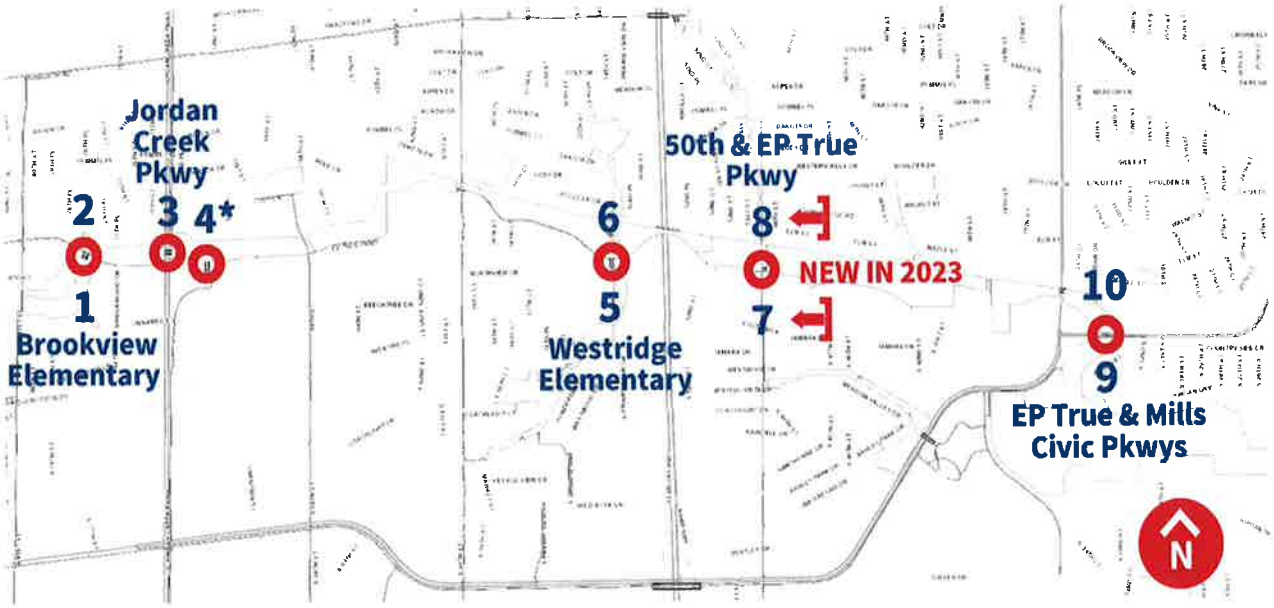
Exhibit A

2 WE ARE THE FIRE

What is acceptance? When do we look inward? Who are the ones who make a community? It's you, it's me, it's everyone. We are the builders, the creators, the poets. We are the voice and the breath. We are the sound and the action. We are the path and the guidance. We are all colors and all identities. We are the Fire. And as equals we burn bright; like the stars in the sky with our feet on the ground.

1 **Connection** – Lauren Pesta
2 **We Are the Fire** - Damen LaPalm
3 **Murmuration** - Ebisu
4 **Escape** - Brandon Hopper*
5 **Winds of Community** - Lindsay Dew

6 **I'll Be There for You** – Ally Frame
7 **Communal Space** - Emily Lawson/Ally Frame
8 **Our Community** - Dani Austen/Cat Rocketship
9 **The Power to Change an Inner World** - Kathleen Roling
10 **Patchwork** - Brandon Hopper



CITY OF WEST DES MOINES PUBLIC ART PROGRAM
2023 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 Paxton Williams (Ebisu) ("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 Jordan Creek Parkway underpass – east 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 1, 2023, and no later than May 30, 2023.
d) 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 1, 2023 through March 31, 2024. 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, 2024. No damages will be due to the Artist for any alterations made to or removal of the Art Work prior to March 31, 2024.

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 $2,000 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 conditions.

