

City of Jasper, Indiana
AGREEMENT FOR CREATION OF ARTWORK
AND RELATED MATTERS

THIS AGREEMENT is made and entered into as of the _____ day of _____, 2015 (the Effective Date of the Agreement) by and between

OWNER: The City of Jasper, Indiana, acting by and through its Jasper Community Arts Commission
and

ARTIST: _____

OWNER and ARTIST, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1 – TERMS AND GENERAL INFORMATION

1.01 **TERMS.** Terms used in this Agreement and printed with initial or all capital letters will have the meanings indicated in the General Conditions, which are applicable to both the singular and plural thereof.

1.02 **WORK AND CONTRACT OBLIGATIONS.** The Jasper Community Arts Commission has been designated by the City of Jasper to pursue the placement of public art in public spaces. ARTIST has been selected to create and install the artwork hereinafter described and referred to as "WORK." The PROJECT is generally described as follows:

A. Project Description/Objective:

ARTIST will design and be involved in supervising, painting, and sealing a mural on the assigned surface as described in the Call for Muralists. The mural will be celebrated as a new public art installation. A catalyst for this mural has been a longing for a project with community involvement. As this is a community project, Jasper Community Arts will promote the painting of the mural as such. Jasper Community Arts employees and volunteers are intended to be involved with painting the mural. Extent of involvement will be coordinated between the artist and Mural Committee.

B. Project Specifications (preliminary):

The mural location _____
Dimensions _____
Surface finish _____

Mural must be finished by _____, 2015 (Implementation window is _____ 2015.)

C. Relevant Attitudes/Beliefs Regarding the Area/Organizers:

ARTIST shall strive to create a mural designed to maintain and draw a younger demographic to the area; to inspire the diversity, affordability, and accessibility of our expanding community. As Jasper has an existing mural portraying our history, the new mural should not necessarily be an interpretation of our past, present, or future.

D. Desired Brand Attributes:

No specific subject matter requirement has been included in the project terms. The ARTIST is encouraged to consider concepts that are amusing, clever, focused on renewal, and portray diversity, in considered themes. The underlying idea should include a celebration of the arts and creativity. Having the mural cover the entire height or width of the building is not a requirement; however, the mural should accentuate the size of the building. **The Mural Committee does not want a literal image of aspects of life in the Jasper area.**

E. Mandatory Design Elements:

The art must be apolitical, non-religious, exclude advertising, and should not center on government. The art work should include minimal or no text. There shall be included **NO** vulgar, profane, discriminatory, violent,

or pornographic references. Varied artistic styles are permitted. Artist may wish to incorporate architectural elements into the design.

F. Key Dates:

1. Artist final design approved on or before July 20, 2015.
2. Estimated time frame for painting of mural mid-September to mid-October 2015.

G. Assumptions: This proposal assumes the Jasper Community Arts Commission will make all necessary submittals to local municipality.

- 1.03 **PROJECT.** The Project for which the WORK and Contract Obligations under the Contract Documents may be the whole or only a part is generally described as follows:

City of Jasper Community Mural Project

- 1.04 **OWNER'S REPRESENTATIVE.** The OWNER'S REPRESENTATIVE is: Kit Miracle, Director of City of Jasper Arts Department, 951 College Avenue, Jasper, Indiana 47546; phone (812) 482-3070.

The OWNER'S REPRESENTATIVE is appointed and authorized by the OWNER to perform and exercise certain administrative authority for the Project on OWNER'S behalf.

- 1.05 **INDEPENDENT CONTRACTOR STATUS:**

- A. The ARTIST is engaged as an independent contractor and will be responsible for any federal, state, and local taxes and fees applicable to payment.
- B. The ARTIST, and its subcontractors and employees, are not employees of the City of Jasper and are not eligible for any benefits through the City, including, without limitation, federal Social Security, health benefits, workers' compensation, unemployment compensation, and retirement benefits.

ARTICLE 2 - CONTRACT PRICE

- 2.01 OWNER shall pay ARTIST for satisfactory completion and performance of the WORK and fulfillment of all other Contract Obligations an amount in current funds equal to the sum of the amounts determined as set forth below:

For all Work other than Unit Price Work, a Lump Sum of:

ARTIST COMMISSION:	\$4,000.00
MATERIALS BUDGET:	\$1,500.00

(Left over materials shall become the possession of OWNER). All specific cash allowances are included in the above price. The listed compensation shall constitute full compensation for all work, permits, inspections, and insurance required to complete the project.

