

## ARTIST AGREEMENT FOR SERVICES

This Artist Agreement For Services (this “Agreement”) is entered into on October 8, 2019 (the “Effective Date”), by and between the City of South Bend, acting by and through its Board of Park Commissioners (the “City”), and Cassandra Graber, an Independent Professional Artist, with her Principal place of business located at 3557 Langley Dr., South Bend, Indiana 46614 (the “Provider”) (each a “Party” and collectively the “Parties”).

For and in consideration of the mutual covenants and promises contained herein, the Parties agree as follows:

1. Services. The Provider will provide to the City the services (the “Services”) set forth in the Provider’s proposal attached hereto as Exhibit A (the “Proposal”), which Proposal is incorporated herein. In the event of any conflict between the terms of this Agreement and the terms of the Proposal, the terms of this Agreement will prevail. The Provider will execute its obligations under this Agreement in accordance with the prevailing professional standard of care for projects of similar design and complexity.

2. Compensation. In exchange for the Provider’s satisfactory performance of the Services, and subject to the terms and conditions of this Agreement, the City will pay the Provider the fee stated in the Proposal (the “Contract Amount”) in accordance with the project budget stated in the Proposal. The City will pay the Contract Amount in installments upon invoicing by the Provider as set forth in the Proposal (each a “Contract Installment”). The City will not be required to pay any Contract Installment if the City is not satisfied with the Provider’s performance under this Agreement or any default or breach of this Agreement by the Provider exists, as the City may determine in its sole discretion. The sum of all Contract Installments will not exceed the Contract Amount, and the Provider will not incur or seek reimbursement for any expenses in excess of the Contract Amount.

3. Term; Termination. Unless earlier terminated in accordance with its terms, this Agreement will commence on the Effective Date and end upon the Provider’s satisfaction of all its obligations hereunder, the City’s acceptance of finished product and final payment therefor. Notwithstanding the foregoing, effective immediately upon delivery of a written termination notice to the Provider, the City may terminate this Agreement, in whole or in part, for any reason, if the City determines that such termination is in the best interest of the City. In addition, in accordance with Ind. Code 6-1.1-18-4, payments are subject to annual appropriation by the City. If the City makes a written determination that funds are not appropriated or are otherwise unavailable to support the continuation of this Agreement, it shall be cancelled. A determination by the City that funds are not appropriated or are otherwise unavailable to support the continuation of performance shall be final and conclusive. The City will not be required to pay any Contract Installment or be otherwise liable for any cost associated with the Provider’s performance of any Services after the effective date of termination.

4. Remedies for Breach of Contract. Failure to complete the Services in accordance with this Agreement will be considered a material breach. In the event of such breach, the City may suspend all payments to the Provider and may pursue any and all remedies available at law

or in equity. The Provider shall repay to the City any portion of the Contract Amount expended for matters not within the scope of the Services.

5. Point of Contact. The City employee identified in Section 9 below will serve as the City's principal point of contact for purposes of this Agreement.

6. Relationship. The Provider shall at all times be an independent contractor for the performance of the Services rather than an employee of the City, and no act or omission to act by the Provider shall in any way bind or obligate the City. This Agreement is strictly for the benefit of the Parties and not for any third party or person. This Agreement was negotiated by the Parties at arm's length and each of the parties hereto has reviewed the Agreement after the opportunity to consult with independent legal counsel. Neither party shall maintain that the language in the Agreement shall be construed against any signatory hereto. The City and the Provider hereby renounce the existence of any form of agency relationship, joint venture, or partnership between the Provider and the City and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between the City and the Provider.

7. Indemnification of City. The Provider hereby agrees to defend, indemnify, and hold harmless the City, its officials, employees, and agents from any and all claims of any nature which arise from the performance by the Provider under this Agreement and from all costs and attorney fees in connection therewith, excepting for claims arising solely out of the negligence of the City, its officials, directors, employees, and agents. The obligations of the Provider under this section shall survive the termination of this Agreement.