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:

Paxton Williams (Ebisu)
1420 Oakland Road NE
Apt. #13
Cedar Rapids, IA 52402

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 neutral 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

Paxton Williams

Paxton Williams (Ebisu)

3/29/23

Date

CITY

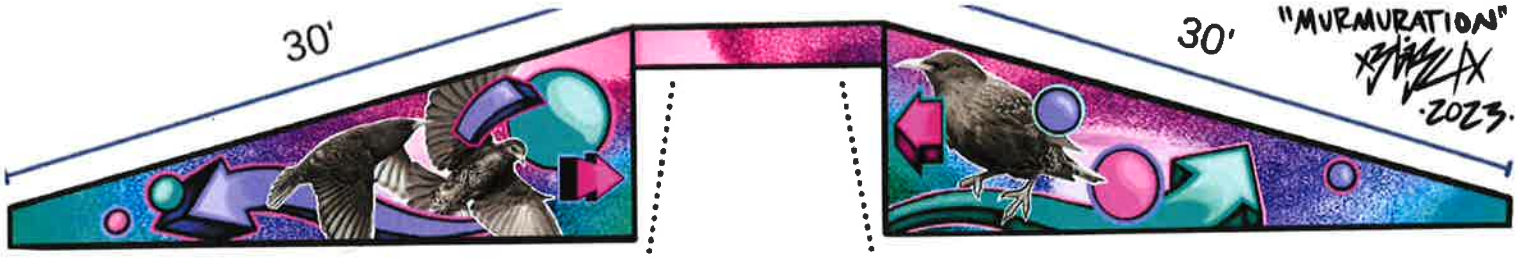
Ryan Penning, Director of Parks and Recreation Department
City of West Des Moines

Date

Exhibit A

3 MURMURATION

"Murmuration" - the behavior observed in Starlings of flocking in dense numbers and creating formations in the sky by dancing around one another. Starlings use this technique to fend off larger predators, and keep warm in the evenings. The use of a bright, colorful background enhances the focus of the murmurations, while the larger birds are done in grayscale to set themselves back into the group. The abstract arrows help to illustrate their motion, while the circles represent unity. There is something to be learned from these murmurating Starlings, using the power of a united community to take care of the collective.



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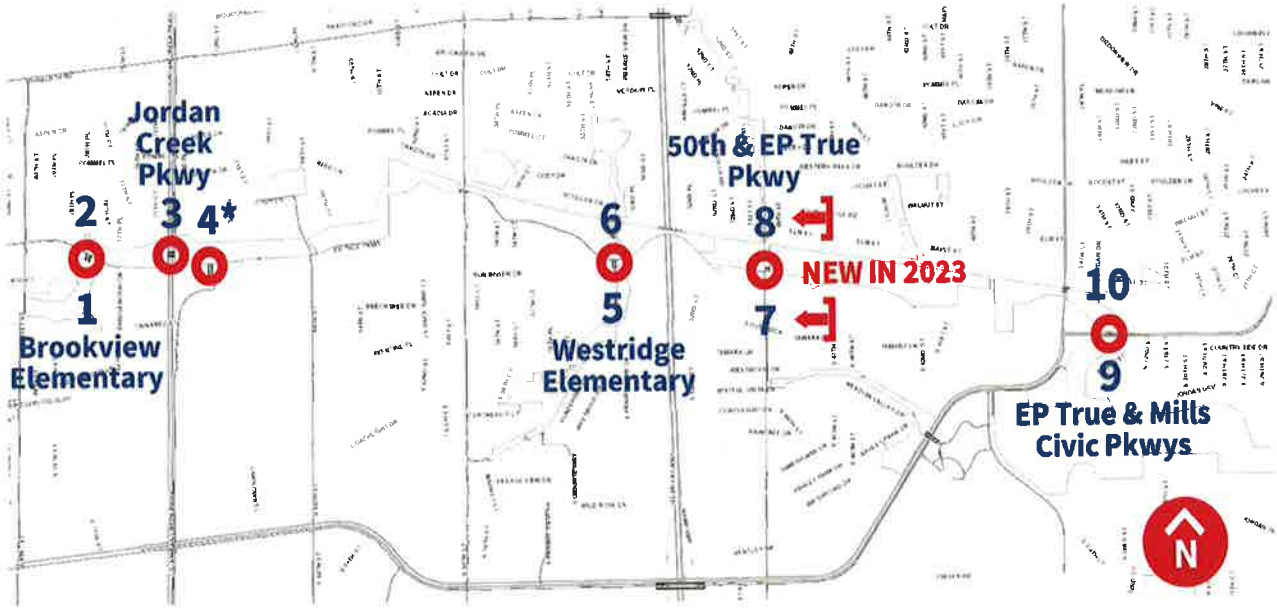


CITY OF WEST DES MOINES PUBLIC ART PROGRAM
2023 WDMurals – Art Exhibition
AGREEMENT BY AND BETWEEN CITY AND ARTIST

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 Lindsay Dew ("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, Westridge Greenway Trail at EP True 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 1, 2023, and no later than May 30, 2023.
d) 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 1, 2023 through March 31, 2024. 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, 2024. No damages will be due to the Artist for any alterations made to or removal of the Art Work prior to March 31, 2024.

