

**2876 N. 32<sup>nd</sup> ST., MILWAUKEE, MURAL AGREEMENT**

GH 3-11-2021\BT 4/12/2021

**THIS MURAL AGREEMENT** (the “**Agreement**”), is made and dated as of \_\_\_\_\_, 2021, and is by and among the City of Milwaukee (“**City**”), Tia Richardson (“**Artist**”), and Klein Land Company (aka Klein Land, LLC) (“**Klein**”), and is for good and valuable consideration, receipt and sufficiency of which are hereby acknowledged.

**RECITALS**

A. **Klein Owns Parcel; Mural on Wall Surface.** Klein owns the real estate at 2876 N. 32<sup>nd</sup> Street, Milwaukee, TIN 309-1202-000 (the “**Parcel**”), including the improvements at that Parcel, including the retaining wall (the “**Wall**”). The Wall abuts the public sidewalk along Locust Street. Artist wants to paint a mural (the “**Mural**”) on the portion of the Wall depicted on **EXHIBIT A** (the “**Surface**”).

B. **Mural.** The Mural that Artist wants to paint on the Surface is depicted on **EXHIBIT B**.

C. **City Funding.** City wants to fund the Mural, up to the maximum amount of \$14,292 (the “**City Cap**”) as per the budget attached hereto as **EXHIBIT C** (the “**Budget**”).

D. Each of Klein, Artist, and City wish to enter into this Agreement so that the Mural may be painted on the Surface in accordance with the terms and conditions contained herein.

**AGREEMENT**

1. **Recitals.** The recitals above are accepted.

2. **Mural.**

A. **Mural Installation.** Artist agrees to prepare the Surface (including completing the necessary Wall repair matters reflected by the Budget), and to paint the Mural on the Surface, or to supervise other artists that she engages (“**Sub-Artists**”) to paint the Mural on the Surface, in substantial compliance with the design on **EXHIBIT B** (the “**Design**”) and with the mural plan on **EXHIBIT D** (the “**Mural Plan**”). This shall be done by Artist at no expense to Klein, and at the City’s expense, up to the City Cap, per the Budget. The City Cap is City’s maximum contribution. Cost overruns are Artist’s responsibility.

**B. Entry, Installation Period, Indemnification.** Klein allows entry by Artist (and by Sub-Artists) onto that portion of the Parcel with the Wall and the Surface, and City allows entry by Artist (and by Sub-Artists) on that portion of the right-of-way sidewalk area adjacent to the Surface, so that Artist and Sub-Artists may undertake their duties hereunder and install the Mural.

Entry is limited from \_\_\_\_\_, 2021 (the “**Mural Start Date**”) to the 7 week anniversary of that Mural Start Date (i.e. to \_\_\_\_\_, 2021) (the “**Mural Completion Date**”), and during that period, between the hours of 6 AM and 9 PM except entry on the Mural Completion Date ends at 8 PM.

Artist shall provide a copy of this Agreement to all Sub-Artists.

Artist has inspected the Wall, the Surface, and the public sidewalk area adjacent to the Surface. Artist understands that the public sidewalk area is not that large, that Artist must ensure that pedestrians are able to still use the sidewalk during Artist entry periods, and that vehicular traffic will be taking place on W. Locust Street. Entry by Artist and by Sub-Artists hereunder shall be under Artist’s supervision and shall be at Artist’s and Sub-Artists’ sole risk. Artist agrees to indemnify and hold Klein and City harmless regarding damage to property and injury to person that may result from entry, from performing work hereunder, and/or from Mural installation, maintenance and repair duties hereunder.

Artist also agrees to clean up and remove tools, supplies, and other personal items while not present, and while not working on the Mural.

**C. Mural per Design and Mural Plan.** Artist may not deviate from or make substantial changes to the Design or Mural Plan without City’s and Klein’s prior written consent. City consent hereunder shall be from the Commissioner of the City’s DCD (or his designee) (the “**Commissioner**”), and Klein’s consent hereunder shall be from Randy Klein (“**Randy**”). In agreeing not to deviate from or to make substantial changes to the Design, Artist acknowledges that Artist will only paint on the Surface. Artist may not, for example, install or affix fixtures, drill holes, use bolts or screws to affix items, hang items, or install lighting at or on the Surface, or at or on the Wall, or in the City’s public right-of-way. This does not prevent Artist from using lighting that is temporary, moveable, portable, and “stand alone” in order to improve Artist’s working conditions to work.

**D. Commencement, Completion.** Artist Mural work on the Surface shall commence on the Mural Start Date and shall terminate on or before the time and date of the Mural Completion Date (time is of the essence), with Artist having the duty to complete the Mural by that Mural Completion Date and time.

E. **Clean Up.** Artist is responsible for clean-up of work area.

3. **Payment by City, VARA, Other Rights.**

A. City owes no money to Sub-Artists.

B. City's maximum contribution and payment to Artist is the City Cap, per the Budget. Twenty days prior to the Mural Start Date, City shall advance \$7,146 to Artist. City shall not owe any other sums to Artist until the Mural has been installed and completed. Within 10 days of the Mural Completion Date, City shall pay to Artist the remaining \$7,146, as payment in full of the City Cap and the sums required to be paid by City hereunder. Artist (and Sub-Artists) agree that monies provided to Artist under this Agreement shall be Artist's (and Sub-Artists') sole compensation.

C. City and Klein may take photographs or otherwise depict, or make reproductions of, the Mural in its development and completed form, and City and Klein may use such photos, reproductions, or depictions as each of them, respectively, desires without paying monies to Artist or Sub-Artists. This includes City posting images of the Mural on the City's internet site and on social media sites. However, neither City nor Klein may charge third parties, or receive, monies from third parties, for any such photos, depictions, or reproductions that they may make.

D. Any interest or rights of Artist, or Sub-Artists, to the Mural, or in and to the art represented by the Mural or in and to the Design, including but not limited to, copyrights, moral rights, and rights under the Visual Artists Rights Act (VARA), are Artist's property but are subject and subordinate to the terms and conditions of this Agreement. To the extent not inconsistent with the terms and conditions of this Agreement, Artist retains Artist's rights under VARA. Any VARA rights are, however, subject to the terms and conditions of this Agreement. 17 U.S.C. Sec. 106A. But for this Agreement, City would not have agreed to contribute the Cap Amount for the Mural on the Surface.

4. **Maintenance by Artist, in her Discretion.** Artist, at her expense, and after completion by Artist of the Mural, is responsible for on-going and necessary maintenance of the Mural as Artist *may wish* to take, *in her discretion* (and without obligation to do so). Klein shall allow Artist entry for such purpose. Any of Klein or City may call to Artist's attention (by providing notice to Artist) the need and/or desire for touch-up, preservation or maintenance of the Mural. Mural Design, however, subject to the provisions herein, may not be altered.

5. **Damage, Destruction, Vandalism & 12 Years.**

A. If the Wall, or the Surface, become damaged or in need of repair, or replacement, or razing, or alteration, or in need of improvement that affects the Mural, then Klein, in Klein's discretion, as

owner of the Wall, has sole discretion regarding the repair, replacement, razing, alteration, or improvement of the Wall and/or Surface. The parties understand that, in such case, Klein also has discretion to remove or destroy or paint over the Mural, in whole or in part, without any liability to, or right of, Artist or Sub-Artists.

Artist understands that the foregoing is important to Klein, as owner of the Parcel and Wall, so that Klein shall not be limited in its right to repair, maintain, replace, raze, alter, or improve the Wall and/or Surface under the foregoing circumstances. By way of example (and not as a limitation of Klein's rights) Klein is not limited in its right to fill cracks, or to repair spalls, and/or to repair/replace expansion joints.

Notwithstanding the foregoing, Klein shall, in good faith, if possible, endeavor to undertake repairs, maintenance, replacements, alterations, and/or improvements to the Wall in such a manner as may reasonably be practicable in order that the Mural may endure for at least 12 years after installation.

