

PUBLIC MURAL AGREEMENT

THIS AGREEMENT ("Agreement") is made this ____ day of August, 2018, by and between Connie Fiorella Fitzpatrick on behalf of WAK'Ó MUJERES PHỤ NỮ WOMXN MURAL project, and the City of Lawrence, Kansas.

RECITALS

- A. Connie Fiorella Fitzpatrick ("Artist") is an independent artist and the project organizer of the Women of Color WAK'Ó MUJERES PHỤ NỮ WOMXN MURAL.
- B. WAK'Ó MUJERES PHỤ NỮ WOMXN MURAL project is a local grassroots initiative. This community mural project is led by the mural's design team, which is composed of members of Girls and Womxn of Color. The design team was formed to develop the artwork that is the subject of this Agreement.
- C. The City of Lawrence, Kansas, a municipal corporation ("City"), owns property known as the Lawrence Public Library, a building near downtown Lawrence, Kansas.
- D. Artist, on behalf of the WAK'Ó MUJERES PHỤ NỮ WOMXN MURAL project and the design team, wishes for a mural ("Mural") to be painted on two adjoining walls of the Lawrence Public Library ("Site").
- E. The Lawrence Cultural Arts Commission approved the final design of the Mural on June 13, 2018.
- F. Assuming good weather, and the anticipated removal of all signs and attachments on the site's walls by Library staff before the installation period begins, the Artist anticipates the installation period to last no more than 6 weeks.

NOW, THEREFORE, in light of the mutual promises and obligations contained herein, and in exchange for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the parties agree as follows:

TERMS

- 1. **License Granted.** The City hereby agrees that it will provide a license to Artist for the purposes of painting a public art Mural at Site.
- 2. **Term of License.** The license shall commence **(a)** at 12:00 a.m. on August 15, 2018 or **(b)** when Artist commences work on the Mural project, whichever occurs earlier ("Commencement Date").
- 3. **Use of Site.** The Site for which the license is granted shall be used by Artist for the sole and exclusive purpose of painting the Mural, as herein described, and for no other purpose without the prior written consent of the City.
- 4. **Scope of Work.** Artist will paint a public mural as described in Exhibit A, attached

hereto and incorporated by reference, on the Southwest corner of the Lawrence Public Library. The parties agree to maintain proper communication, as appropriate. All duties to be performed hereunder shall be performed as specified or, if not specified, in a prompt and timely manner. The Artist agrees to use Artist's best efforts to complete the Mural project in a reasonable amount of time.

5. **Payment.** Artist agrees to donate the mural to the City at no cost to the City. Artist shall be solely responsible for any and all compensation of individuals providing services pursuant to this Agreement.

6. Artist Responsibilities.

- a) Artist shall notify the Mayor of the City of Lawrence upon completion of the Mural.
- b) Artist represents and warrants that the Mural to be created is an original work of art and that the Mural shall be a faithful rendition of the preliminary design submitted by Artist and approved by the Lawrence, Kansas City Commission and the Lawrence Cultural Arts Commission.
- c) Artist shall grant a non-exclusive license to City and the Lawrence Public Library to copy or reproduce the Mural or images of the Mural for all noncommercial standard collection purposes including specifically (but not limited to): City websites or social media, handouts, and brochures. Artist shall provide the City with digital images of the completed Mural in a format agreed upon between the parties.
- d) Artist is responsible for furnishing all paints, materials, tools and equipment necessary for the creation of the Mural.
- e) Within 60 days after completion of the Mural, in order to assist the City with the long-term maintenance of the mural, Artist shall provide to the City the brand name and make of all primers, paints, varnishes and any other materials used to install the Mural on the Site.

7. City Responsibilities.

- a) The City agrees to procure all necessary permits including any easements, encroachment permits, signage permits, scaffolding permits, alley closure permits, or other permits necessary to access the property while such Mural is being painted, including but not limited to, a temporary use of right permit to allow Artist to park a small storage trailer within a reasonable distance from the Site and a permit for a modest ribbon-cutting ceremony at the completion of the Mural, provided however, that Artist shall provide reasonable notice to the City on a desired date for such ceremony, and shall coordinate with the City on planning such event.
- b) The City agrees to erect and maintain any necessary signage notifying users of adjacent sites and utilities of the Mural project and to promulgate safety regulations.
- c) The City agrees to provide access to exterior water spigots, for the purpose of washing the site's walls prior to installation, and electrical outlets, for the purpose of operating a projector for 1-2 evenings to facilitate tracing the mural onto the site's

walls, and for any necessary purpose related to Artist's minor maintenance and repair.