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 $2,000 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 conditions.

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:

Lindsay Dew
801 54th Street
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 neutral 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

Lindsay Dew

3/28/23

Lindsay Dew

Date

CITY

Ryan Penning, Director of Parks and Recreation Department
City of West Des Moines

Date

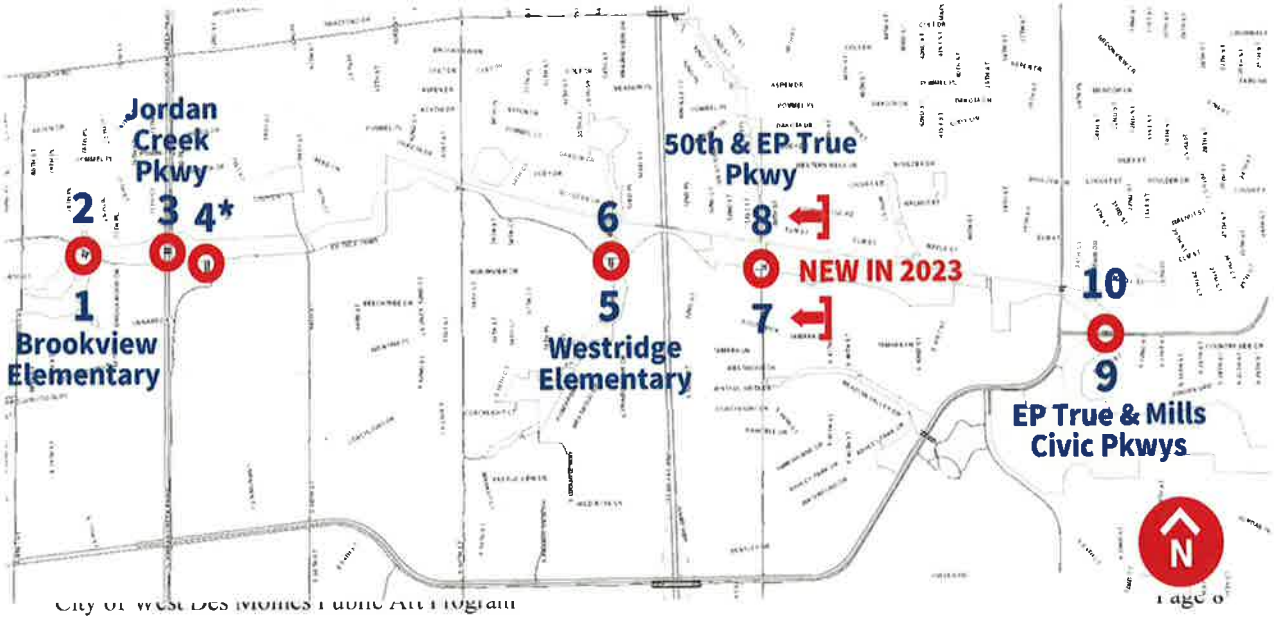
Exhibit A

5 WINDS OF COMMUNITY

"Winds of Community" looks at community through symbolism of nature. Our community is vast and offers so many unique experiences. One thing we all share in our great city is what nature gives us. The beauty of the sky, human form, life the trees bring and the wind that touches us each day.

1 **Connection** – Lauren Pesta
2 **We Are the Fire** – Damen LaPalm
3 **Murmuration** - Ebisu
4 **Escape** - Brandon Hopper*
5 **Winds of Community** - Lindsay Dew

6 **I'll Be There for You** – Ally Frame
7 **Communal Space** - Emily Lawson/Ally Frame
8 **Our Community** - Dani Austen/Cat Rocketship
9 **The Power to Change an Inner World** - Kathleen Roling
10 **Patchwork** - Brandon Hopper



CITY OF WEST DES MOINES PUBLIC ART PROGRAM
2023 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, Westridge Greenway Trail at EP True 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 1, 2023, and no later than May 30, 2023.
d) 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 1, 2023 through March 31, 2024. 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, 2024. No damages will be due to the Artist for any alterations made to or removal of the Art Work prior to March 31, 2024.