B. Neither City nor Klein warrants or guarantees the Wall or Surface, and Artist accepts the Wall and the Surface in AS IS condition.

C. If the Mural becomes damaged by graffiti, or vandalism, or other third-party factor such as vehicular collision, or by water, weather, or act of God, Klein shall discuss same with Artist and City. Klein has discretion:

(1) to allow Artist to repair the Mural, at no cost to City or Klein, if Klein elects to allow such repair, in which case Artist, if Artist desires to and if Artist is able to secure funding, shall promptly (within a reasonable time period prescribed by Klein) undertake and complete the repair at Artist's expense per her funding sources, in substantial compliance with the Design and Mural Plan, or

(2) if Artist refuses to or does not repair per sub item (1) above, to cause removal or painting over of the Mural (in whole or in part) at Klein's expense. If Klein causes removal or painting over of the Mural (in whole or in part) under this sub item (2), Klein shall not have any liability to City or to Artist or Sub-Artists.

D. In any event, Klein may, in its discretion, and at its expense, cause removal or painting over of the Mural at any time after the **12-year anniversary** of the Mural Completion Date. If Klein causes such removal or painting over of the Mural, Klein shall not have any liability to City or to Artist or Sub-Artists.

6. **Entire Agreement, Amendment.** This is the entire agreement among the parties regarding the matters herein. This Agreement may only be amended or modified by a written agreement signed by each of the parties hereto.

7. **Recording.** This Agreement after Mural installation may be recorded in the Milwaukee County Register of Deeds Office at City's expense if City (in its discretion) elects to record it. If City does record the Agreement, City may record a Satisfaction of this Agreement at City expense at any time that the Mural is removed or painted over, and/or at any time after the 12-year anniversary of the Mural Completion Date.

8. **Counterparts.** This Agreement may be signed in one or more counterparts each of which shall, when taken together, constitute one and the same document.

9. **Drafter-Doctrine Not Applicable.** The contract-interpretation doctrine of "construing against the drafter" shall not apply to interpretation of this Agreement.

10. **Notices.** Notices provided or given hereunder shall be considered given (i) upon receipt if hand-delivered by commercial courier or otherwise personally delivered, (ii) if sent by email, the notice shall be deemed given when sent as per the following and so long as the notice is successfully sent (i.e., the sender does not receive any error or busy or inability to send notification), and (iii) within two business days of depositing same in the U.S. mail, postage-paid, addressed by name and address to the party intended as follows. Notice recipient contact information may be changed by providing notice of same in accordance herewith.

<b>If to City</b>	<b>If to Artist</b>
Benji Timm City of Milwaukee - DCD 809 N. Broadway, 2 <sup>nd</sup> Floor Milwaukee, WI 53202	Tia Richardson Cosmic Butterfly Design PO Box 840 Milwaukee, WI 53201
Email: btimm@milwaukee.gov Phone: 414-708-9291	Email: tiachianti@gmail.com Phone: 414-793-6825
<b>With Copy to</b>	
Gregg Hagopian City Attorney's Office 841 N. Broadway, 7 <sup>th</sup> Floor Milwaukee, WI 53202	
Email: ghagop@milwaukee.gov	

Phone: 414-286-2620	
<b>If to Klein</b>  Randy Klein Klein Land Company c/o Klein Land, LLC 401 E. Beaumont # 305 Milwaukee, WI 53217  Email: klein.rs@gmail.com Phone: 414-915-3080	

11. **Breach, Remedies.** In the event of breach of this Agreement, the non-breaching party retains all rights and remedies available at law and in equity. City retains all rights under Wis. Stat. 893.80. If Artist breaches her duties hereunder by failing to install the Mural as required, in addition to any other right City may have, City may provide notice to Artist, and if there is not a cure within 30 days of the date of City's notice, then City may declare this Agreement terminated, City may paint over or remove the Mural (or that portion of it that may have been installed) in such event if City wishes (City does not have the duty to do so), City shall have no duty to pay Artist any funds not yet paid to Artist, and City may recover from Artist the initial payment if City paid that to the Artist.

12. **Open Records.** This Agreement is or may be subject to Wisconsin open records law, under Wis. Stat. Ch. 19. The parties agree to cooperate with the City if a request is made of the City, or of any of the parties hereto, for this Agreement or for any record related hereto.

**THE PARTIES HERETO** caused this Agreement to be signed and entered as of the date first written above.

<b>CITY: CITY OF MILWAUKEE</b>  By: _____ Mayor Tom Barrett  <b>CITY CLERK</b>  _____ Jim Owczarski, City Clerk  <b>Countersigned:</b>	<b>ARTIST</b>  _____ Tia Richardson
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**CITY COMPTROLLER**

By: \_\_\_\_\_  
Aycha Sawa, Comptroller

Common Council File No. \_\_\_\_\_

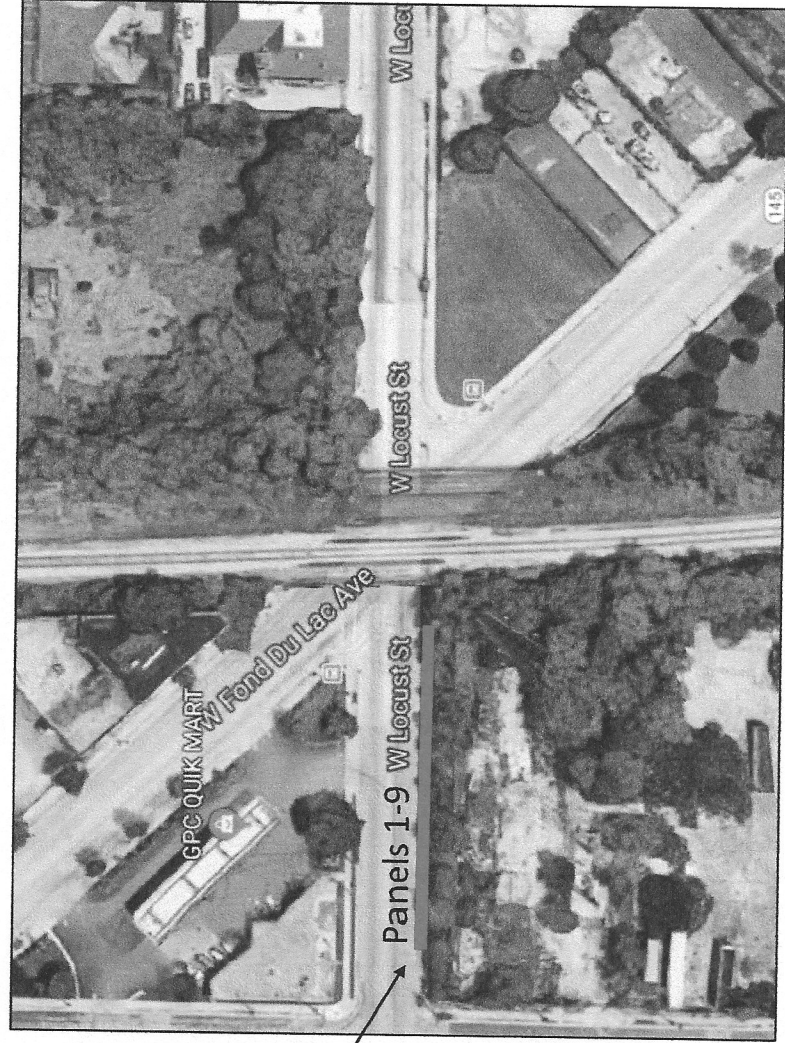
**CITY ATTORNEY APPROVAL**  
MCO 304-21

By: \_\_\_\_\_  
Gregg Hagopian, Assistant City Attorney

**KLEIN: KLEIN LAND COMPANY**  
By and d/b/a Klein Land, LLC

By: \_\_\_\_\_  
Randy Klein, Managing Member

# EXHIBIT A -- LOCATION OF SURFACE ON WALL

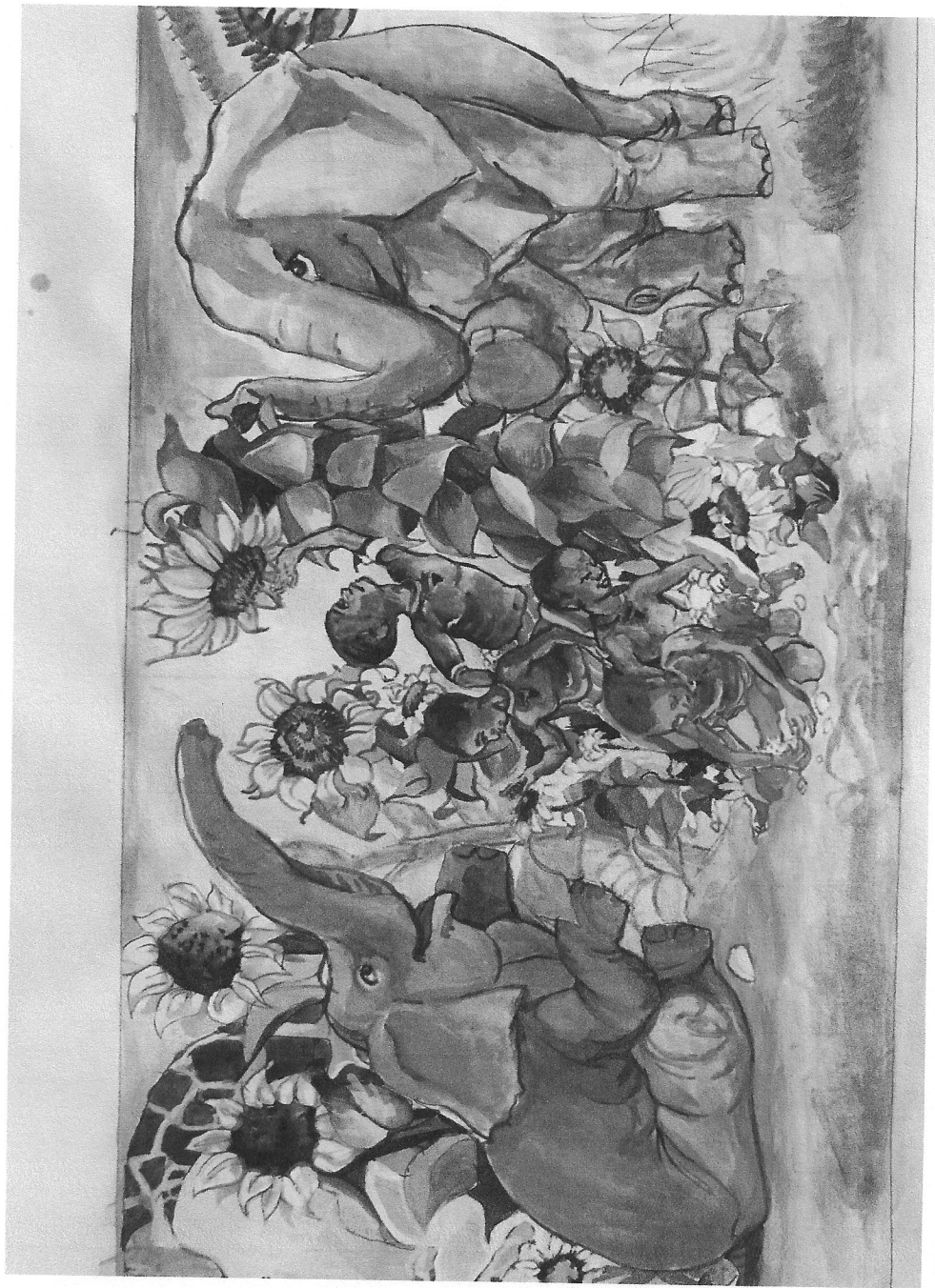


Location of  
Wall Panels

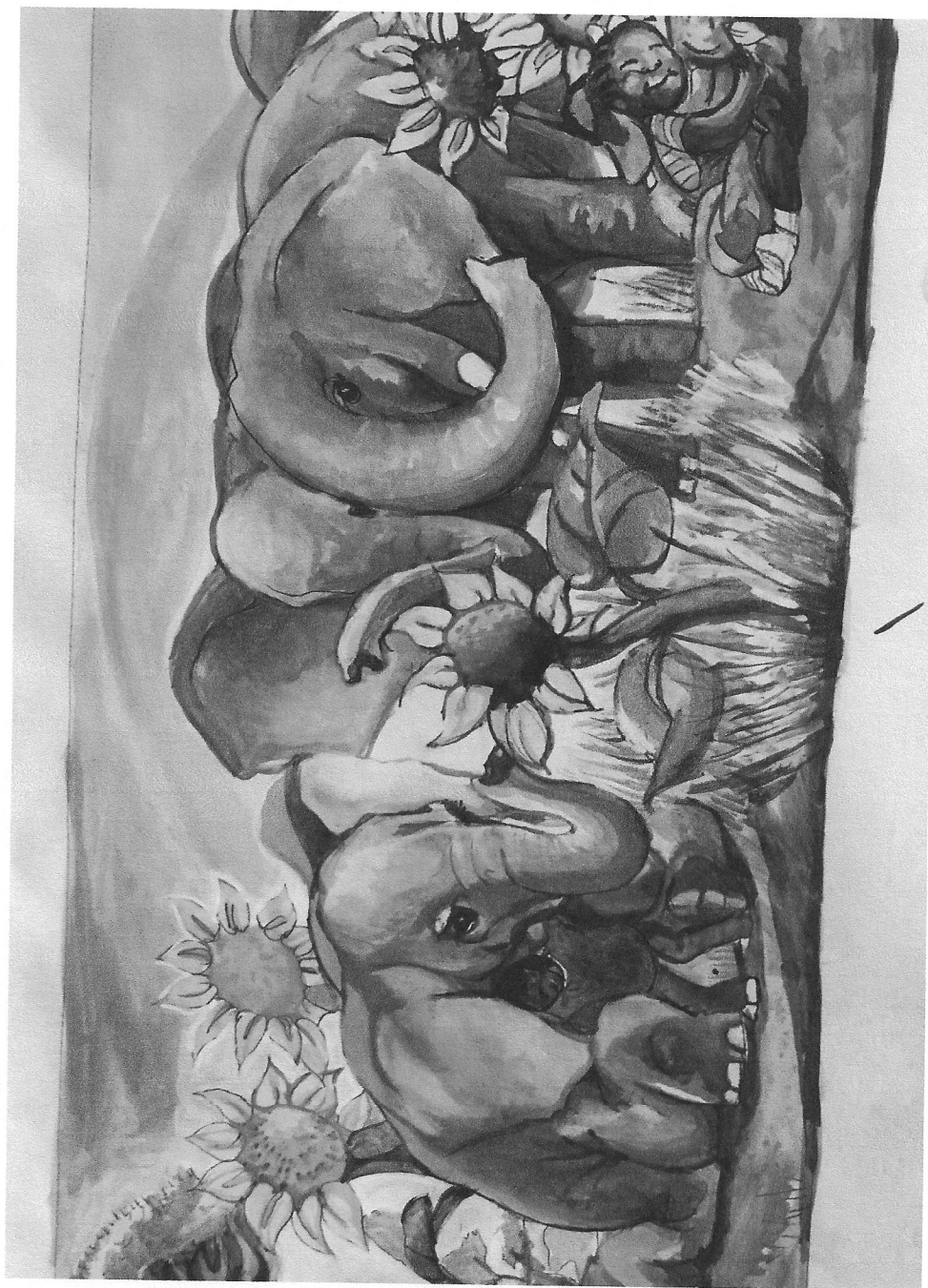


**EXHIBIT B - DESIGNS**

















# EXHIBIT C - BUDGET

## Proposal for Mural Retaining wall at W. Locust and N. Fond Du Lac Ave

Tia Richardson, Artist, Owner  
Cosmic Butterfly Design  
(414) 793-6825  
Email: [tiachianti@gmail.com](mailto:tiachianti@gmail.com)  
[www.cosmic-butterfly.com](http://www.cosmic-butterfly.com)

Client: City of Milwaukee DCD/ECO  
Client contact: cell (414) 708-9291

**Project Objective:** Create an uplifting mural approx 700 sq ft on a portion of the concrete retaining wall on W. Locust St. intersecting W. Fond Du Lac Ave.

### Timeline

- Oct. 19, 2020 - Submit proposal outlining scope of project and budget to Ald. Rainey, Benjamin Timm
- March 2021 - Submit color concept sketch to Alderman Rainey, Benjamin Timm, Randy Klein
- Revisions if needed or design approved
- April - design and contract submitted to City Clerk, Common Council, CED Committee
- May - file approval by Common Council
- TBD - sign contract, schedule wall prep by sub-contractor (needs two weeks)
- Schedule painting after wall prep

### Budget

*Artist fees billed at \$75/hour for wall prep, design, planning, painting, varnishing*  
Subcontract OG Cement & Roofing - wall power wash, repair minor surface cracks  
Design, tracing/transfer design, painting, varnishing = 142hrs

2800.00  
10,600.00  
**13,400.00**

### Total labor:

### Supply estimate

5 gall Loxon primer/sealer @31.99/1gall, 29.99/5gall

30.00

5 gall Loxon XP waterproofing masonry coating @\$38.55/1gall, 37.55/5gall (@230sq ft)

30.00

NovaColor acrylic paint

225.00

3 gall NovaColor exterior varnish @ 34.00/gall

102.00

3 gall Liquitex Soluvar anti-graffiti varnish @ 40.00/qt

480.00

### Total Supplies

**892.00**

**TOTAL PROJECT BUDGET NOT TO EXCEED**

**14,292.00**

## EXHIBIT D – MURAL PLAN

Mural Plan items are at Artist's expense.

### 1. State Surface Preparation.

Artist will sub-contract masonry repair of Wall at Artist expense as a Budget item. Skim coat of entire portion of wall to be painted, with hydraulic cement. Artist will prime surface using Sherman William's Loxon XP masonry waterproofer to prevent moisture getting through from behind retaining wall; topcoated with Zinsser 1-2-3 primer. Artist will provide a detailed estimate of repairs to City if City requests.

### 2. State the type paint Artist will use.

Novacolor acrylic paint – <https://novacolorpaint.com>

### 3. State information about scaffolding or other ladders or devices Artist will use to undertake the Mural work.

Artist will use two bakers rolling scaffolds, ladders or stepstools as needed depending on amount of sub-artists helping that day. Artist will provide drop cloths to prevent paint from getting onto concrete.

### 4. State Artist plans to safeguard the public and to minimize obstruction of sidewalk right-of-way while Artist is undertaking the Mural work.

Artist will place an orange traffic cone at each end of the sidewalk while Artist or Sub-Artists are working and/or while they have items (such as paint buckets and brushes) at or on the sidewalk. Artist will attach a sign to each cone that says "CAUTION ARTISTS AT WORK."

### 5. State methods Artist will use to seal, preserve or protect the Mural after the Design is painted/installed.

Artist will use 3 layers of varnish to extend the life of the Mural by protecting from weathering, exhaust and environmental pollutants that would otherwise make the paint become dull. Artist will use 2 isolation coats of acrylic varnish, and one coat of Liquitex Soluvar anti-graffiti varnish. This has a UV coating and makes graffiti easier to clean and remove, while enhancing colors. The layers of varnish make conservation easier so that, over the years, if the Mural started to dull, the original colors could be brought back to life simply by removing the anti-graffiti varnish and reapplying the varnish.

### 6. State any temporary, stand-alone lighting Artist may plan on using (if any).

None.