ARTIST estimates the following fee breakdown by phase:

Design Development/Construction Documents:	\$4,000
Bidding/Construction Administration:	<u>\$1,500</u>
Fee Total:	\$5,500

Additional site trips or services requested beyond those listed above will be provided at the following hourly rates or negotiated separately.

ARTIST shall complete all WORK and perform and fulfill all other Contract Obligations in strict accordance with the Contract Documents.

- 2.02 The Contract Price, however determined, shall be deemed full and complete compensation for all direct and indirect costs for the WORK, including, without limitation, all materials, labor, supervision, equipment, transportation, warranties,

repairs, replacement, testing, start-up, training, overhead and profit, and all liabilities, responsibilities, and Contract Obligations assigned to or assumed by ARTIST under the Contract Documents in respect of the WORK.

ARTICLE 3 - CONTRACT TIMES

- 3.01 **SUBSTANTIAL/FINAL COMPLETION.** ARTIST shall perform the WORK and other Contract Obligations regularly, diligently, and uninterruptedly, and at such a rate of progress, and in such other manner as required to achieve Substantial Completion within 180 calendar days after the date when the Contract Time(s) commence.
- 3.02 **TERMINATION.** This Agreement may be terminated by submitting thirty (30) days written notice to the non-terminating party of such intent to terminate. In the event of termination, payment for services rendered up to and including the date of termination shall be based upon the work completed at the rates and conditions identified in this Agreement.
- 3.03 ARTIST and OWNER mutually understand and agree that the times for commencement of the WORK and any and all other Contract Times specified by this Agreement or other Contract Documents are essential conditions of this Agreement and the Contract, and that such Contract Times are reasonable and take into account any and all risks, limitations, adverse conditions, and Contract Obligations assumed by ARTIST under the Contract Documents.

ARTICLE 4 – INDEMNIFICATION

- 4.01 **ARTIST LIABILITY.** ARTIST agrees to indemnify and hold harmless the OWNER and their agents and employees from and against all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from the performance of the WORK, provided that any such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease, or death, or injury to or destruction of tangible property, including the loss of any use resulting therefrom; and is caused in whole or in part by any negligent or willful act or omission of the ARTIST, or any of its subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable. Artist liability specifically does not extend to any negligent or willful act or omission of any volunteer solicited by Owner.

In any and all claims against the OWNER and any of their agents or employees, by any employee of the ARTIST, any of its subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the ARTIST or any of its subcontractors under workmen's compensation acts, disability benefits acts, or other employee benefit acts.

- 4.02 **OWNER'S LIABILITY.** OWNER shall indemnify and hold harmless ARTIST against claims, damages, losses, and expenses, including attorneys' fees, to the extent caused by OWNER'S negligent acts, errors, or omissions from the performance of services under this Agreement.

In any and all claims against the ARTIST and any of their agents or employees, by any employee of the OWNER, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the ARTIST, or any of its subcontractors, under workmen's compensation acts, disability benefits acts, or other employee benefit acts.

ARTICLE 5 - PAYMENT PROCEDURES

APPLICATIONS FOR PAYMENT. ARTIST'S Applications for Payment shall be submitted within no less than five (5) days prior to the regularly scheduled monthly meeting of the Jasper Community Arts Commission for approval by the Commission. Said Commission meets on the 1st Tuesday of each month. Claims shall be paid within seven (7) business days following approval at said meeting.

ARTICLE 6 – ASSIGNMENT

ARTIST shall not assign this Agreement, in whole or in part, or any right or obligation, without the prior written approval of the OWNER.

ARTICLE 7 – OWNERSHIP OF WORK NON-EXCLUSIVE LICENSE; COPYRIGHT; REPRODUCTION; RESALE; DEACCESSION

- 7.01 **OWNERSHIP.** The WORK created under this Agreement shall be the property of the OWNER.