8. Assignment. The Provider shall not assign or subcontract the whole or any part of this Agreement or its obligations hereunder without the prior written consent of the City.

9. Notices. Any notice required or permitted to be delivered hereunder shall be deemed to be delivered, whether or not actually received, when deposited in the United States Postal Service, postage prepaid, registered or certified mail, return receipt requested, addressed to the City or the Provider, as the case may be, at the address set forth below.

Provider:  
Decorative Painting by  
Cassandra Graber  
3557 Langley Drive  
South Bend, IN 46614  
Attn: Cassandra Graber

City:  
City of South Bend  
Venues Parks & Arts  
1020 High St.  
South Bend, IN 46610  
Attn: Patrick Sherman

10. Equal Opportunity; Non-Discrimination; Compliance. The Provider shall comply with all applicable laws and regulations in its hiring and employment practices and policies for any activity covered by this Agreement. The Provider shall comply with all state, federal, and municipal laws, regulations, and standards applicable to its activities pursuant to this Agreement including, but not limited to, the requirements imposed by Ind. Code 22-9-1-10 (non-discrimination), the provisions of Ind. Code 5-22-16.5 (disqualification for dealings with the

government of Iran), and the provisions of Ind. Code 22-5-1.7 (requiring E-Verify for new employees and prohibiting employment of unauthorized aliens). Each of the foregoing provisions is incorporated herein as if set forth in full, and the Provider certifies that it is in compliance with each such provision and shall remain in compliance throughout the term of this Agreement.

11. Contractor's Affidavit. The Provider agrees, as a condition precedent to the effectiveness of this Agreement, that its authorized representative will execute and submit to the City and any other appropriate bodies an affidavit in the form attached hereto as Exhibit B.

12. Drug-Free Workplace. The Provider hereby agrees to make a good faith effort to provide and maintain a drug-free workplace. The Provider will give written notice to the City within ten (10) days after receiving actual notice that the Provider or an employee of the Provider within the State of Indiana has been convicted of a criminal drug violation occurring in the workplace.

13. Entire Agreement; Amendment; Applicable Law. This Agreement sets forth the entire agreement and understanding between the parties as to the subject matter hereof, and merges and supersedes all prior discussions, agreements, and understanding of any and every nature between them. This Agreement may be amended only by separate writing, signed by authorized representatives of both the Provider and the City. This Agreement will be construed and interpreted according to the laws of the State of Indiana, and any dispute arising out of this Agreement or otherwise concerning the Provider's rendering of the Services will be resolved in the courts located in St. Joseph County, Indiana, unless the Parties mutually agree to a different method of dispute resolution.

14. Severability. All provisions of this Agreement shall be considered as separate terms and conditions, and in the event any one shall be held illegal, invalid or unenforceable, all the other provisions hereof shall remain in full force and effect as if the illegal, invalid, or unenforceable provision were not a part hereof, unless the provision held illegal, invalid or unenforceable is a material provision of this Agreement, in which case the Provider and the City agree to amend this Agreement with replacement provisions containing mutually acceptable terms and conditions.

15. Force Majeure. The Provider shall not be responsible for any failure or delay in the performance of any obligation hereunder, if such failure or delay is due to a cause beyond the Provider's reasonable control, including, but not limited to acts of God, flood, fire, volcano, war, third-party suppliers, labor disputes or governmental acts.

16. Counterparts. This Agreement may be executed in two or more counterparts, which together shall constitute one and the same agreement among the Parties.

[Signature page follows.]

IN WITNESS WHEREOF, the Parties hereto have caused this Artist Agreement for Services to be effective as of the Effective Date stated above.