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 $3,000 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 conditions.

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
Apt. 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 neutral 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

Ally Frame

April 1, 2023

Date

CITY

Ryan Penning, Director of Parks and Recreation Department
City of West Des Moines

Date

Exhibit A

6 I'LL BE THERE FOR YOU

My mural turns the bike path into a larger than life comic strip that illustrates one example of how our community supports each other in a fun way that both kids and adults can engage with. It features a dog enjoying his day when disaster strikes and his home is destroyed. His neighbors and community rally together to rebuild his home and build lasting friendships too.

1 **Connection** - Lauren Pesta
2 **We Are the Fire** - Damen LaPalm
3 **Murmuration** - Ebisu
4 **Escape** - Brandon Hopper*
5 **Winds of Community** - Lindsay Dew

6 **I'll Be There for You** - Ally Frame
7 **Communal Space** - Emily Lawson/Ally Frame
8 **Our Community** - Dani Austen/Cat Rocketship
9 **The Power to Change an Inner World** - Kathleen Roling
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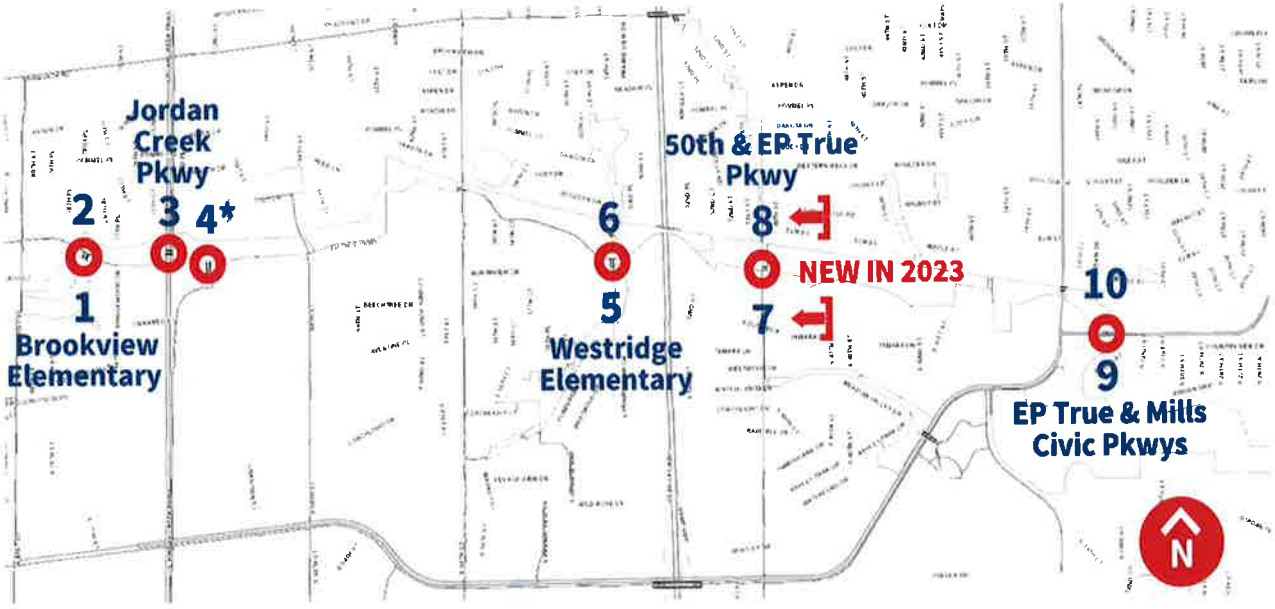


CITY OF WEST DES MOINES PUBLIC ART PROGRAM
2023 WDMurals – Art Exhibition
AGREEMENT BY AND BETWEEN CITY AND ARTIST

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 Emily Lawson ("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 50th Street underpass – east 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 1, 2023, and no later than May 30, 2023.
d) 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 1, 2023 through March 31, 2024. 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, 2024. No damages will be due to the Artist for any alterations made to or removal of the Art Work prior to March 31, 2024.

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 conditions.