- 7.02 **COPYRIGHT.** ARTIST shall be entitled to copyright, but shall make no exact duplications to full scale of the WORK at another location. All copyright and further reproduction rights to the WORK shall remain with ARTIST.
- 7.03 ARTIST shall grant a non-exclusive license to the City of Jasper to copy or reproduce the WORK for all standard collection purposes including specifically (but not limited to): exhibition and collection catalogues, City of Jasper website, handouts, brochures, didactic labels, magazines, journals, and newspapers; to transmit or otherwise communicate a display thereof by means of any device or process (examples include but are not limited to slides, film, and television); and to authorize others to do the same, but only on the condition that all such reproductions of said WORK bear a copyright notice as prescribed by the Copyright Law of the United States. City of Jasper reserves the right to use the WORK for commercial purposes, and no separate agreement need be negotiated. This non-exclusive license, which does not transfer ownership of copyright to the City of Jasper shall endure for the entire term of the copyright in and to said WORK (to the extent permissible under the copyright laws of the United States) and shall survive all assignments of copyright.
- ARTIST hereby agrees that ARTIST shall give the City of Jasper written notice prior to asserting any claim pertaining to the specific WORK referred herein which may arise pursuant to 17 U.S.C D) PROTECTION OF COPYRIGHT. The City shall take steps necessary to ensure that ARTIST'S copyright is protected.
- 7.04 **PHOTOGRAPHIC REPRODUCTION.** The ARTIST also agrees that photographic reproductions of the WORK made by ARTIST for publicity purposes shall be permitted.
- 7.05 **RESALE.** ARTIST and OWNER understand that the City is not the owner of the property on which the WORK shall be installed. Accordingly, OWNER has no control over the sale of said property and ARTIST agrees that he/she shall have no rights with respect to the sale of the property.
- 7.06 **DEACCESSION PROCEDURE.** The ARTIST agrees and acknowledges OWNER has the sole discretion to determine the need for deaccessioning of the WORK.
- 7.07 **RESITING.** The OWNER intends that the WORK shall remain in its designated site. However, ARTIST agrees and acknowledges that OWNER, at its sole discretion, shall have control over decisions regarding resiting.

ARTICLE 8 – WARRANTY, LOSS OR DAMAGES

- 8.01 ARTIST warrants that the WORK is and will be the original product of ARTIST'S own creative efforts and does not infringe on any third party's copyrights or other intellectual property rights. This shall not, however, preclude ARTIST from subcontracting certain processes as described in Section 1.02 in this Agreement. The artist may subcontract portions of the WORK upon prior written consent from the OWNER.
- 8.02 ARTIST warrants for a period of one year from the date of acceptance by the OWNER of the WORK that the WORK shall be free from defects in material and workmanship. OWNER shall not unreasonably withhold acceptance of the completed WORK, or of its installation, and shall accept or reject the WORK no later than forty-five (45) days after its completion. ARTIST shall repair or replace at OWNER'S discretion, and at no additional cost to OWNER, any portion of the WORK that is found to be defective during the warranty period. OWNER agrees to notify ARTIST of any such defect immediately upon discovery. Confirmation of notice shall be made in writing.
- 8.03 ARTIST shall assume all risk of loss or damage to the WORK prior to completion and installation. The OWNER shall assume all risk of loss or damage to the WORK after acceptance of the work provided such loss or damage is not the fault of the ARTIST.
- 8.04 In the event of physical loss or damage to the WORK prior to completion and installation, the ARTIST shall rectify the loss or damage by repair, restoration, replacement or other appropriate means as soon as possible at no additional cost to the OWNER.

ARTICLE 9 – REPAIR

With respect to any repair or restoration of the WORK not covered by the warranty provided in Article 8, ARTIST shall be consulted if possible if the need for repair or restoration arises. The nature of the repair shall not significantly alter the original appearance of the WORK.

ARTICLE 10 - NON-DESTRUCTION/ALTERATION

The OWNER agrees not to purposefully destroy, alter, modify or otherwise change the WORK for a period of ten (10) years. If any alteration occurs during that time, after the receipt of the WORK by the OWNER, whether intentional or accidental, the ARTIST has the right to request that the WORK shall no longer be represented to be the WORK of the ARTIST.

ARTICLE 11 - MAINTENANCE

The OWNER shall be responsible for the proper cleaning, maintenance, and protection of the WORK after installation.

ARTICLE 12 - EARLY TERMINATION OF AGREEMENT

12.01 The OWNER and ARTIST, by mutual written agreement, may terminate this Agreement at any time.

12.02 **PAYMENT ON EARLY TERMINATION.**

- A. In the event of termination by OWNER, the OWNER shall pay the ARTIST for work performed in accordance with the Agreement prior to the termination date.
- B. In the event of termination, if ARTIST has not performed WORK for which he/she has been paid, ARTIST shall return a portion or all of their payment to OWNER.
- C. In the event of early termination, all ARTIST'S work product will become and remain the property of OWNER.