- d) The City agrees to permit afterhours work during the tracing phase. The projection and tracing of the mural must occur after sundown. The Artist anticipates this phase lasting 1-2 days.
- e) The City agrees to provide the Artist a list of events occurring on the lawn between the library and the parking structure from August 1, 2018 to November 1, 2018 so that the Artist may avoid interfering in these events.

8. **Mural Maintenance.**

- a) Artist and the City acknowledge that maintenance of the Mural on a regular basis is essential to the integrity and appearance of the Mural.
- b) The parties define minor maintenance and repair of the Mural as the completion of touch-up painting, patching, or sanding related to minor cracks, fading, peeling, blistering, failure of paint adhesion, scratches, minor instances of graffiti, or minor instances of vandalism. Minor maintenance and repair of any type is limited to an area no larger than two square feet.
- c) The parties define larger-scale maintenance of the Mural as any and all work exceeding the scope of minor maintenance and repair, to include the circumstances described for minor maintenance and repair except in areas larger than two square feet and/or in multiple areas of damage or deterioration that require a more extensive assessment, material costs, and labor/time or professional conservation to repair. Major maintenance and repairs also include any damage caused by an object or vehicle striking the wall surface and causing physical damage to the wall structure.
- d) For the length of time that the Mural is on Site, Artist shall be responsible for minor maintenance and repair of the Mural under the City's supervision. The City agrees to notify the Artist if minor maintenance is required, and Artist shall notify and coordinate with the City regarding any plans to work on the Site. The Artist will conduct such minor maintenance and repair after receipt of the City's notice within a reasonable period of time, taking into account weather and outside temperatures that may affect the drying of the paint and delay exterior painting.
- e) The Artist may, in her sole discretion, outsource minor maintenance and repair work to third parties such as other mural artists or art students in a project-by-project fashion. The Artist, with the written agreement of the City, may assign all future minor maintenance and repair responsibilities to a third party.
- f) If the Artist fails to make minor maintenance and repairs within a reasonable period of time after receiving notice, the City shall have no recourse against the Artist. In such an instance, the City shall have complete discretion to manage the Mural, in accordance with Section 13(c) below.
- g) If there is a need for larger-scale maintenance, the City agrees to make a good

faith effort to notify and consult with the Artist to determine the extent of repairs and develop a plan. The Artist may elect to consult with the Lawrence Public Library for input. If Artist is unable to oversee larger-scale maintenance and repairs, the City shall have the right to make such necessary maintenance and repairs as indicated in Section 13(c) below.

9. **Copyright.** Artist reserves all copyrights in the Mural, the preliminary design, and any incidental works made in the creation of the Mural under the Copyright Act of 1976, 17 U.S.C. § 101 et seq., as the sole author of the artwork for the duration of the copyright. Artist does, however, grant the City permission to reproduce the Mural image for noncommercial purposes.
10. **Title and Ownership of the Work.** Upon completion and installation of the work and upon final acceptance by the City, title to the Mural shall pass to the City.

11. Insurance.

- a) As a municipal corporation, the City is self-insured for general liability in accordance with Kansas law. Consequently, the City shall not be required to purchase insurance as a condition of this Agreement.
 - b) Artist shall obtain a certificate of insurance establishing general liability insurance in the amount not less than \$500,000 per occurrence and naming the City as an additional insured. Such certificate shall be obtained prior to the commencement of any work on the Mural, with copies of the certificate being provided to the City Clerk's office.
12. **Indemnity.** During (i) the installation period and (ii) periods of larger-scale and minor maintenance and repair when the Artist is performing such repair work: Artist agrees to indemnify, defend, save, and hold harmless City, its officers, commissioners, agents, employees, grantees, and assigns, from and against all claims, actions, liabilities, damages, costs, expenses, and judgments, including attorneys' fees, which relate to, arise out of, or are in any way related to Artist's use of the Site during the installation period and periods of minor maintenance and repair on account of any injury to persons or damage to property. In any event, the Artist's liability shall not exceed \$500,000 per occurrence. This indemnification clause shall not apply to any injury or damage caused by City's own negligent, reckless, or willful actions, or that of its agents.
 13. **Mural or Site Alterations.** The parties agree that, to the extent allowed by law:
 - a) It is the Artist's intent to retain and publicly display the Mural at the Site for a period of twenty (20) years. However, all parties acknowledge that circumstances may arise that would make it prudent for the Artist or City to remove the Mural from public display. When such circumstance arises, the parties shall confer in good faith about the future status of the Mural.

- b) The City shall make a good faith effort to notify Artist of any proposed significant alteration of the Site that would affect the intended character and appearance of the Mural. The City shall make a good faith effort to consult with the Artist in the planning and execution of any such alteration. The City shall make a reasonable effort to maintain the integrity of the Mural during such alteration.
 - c) If the City is unable to locate, communicate with, or reach an agreement in good faith with Artist within 90 days of the City discovering the need for maintenance, or if Artist is unable to pay for the cost of maintenance or repairs, then the City shall have sole discretion on whether to display or deaccession the artwork and to determine whether artwork which has been damaged or destroyed shall be repaired. Artist shall not object to the decision of the City in its handling of the artwork when this subsection is utilized. The City retains discretion to act immediately if the structural integrity of the site is threatened or if the mural is marred with offensive graffiti or similar defacement.
 - d) Consistent with the paragraphs above and in the case of removal, Artist agrees to waive all rights with regard to the work while retaining copyright to the work.
 - e) The City will not intentionally use the Mural in any manner that would reflect discredit on the Artist's name or reputation as an Artist or which would violate the spirit of the Work. This clause is intended to replace and substitute for the Visual Artists Rights Act of 1990, 17 U.S.C. Sections 106A and 1133, or as subsequently amended, to the extent that any portion of this Agreement is in direct conflict with those rights. The parties acknowledge that this Agreement supersedes that law to the extent that this Agreement is in direct conflict therewith.
14. **Modification.** Any modification of the terms of this Agreement, including assignment of rights or obligations, shall be in writing and signed by all parties.
15. **Termination.** This Agreement shall expire August 15, 2038, provided however, that City reserves the right to terminate the license granted by this Agreement for any compelling reason, including but not limited to, construction, maintenance, deterioration, or renovation of Site, by giving Artist at least 30 days written notice of such termination, except that the City may, at the City's election, terminate the license immediately without notice at any time, if (i) Artist fails to comply with or abide by each and all of the provisions of this License Agreement, or (ii) if the continued use of the license presents a health or safety hazard.
16. **Relationship of the Parties.** Nothing set forth herein shall be deemed or construed by the parties, nor by any third party, as creating the relationship of principal and agent, partnership, or joint venture between the parties hereto; it being understood and agreed that no provision contained herein, nor any acts of the parties hereto, shall be deemed to create any relationship between the parties hereto other than the relationship as set out between Artist and the City herein.

17. **Cleanliness of Site.** Artist shall not store, use, or dispose of any toxic or hazardous materials in, on, or about the Site without the prior written consent of City, and shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under this Agreement. At the completion of the Mural project, Artist shall remove from and about the Site waste materials, rubbish, Artist's tools, construction equipment, machinery and surplus materials. If Artist fails to clean up as provided herein, the City may do so and the cost thereof shall be charged to Artist. Artist shall be solely responsible for and will defend, indemnify, and hold City, its agents, and employees, harmless from and against all claims, costs, and liabilities, including attorney's fees and costs, arising out of or in connection with the removal, clean-up, and materials necessary to return the Site and any other property of whatever nature located on the Site to their condition existing prior to the appearance of any materials related to the Mural project. Artist's obligations hereunder shall survive the termination of this Agreement.
18. **Entire Agreement.** This Agreement represents the entire Agreement of the parties with respect to the matters set forth herein. No Agreements, representations or understandings (whether oral or written and whether express or implied) which are not expressly set forth in this Agreement have been made or entered into by either party with respect to the subject matter hereof.
19. **Governmental Powers.** It is agreed that, by executing this Agreement, City does not waive or surrender any of its governmental powers or authority.
20. **Severability.** If any section, sentence, clause, or phrase of this Agreement is found to be invalid by any court of competent jurisdiction, it shall not affect the validity of any remaining provision of this Agreement.
21. **Venue.** The parties agree that the appropriate venues for any legal actions arising out of this Agreement are the District Court of Douglas County, Kansas, or, if federal jurisdiction exists, the United States District Court for the District of Kansas.
22. **Governing Law.** This Agreement will be construed in accordance with the laws of Kansas and any litigation will be brought in the courts of that state.
23. **Miscellaneous.**
- a) This Agreement supersedes all prior discussions and contains all agreements and understandings between Artist and City with respect to the subject matter hereof. This Agreement may only be amended by a writing signed by all parties.
 - b) The provisions of the Agreement relating to indemnification shall survive any termination or expiration of this Agreement. Any provision of this Agreement that would require performance subsequent to the termination or expiration of this Agreement shall likewise survive any such termination or expiration.

- d) The recitals are incorporated herein by reference as if set forth herein in full.

Date _____

Name of Artist

Signature _____

Date _____

Thomas M. Markus, City Manager

Signature