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:

Emily Lawson
5221 Village Run Avenue
Unit 401
Des Moines, IA 50317

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 neutral 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

Emily Lawson

Emily Lawson

03/28/2023

Date

CITY

Ryan Penning, Director of Parks and Recreation Department
City of West Des Moines

Date

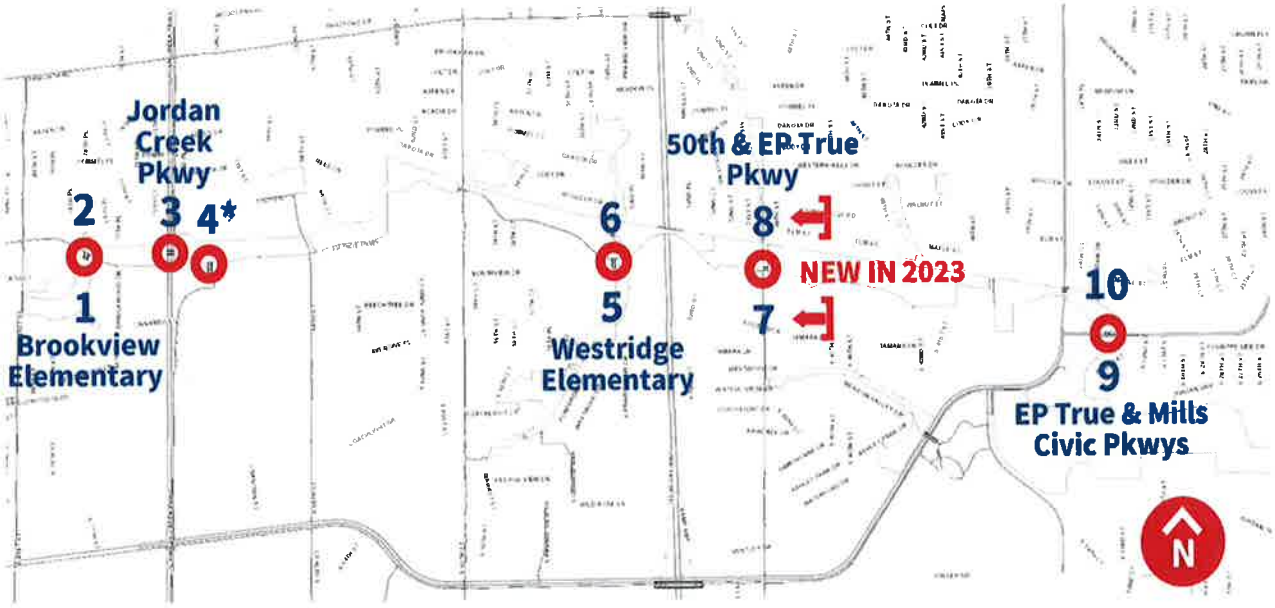
Exhibit A

7 COMMUNAL SPACE

Our inspiration behind this mural is celebrating the idea that in this vast, ever-expanding universe, we have the privilege of finding ourselves together in this community; and that ultimately finding community could give our viewers a touchstone for hope, meaning, and purpose. We are not alone, we are in this together. It also serves as a reminder that while we have our little community here we are also part of a larger community - the world. We're all in this together and need to work together to make positive changes around the globe. Using bright colors, illustrative elements, and a cut-and-paste aesthetic we aim to keep the overall feeling of the mural lighthearted and joyful, while the deeper messaging of "I'm here" "and so are you" on the Earth could be a really meaningful reminder of connection for the viewer.

1 **Connection** – Lauren Pesta
2 **We Are the Fire** – Damen LaPalm
3 **Murmuration** - Ebisu
4 **Escape** - Brandon Hopper*
5 **Winds of Community** – Lindsay Dew

6 **I'll Be There for You** – Ally Frame
7 **Communal Space** - Emily Lawson/Ally Frame
8 **Our Community** - Dani Austen/Cat Rocketship
9 **The Power to Change an Inner World** - Kathleen Roling
10 **Patchwork** - Brandon Hopper



CITY OF WEST DES MOINES PUBLIC ART PROGRAM
2023 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 Cat Rocketship ("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 50th Street underpass – west 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 1, 2023, and no later than May 30, 2023.
d) 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 1, 2023 through March 31, 2024. 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, 2024. No damages will be due to the Artist for any alterations made to or removal of the Art Work prior to March 31, 2024.

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 $2,000 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 conditions.

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:

Cat Rocketship
3510 Jefferson Avenue
Des Moines, IA 50310

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 neutral 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

Cat Rocketship

Cat Rocketship

4/10/23

Date

CITY

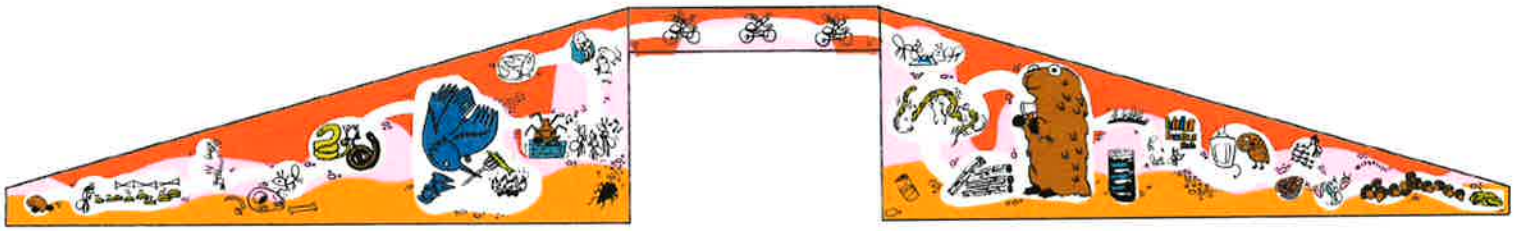
Ryan Penning, Director of Parks and Recreation Department
City of West Des Moines

Date

Exhibit A

8 OUR COMMUNITY

In Our Community, we take a look at a number of fossorial (burrowing or underground dwelling) animals found in Iowa. From the ants making art and attending a dance party to the burrowing owl watching a little TV, the creatures in this mural are participating in many of the activities that our community is invested in. Though the animals are stylized in a fun and friendly way, they are each representative of a species native to this area. The colorful mural will bring humor and joy to trail users.



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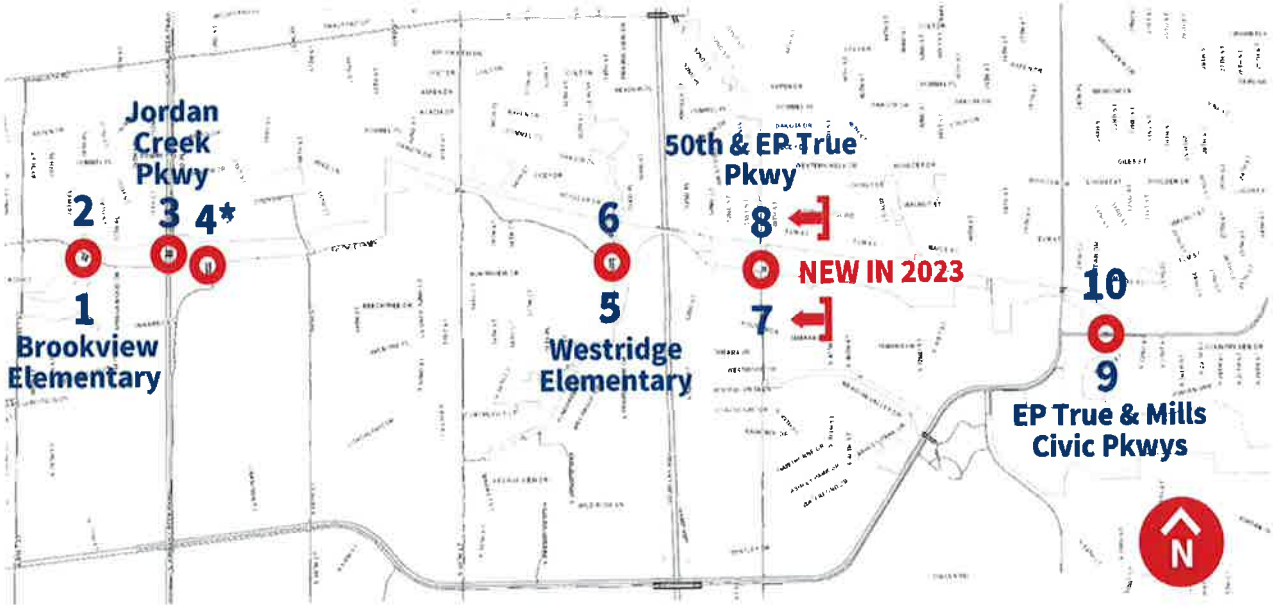

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AGREEMENT BY AND BETWEEN CITY AND ARTIST

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WITNESSETH:

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

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1.1 General

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2.1 Fixed Fee

a) The City shall pay the Artist a stipend of $2,000 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.

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a) The Artist represents and warrants that:
   1) The Art Work is solely the result of the artistic effort of the Artist;
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   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.

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   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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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.

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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:

Kathleen Roling
5616 Hickman Road, 5
Des Moines, IA 50310

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 neutral 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

_____ _____

Kathleen Roling Date

CITY

_____ _____

Ryan Penning, Director of Parks and Recreation Department Date
City of West Des Moines

Exhibit A

9 THE POWER TO CHANGE AN INNER WORLD

I have interpreted the theme "Our Community" with bold symbolism of unity and diversity. The graphic style is aesthetically pleasing with high contrast and saturated colors. The two hands placed on both sides of the tunnel entrance represent different kinds of people who choose to come together to form a whole heart. They are placed in a way that it is the walkway where people travel that unites the two hands as one heart. The community walking through the tunnel complete the artwork, and are part of the art themselves. The hands also represent the embrace of the community members that might be walking through the tunnel. The different colors of hands symbolize the diversity of the different souls that make up the community of West Des Moines in a way that celebrates the uniqueness of individuals. The variety of bold flowers also represent the diversity of the community as a symbol that is more than external quality, but even internal. The uniqueness of every mind and heart is celebrated in this design. The graphic lines emanating from the tunnel represent the power of change each member of the community that walks through the tunnel carries. As they release that power within them, they reach out to the flowers and energize them, helping them grow, representing the power to help every internal world they touch to flourish like a beautiful bloom.

1 **Connection** – Lauren Pesta
2 **We Are the Fire** – Damen LaPalm
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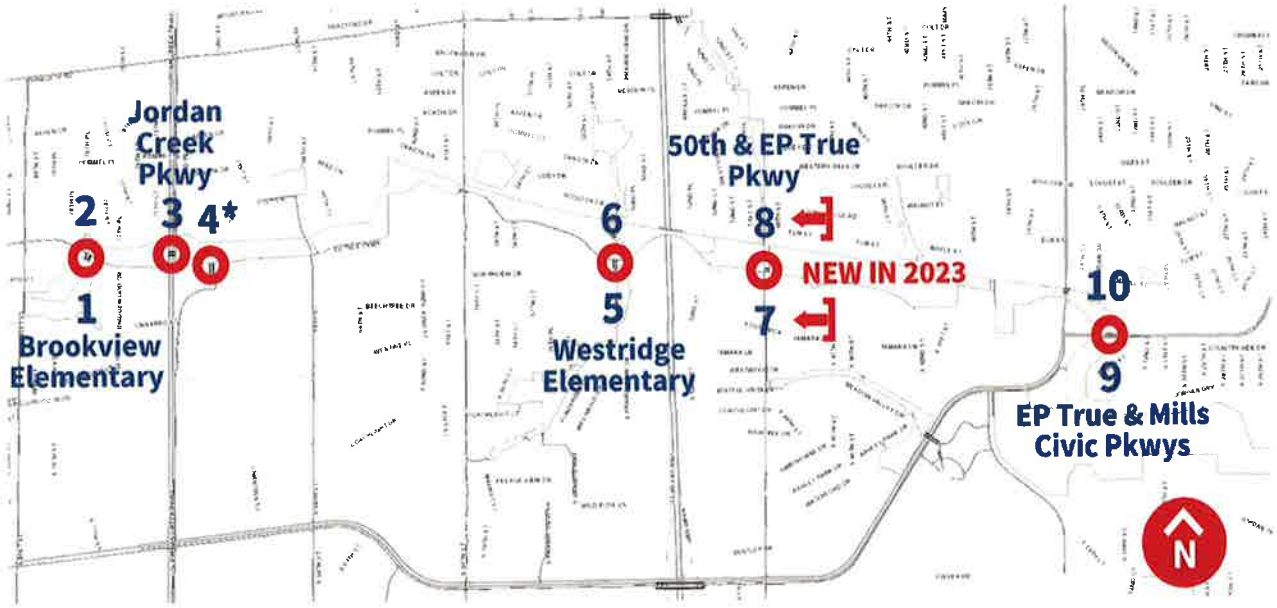