ARTICLE 13 - CONTRACT DOCUMENTS

13.01 This Agreement consists of the following Contract Documents all of which are as fully a part of this Agreement as if set out verbatim herein or attached hereto and the same do in all particulars become the Agreement and Contract between the parties hereto in all matters and things set forth herein and described

A. This Agreement, including the following Exhibits attached hereto:

- 1. City of Jasper Policy on Nepotism and Contracting with Relatives Affirmation;
- 2. Affidavit Regarding Nonresponsibility;
- 3. Indiana Legal Employment Declaration;
- 4. Non-Collusion Affidavit;
- 5. City of Jasper Minimum Insurance Requirements.

B. Addenda Numbers:

N/A

C. The following which may be delivered or issued on or after the Effective Date of the Agreement (IF APPLICABLE):

- 1. Written Amendments;
- 2. Work Change Directives;
- 3. Change Order(s).

13.02 In resolving conflicts, errors, discrepancies, and disputes concerning the nature, character, scope, or extent of WORK, or other Contract Obligations to be accomplished or fulfilled by ARTIST, or other rights and obligations of the parties related to or arising from this Agreement or other Contract Documents, or the interpretation thereof, the provisions of a Contract Document expressing the greater quantity, quality, or scope of the WORK, or imposing the greater obligation upon the ARTIST, or affording the greater right or remedy to OWNER shall govern, without regard to the party who drafted or adopted such provision.

13.03 The Contract Documents may only be amended, modified, or supplemented with **PRIOR WRITTEN** consent of OWNER.

ARTICLE 14 - SEVERABILITY

If any term of this Agreement is held to be illegal, void, or unenforceable for any reason, such holding shall not affect the validity and enforceability of any other term of this Agreement.

ARTICLE 15 - ENTIRE AGREEMENT

This Agreement constitutes the entire Agreement of the parties with respect to the subject matter of the Agreement, and supersedes and replaces any prior written or oral agreements, or understandings between the parties.

ARTICLE 16 - GOVERNING LAW AND VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of Indiana. The venue for any action commenced under the agreement shall be exclusively in Dubois County, Indiana.

ARTICLE 17 – ARBITRATION

Any dispute between the parties, including, but not limited to, disputes arising out of this Agreement shall, upon written notice, be submitted to binding arbitration pursuant to Indiana law by a professional arbitration service acceptable to the parties. Unless otherwise agreed, the arbitration shall be conducted in Jasper, Indiana. If the parties are unable to agree on an arbitrator or an arbitration service within fifteen (15) days from receipt of written notice, the dispute shall be submitted to the presiding court judge for Dubois County. The parties agree that all facts and other information relating to any arbitration arising under this Agreement shall be kept confidential to the fullest extent permitted by law.

ARTICLE 18 – ATTORNEYS’ FEES

In the event of arbitration or litigation arising out of, or in any way related to any term set forth in this Agreement, the prevailing party, in addition to any other relief awarded, shall be entitled to recover its reasonable attorneys’ fees and court costs at arbitration, trial and/or an appeal.

ARTICLE 19 – NONWAIVER

The waiver by any party of a breach or violation of any term of this Agreement by the other party shall not operate or be construed as a waiver of any subsequent breach.

ARTICLE 20 – AMENDMENTS

Any amendment to this Agreement must be made in writing and signed by the party against whom enforcement is sought.

ARTICLE 21 – NOTICES

All notices required by this Agreement shall be in writing and mailed to the parties at the addresses set forth below or at such other address that a party shall specify. If the ARTIST fails to notify the OWNER of his/her current address, notice shall be deemed sufficient if the OWNER mails notice to the last known address of the ARTIST even if such notice is returned unopened to the OWNER.

OWNER: Kit Miracle, Director of City of Jasper Arts Department, 951 College Avenue, Jasper, Indiana 47546.

ARTIST:

IN WITNESS WHEREOF, OWNER and ARTIST have signed this Agreement in duplicate. One counterpart each has been delivered to OWNER and ARTIST. All portions of the Contract Documents have been signed or identified by OWNER and ARTIST or on their behalf.

ARTIST, by:

Signature

Printed Name, Title

Signature

Printed Name, Title

OWNER, by:

Michael Jones
President,
Jasper Community Arts Commission

ATTEST:

Linda Kahle
Secretary,
Jasper Community Arts Commission