**CASSANDRA GRABER**

Cassandra Graber  
*Signature*

Cassandra Graber, Owner  
*Printed Name and Title*

3557 Langley Dr.  
*Street Address*

South Bend, IN 46614  
*P.O. Box  
City, State Zip*

574-370-9453  
*Telephone Fax*

**CITY OF SOUTH BEND, INDIANA  
BOARD OF PARK COMMISSIONERS**

[Signature]  
Mark Neal, President

[Signature]  
Consuela Hopkins, Vice President

[Signature]  
Aimee Buccellato, Member

[Signature]  
Dan Farrell, Member

ATTEST: [Signature], Clerk

EXHIBIT A

INVOICE

**Decorative Painting**

by

*Cassandra Graber*

3557 Langley Dr.

South Bend, IN 46614

574-370-9453

www.CassandraGraber.com

Client: City of South Bend Venues, Parks and Arts

Date: October/November 2019

Area	Finish	Total
Howard Park Wall	Mural	\$15,000.00

Supplies:

Included

**Money Down:**

\$7,500.00

(Paid on invoice after approved PO)

\*Contingent fee payable only if artist does not complete Project within 2019 and additional cold weather mobilization and area protection needed after park opens: \$2,000.00

Total:

\$15,000.00

\*Possible Contingent Fee:

+ \$2,000.00  

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\$17,000.00

(Please Make Checks Out to **Cassandra Graber**)

**Thank You!**

# Specifications:

- I. General Provisions:
  - A. Artist will be responsible for procuring all labor, materials, and supplies to complete the project.
  - B. Artist will add The City of South Bend as an additional insured to their insurance.
  - C. Venues Parks & Arts will provide a protected area for the artist for staging in the adjacent Lodge building.
  
- II. Painting process
  - A. Area protection:
    1. Venues Parks and Arts will coordinate light pressure washing of surface prior to painting starting.
    2. Artist will protect all surrounding areas against overspray, drips, or any other spills
    3. Artist will be responsible for cleaning any area that gets paint that is outside the project area.
  - B. Paint:
    1. Artist will prime entire project area with quality primer prior to starting painting.
    2. Artist will use quality exterior paint that is appropriate for this large mural project.
    3. Artist will ensure that all painting occurs in temperature and environmental conditions that are acceptable per the manufacturer instructions of materials applied. The use of heaters to maintain an appropriate temperature will be acceptable but extra care must be taken to avoid damage to existing surfaces.
    4. After paint is fully cured, the artist will apply MuralShield™ and Worlds Best Graffiti Coating (WBCG) per the manufacturer's instructions.
  
- III. Schedule:
  - A. Project time will start once Notice to Proceed is given.
  - B. Contract shall expire when piece is completed and accepted or May 25<sup>th</sup>, 2020.
  - C. If the artist cannot finish within 2019, artist shall be able to re-start in the spring once weather is amenable and subject to scheduling with Owner representative. There will be additional area protection needed as the park will be open at that time.
  - D. Final acceptance
    1. Artist will walk through project with Owner representative, which is required to sign off on acceptance of the Project.
    2. Owner will have a period of 30 days, from the date of Project acceptance, to request touch ups of areas, if dissatisfied with the workmanship related thereto.

**EXHIBIT B**

**Contractor's Affidavit**

[See attached.]

*When the prospective Contractor is unable to certify to any of the statements below, it shall attach an explanation to this Affidavit.*

**CONTRACTOR'S NON-COLLUSION AND NON-DEBARMENT AFFIDAVIT,  
CERTIFICATION REGARDING INVESTMENT WITH IRAN, EMPLOYMENT ELIGIBILITY  
VERIFICATION, NON-DISCRIMINATION COMMITMENT AND CERTIFICATION OF USE  
OF UNITED STATES STEEL PRODUCTS OR FOUNDRY PRODUCTS**

(Must be completed for all quotes and bids. Please type or print)

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STATE OF Indiana )  
 ) SS:  
St. Joseph COUNTY )

The undersigned Contractor, being duly sworn upon his/her/its oath, affirms under the penalties of perjury that:

1. Contractor has not, nor has any other member, representative, or agent of the firm, company, corporation or partnership represented by him, entered into any combination, collusion or agreement with any person relative to the price to be bid by anyone at such letting nor to prevent any person from bidding nor to induce anyone to refrain from bidding, and that this bid is made without reference to any other bid and without any agreement, understanding or combination with any other person in reference to such bidding. Contractor further says that no person or persons, firms, or corporation has, have or will receive directly or indirectly, any rebate, fee, gift, commission or thing of value on account of such sale; and
2. Contractor certifies by submission of this proposal that neither contractor nor any of its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency; and
3. Contractor has not, nor has any successor to, nor an affiliate of, Contractor, engaged in investment activities in Iran.
  - a. For purposes of this Certification, "Iran" means the government of Iran and any agency or instrumentality of Iran, or as otherwise defined at Ind. Code § 5-22-16.5-5, as amended from time-to-time.
  - b. As provided by Ind. Code § 5-22-16.5-8, as amended from time-to-time, a Contractor is engaged in investment activities in Iran if either:
    - i. Contractor, its successor or its affiliate, provides goods or services of twenty million dollars (\$20,000,000) or more in value in the energy sector of Iran; or
    - ii. Contractor, its successor or its affiliate, is a financial institution that extends twenty million dollars (\$20,000,000) or more in credit to another person for forty-five (45) days or more, if that person will (i) use the credit to provides goods and services in



the energy sector in Iran; and (ii) at the time the financial institution extends credit, is a person identified on list published by the Indiana Department of Administration.

4. Contractor does not knowingly employ or contract with an unauthorized alien, nor retain any employee or contract with a person that the Contractor subsequently learns is an unauthorized alien. Contractor agrees that he/she/it shall enroll in and verify the work eligibility status of all of Contractor's newly hired employees through the E-Verify Program as defined by I.C. 22-5-1.7-3. Contractor's documentation of enrollment and participation in the E-Verify Program is included and attached as part of this bid/quote; and

5. Contractor shall require his/her/its subcontractors performing work under this public contract to certify that the subcontractors do not knowingly employ or contract with an unauthorized alien, nor retain any employee or contract with a person that the subcontractor subsequently learns is an unauthorized alien, and that the subcontractor has enrolled in and is participating in the E-Verify Program. The Contractor agrees to maintain this certification throughout the term of the contract with the City of South Bend, and understands that the City may terminate the contract for default if the Contractor fails to cure a breach of this provision no later than thirty (30) days after being notified by the City.

6. Persons, partnerships, corporations, associations, or joint venturers awarded a contract by the City of South Bend through its agencies, boards, or commissions shall not discriminate against any employee or applicant for employment in the performance of a City contract with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment because of race, sex, religion, color, national origin, ancestry, age, gender expression, gender identity, sexual orientation or disability that does not affect that person's ability to perform the work.

In awarding contracts for the purchase of work, labor, services, supplies, equipment, materials, or any combination of the foregoing including, but not limited to, public works contracts awarded under public bidding laws or other contracts in which public bids are not required by law, the City, its agencies, boards, or commissions may consider the Contractor's good faith efforts to obtain participation by those Contractors certified by the State of Indiana as a Minority Business ("MBE") or as a Women's Business Enterprise ("WBE") as a factor in determining the lowest, responsible, responsive bidder.

In no event shall persons or entities seeking the award of a City contract be required to award a subcontract to an MBE/WBE; however, it may not unlawfully discriminate against said WBE/MBE. A finding of a discriminatory practice by the City's MBE/WBE Utilization Board shall prohibit that person or entity from being awarded a City contract for a period of one (1) year from the date of such determination, and such determination may also be grounds for terminating the contract for which the discriminatory practice or noncompliance pertains.

7. The undersigned contractor agrees that the following nondiscrimination commitment shall be made a part of any contract which it may henceforth enter into with the City of South Bend, Indiana or any of its agencies, boards or commissions.

Contractor agrees not to discriminate against or intimidate any employee or applicant for employment in the performance of this contract with privileges of employment, or any matter directly or indirectly related to employment, because of race, religion, color, sex, gender expression, gender identity, sexual orientation, handicap, national origin or ancestry. Breach of this provision may be regarded as material breach of contract.