CITY OF WEST DES MOINES PUBLIC ART PROGRAM
2023 WDMurals – Art Exhibition
AGREEMENT BY AND BETWEEN CITY AND ARTIST

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 Brandon Hopper ("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 EP True Parkway and Mills Civic 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 1, 2023, and no later than May 30, 2023.
d) 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 1, 2023 through March 31, 2024. 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, 2024. No damages will be due to the Artist for any alterations made to or removal of the Art Work prior to March 31, 2024.

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 $2,000 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 conditions.

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:

Brandon Hopper
415 7th Street
108
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 neutral 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

Brandon Hopper

Brandon Hopper

4/7/2023

Date

CITY

Ryan Penning, Director of Parks and Recreation Department
City of West Des Moines

Date

Exhibit A

10 PATCHWORK

Our community is made up of a variety of different parts and pieces. We are made up of people from all different places, each with something unique to contribute. We are woven together like an intricate patchwork telling our story. The pattern is inspired by quilting and is reminiscent of aerial views of Iowa. This piece represents the diversity and community of West Des Moines.

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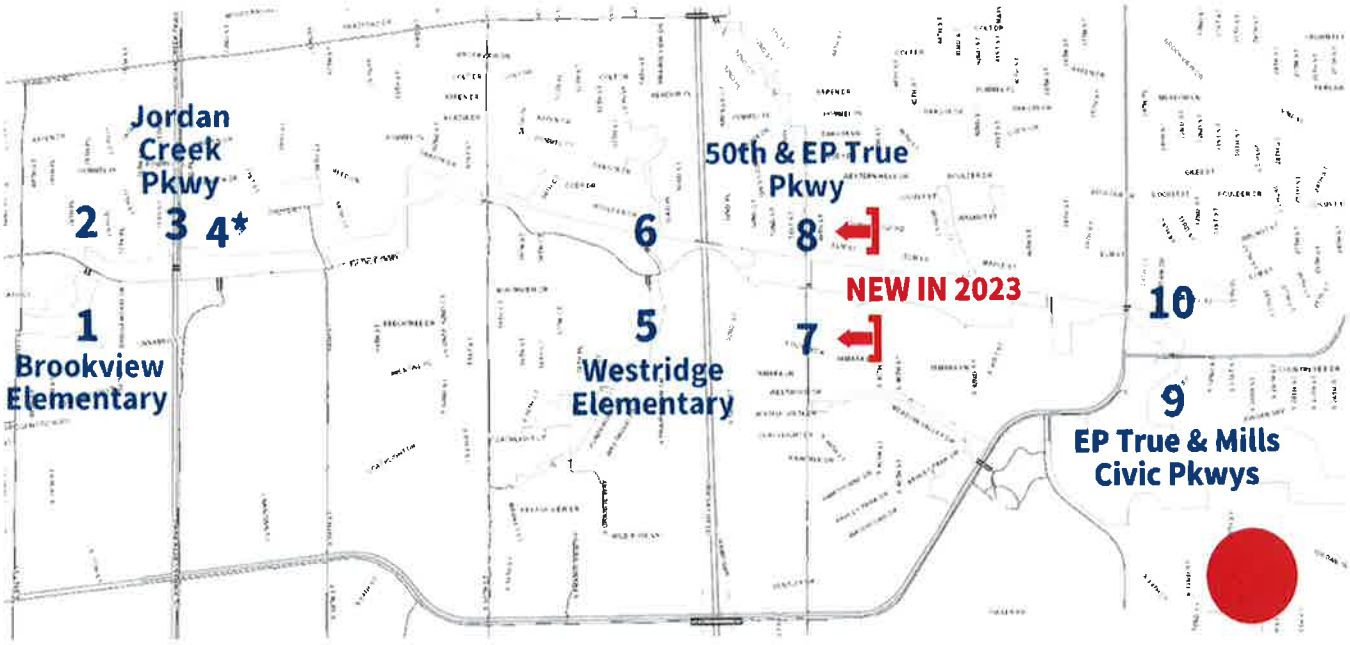
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