

MURAL ARTIST CONTRACT

This is an agreement entered upon on **9/7/21** between the City of West Allis, Wisconsin ("City"), and John Kowalczyk, a resident of WI residing at [address], Milwaukee ("the Artist").

WHEREAS, City desires to retain the services of Artist to create a large-scale mural ("Mural" or "Artwork") for the WALS Mural Project ("Project") as described in greater detail in Schedule A, attached; and

WHEREAS, City has previously obtained permission for the Artist to create the Mural at the location described in Schedule A via a separate agreement with the property's owner ("Owner"); and

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

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

Article 1 Retention Of Artist

- 1.1 City hereby retains the services of Artist to provide art related services for City in connection with the Mural, including the creation and development of ideas, artwork, designs, and plans.
- 1.2 Artist is an independent contractor and not an employee of City. Unless otherwise expressly agreed to in writing, Artist shall not be entitled to or eligible for any benefits or programs otherwise given by City to its employees.

Article 2 Responsibilities of Artist

- 2.1 Artist agrees to create, develop, and install original Artwork for the Mural in accordance with the Delivery Schedule provided for in Schedule A, attached. This is a material provision of the Agreement.

Article 3 Compensation

- 3.1 In full consideration for the services performed by Artist under the terms of this Agreement, City agrees to Artist compensation as provided for in Schedule A.
- 3.2 Artist's agreed-to compensation as provided for in Schedule A will be full payment for any Artwork Artist generates, and Artist will not be entitled to any royalties or proceeds received by City from the commercialization in any manner of the Artwork or Mural.
- 3.3 Prior to receiving any compensation, Artist shall provide an Internal Revenue Service W-9 form to KASTEN Design LLC for purposes of payment reporting.

Article 4
Representations and Warranties

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

Article 5
Ownership Rights

- 5.1 Both parties acknowledge that due to the location of the Artwork as public, that the Artwork can and will be frequently photographed and reproduced according to the nature of the Project.
- 5.2 It is understood and agreed that Artwork is being developed by Artist for City. City shall be deemed to be the sole and exclusive owner of all right, title, and interest therein, including all copyright and proprietary rights relating thereto. All work performed by Artist on the Mural and all Artwork generated in connection therewith is and shall be considered as "Works Made for Hire" and Artist waives all "Moral Rights" in the Artwork (terms are as defined under U.S. Copyright Laws).
- 5.3 With respect to the Mural produced under this Agreement, and in consideration of the procedures and remedies specified in this Agreement, Artist hereby waives any and all claims, arising at any time and under any circumstances, against Owner and City, its officers, agents, employees, successors and assigns, arising under the federal Visual Artists Rights Act (17 U.S.C. §§106A and 113(d)), and any other local, state, federal or international laws that convey rights of the same nature as those conveyed under 17 U.S.C. §106A, or any other type of moral right protecting the integrity of works of art. Specifically, Artist hereby waives any and all such claims against Owner or any future owners of the Property, and its agents, officers and employees, and City. Artist hereby represents and warrants that the Artist is authorized to sign this waiver.
- 5.4 Notwithstanding the above, Artist is granted permission to utilize images or reproductions of the Artwork produced hereunder for Artist's own purposes, including portfolios and other tools used to depict and describe the Artist's work, experience and skills, but not including direct sales or licensing of the Artwork or reproductions of the Artwork for commercial purposes. Such permitted uses may include displaying depictions or reproductions of the Artwork on website(s) and other printed, electronic or social media, provided the depiction or representation of the Artwork notes, where possible, that the Artwork is visible and available for viewing at the location described in Schedule A.

Article 6
Indemnification

- 6.1 Artist agrees to defend, indemnify, and hold City, its officers, directors, agents, and employees, harmless against all costs, expenses, and losses (including reasonable attorney fees and costs) incurred through claims of third parties against City.

Article 7
Termination

- 7.1 City shall have the absolute right to terminate this Agreement on no notice to Artist should Artist fail to deliver the Artwork to City in a form acceptable to City. This includes Artwork that is deemed by the City to be incomplete, inadequate, vulgar or offensive in its content, or otherwise in any way unacceptable to the City's vision of the Project.

Article 8
Additional Terms

- 8.1 This Agreement shall be governed by the laws of Wisconsin.
- 8.2 No waiver by either party of any default shall be deemed as a waiver of any prior or subsequent default of the same or other provisions of this Agreement.
- 8.3 This Agreement and the rights and obligations thereunder with respect to Artist are personal to Artist and may not be assigned by any act of Artist or by operation of law without the prior written consent of City. City shall have the unfettered right to assign this Agreement to a successor organization taking control of the Project or the Mural.
- 8.4 This Agreement constitutes the entire understanding of the parties, and revokes and supersedes all prior agreements between the parties and is intended as a final expression of their Agreement.
- 8.5 Unless otherwise specifically provided herein, all notices, consents, directions, approvals, instructions, requests and other communications hereunder shall be in writing, shall be addressed to the person and address set forth below and shall be (a) deposited in the U.S. mail, first class, certified with return receipt requested and with appropriate postage, (b) hand delivered, or (c) through such other means of communication as is mutually agreed upon by the Parties:

Artist: John Kowalczyk
[address]
Milwaukee, WI [ZIP]
kowalczykart@gmail.com

City: City of West Allis
7525 W. Greenfield Avenue
West Allis, WI 53214
ddevine@westalliswi.gov

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the last date specified herein.

ARTIST

John Kowalczyk

DATE

CITY

Mayor Dan Devine

DATE

COMPTROLLER'S CERTIFICATE

Countersigned this ____ day of September, 2021, and I certify that the necessary funds have been provided to pay the liability that may be incurred by the City of West Allis under this Agreement.

Name: _____

Title: Comptroller