I, the undersigned bidder or agent as contractor on a public works project, understand my statutory obligations to the use of steel products or foundry products made in the United States (I.C. 5-16-8-1). I hereby certify that I and all subcontractors employed by me for this project will use steel products or foundry products made in the United States on this project if awarded. I understand I have an affirmative duty to notify the City in my bid that my proposal does not include the use of steel products or foundry products made in the United States. I understand it is my sole obligation and responsibility to provide a justification to the City, subject to review and approval, why the cost of United States made steel or foundry products is unreasonable. Prior to award and upon submission of bid which does not use steel products or foundry products made in the United States, the City, through its director of public works, shall make a determination if the price of United States made steel or foundry is unreasonable. I understand that violations hereunder may result in forfeiture of contractual payments.

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I hereby affirm under the penalties of perjury that the facts and information contained in the foregoing bid for public works are true and correct.

Dated this 22<sup>nd</sup> day of October, 2019

Decorative Painting by Cassandra Graber  
Contractor/Bidder (Firm)

Cassandra Graber

Signature of Contractor/Bidder or Its Agent

Cassandra Graber, Owner  
Printed Name and Title

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

My Commission Expires \_\_\_\_\_

\_\_\_\_\_  
Notary Public

County of Residence \_\_\_\_\_



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

09/30/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> <b>TCU Agency, LLC</b> <b>425 Lincolnway East</b> <b>Mishawaka, IN 46544</b> <b>Bridget L. Holt, AINS, CISR</b>	<b>CONTACT NAME:</b> TCU Insurance Agency	
	<b>PHONE (A/C, No, Ext):</b> 574-256-6070	<b>FAX (A/C, No):</b> 574-236-3538
<b>E-MAIL ADDRESS:</b> bholt@tcuinsurance.com		
<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>
<b>INSURER A :</b> Selective Insurance Group, Inc		<b>12572</b>
<b>INSURER B :</b>		
<b>INSURER C :</b>		
<b>INSURER D :</b>		
<b>INSURER E :</b>		
<b>INSURER F :</b>		

**INSURED**      **Decorative Painting by**  
**Cassandra Graber**  
**3557 Langly Dr**  
**South Bend, IN 46614**

**COVERAGES****CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY						
	CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR	X		S 2412300	07/01/2019	07/01/2020	EACH OCCURRENCE \$ <b>1,000,000</b>
							DAMAGE TO RENTED PREMISES (Ea occurrence) \$ <b>500,000</b>
							MED EXP (Any one person) \$ <b>15,000</b>
							PERSONAL & ADV INJURY \$ <b>1,000,000</b>
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE \$ <b>3,000,000</b>
	<input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						PRODUCTS - COMP/OP AGG \$ <b>3,000,000</b>
	OTHER:						\$
	<b>AUTOMOBILE LIABILITY</b>						COMBINED SINGLE LIMIT (Ea accident) \$
	<input type="checkbox"/> ANY AUTO						BODILY INJURY (Per person) \$
	<input type="checkbox"/> ALL OWNED AUTOS						BODILY INJURY (Per accident) \$
	<input type="checkbox"/> HIRED AUTOS						PROPERTY DAMAGE (Per accident) \$
							\$
	<b>UMBRELLA LIAB</b>						EACH OCCURRENCE \$
	<input type="checkbox"/> OCCUR						AGGREGATE \$
	<b>EXCESS LIAB</b>						\$
	<input type="checkbox"/> CLAIMS-MADE						\$
	DED						\$
	RETENTION \$						\$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b>						PER STATUTE
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y/N		N/A			OTHER
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. EACH ACCIDENT \$
							E.L. DISEASE - EA EMPLOYEE \$
							E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

**CERTIFICATE HOLDER****CANCELLATION**

Howard Park  
 604 E Jefferson Blvd  
 South Bend, IN 46617

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE