

FLAT BRANCH PARK MURAL AGREEMENT

THIS AGREEMENT between the City of Columbia, Missouri, a constitutional charter city (“City”) and CHILDREN’S GROVE (“Agency”), a nonprofit corporation organized in the State of Missouri and with an address of PO Box 736, Columbia, Missouri, 65205, is entered into on the date of the last signatory noted below (the “Effective Date”). City and Agency are each individually referred to herein as a “Party” and collectively as the “Parties.”

WITNESSETH:

WHEREAS, Agency desires to paint a mural on a city owned retaining wall leading into Locust Street tunnel in Flat Branch Park;

WHEREAS Section 24-2 of the City Code prohibits any person from painting any structure, material, article, substance, decoration or thing on, in or above any street, curb, gutter, park, parkway, sidewalk or public place except as specifically authorized by the city council by resolution;

NOW, THEREFORE, the Parties hereto, for good and sufficient consideration, the receipt of which is hereby acknowledged, intending to be legally bound, do hereby agree as follows:

1. LOCATION AND DESIGN

Agency is authorized to render in paint a mural, as described in the approved design concept attached as Exhibit A (hereinafter “mural”), on a city owned retaining wall leading into Locust Street tunnel in Flat Branch Park in Columbia, Missouri, at the location specified in Exhibit B (“mural site”). Agency will meet with the city designated project manager as necessary on all matters connected with carrying out Agency’s work on the mural. The City hereby designates Sarah Dresser, Manager of Cultural Affairs, as its designated project manager. Any disagreements between the city designated project manager and Agency will be referred to the City Manager for a decision. The City Manager’s decision shall be final.

2. LIMITED LIFETIME OF MURAL

Agency acknowledges, and accepts, that the wall is in the public realm and any installed artwork has a limited lifetime. The wall may be repaired, if needed. City may use the wall for any purpose, paint the wall, or dispose of the wall and mural at the City’s sole discretion. Agency waives any and all Moral rights to the artwork. Agency has included in its contract with Artist language which indicates that the mural has a limited lifetime and that the City may paint the wall or dispose of the wall and mural at the City’s sole discretion. In its contract with Artist, Agency also has included the Artist’s waiver of moral rights to the artwork.

3. TIME

Agency will begin work as soon as practical after the execution of this agreement

and shall have completed and installed the work by June 15, 2021.

4. WARRANTIES

Agency represents and warrants that the work is solely the result of the artistic effort of Agency and its Artist, and is original and unique to the Agency and its Artist, and does not infringe upon any copyright. Agency represents and warrants that the work will be durable, executed and fabricated in a workmanlike manner, and will be free from defects in material and workmanship including defects known as "inherent vice" or qualities which cause or accelerate deterioration of the work.

5. MAINTENANCE

Agency shall provide any maintenance needed on the mural for the first five years. If, within five (5) years of the date of final acceptance, the mural exhibits any structural or cosmetic defect or flaw, Agency will repair the mural or replace any defective component of the mural at no cost to City. All repairs or cures to defects shall be consistent with professional conservation standards. After five years, if the mural needs maintenance or repair, City will notify Agency in writing and Agency will determine if Agency wants to repair the mural. If Agency takes no action within thirty days of the notice, City may either repair the mural or paint over the mural in the City's sole discretion. If the wall needs to be repaired, the City may make repairs to the wall without notifying Agency, even if the repair(s) to the wall damages or destroys the mural.

6. FINAL ACCEPTANCE AND TITLE

Upon the work being installed and completed to Agency's satisfaction, City shall inspect the mural and present the Agency with a detailed listing of any observed flaws. When City is satisfied with the mural, City shall notify Agency of its final acceptance of the mural. Upon final acceptance, title to the mural shall pass to City. Thereafter, City shall retain all written documentation regarding the mural and shall have the right to a copy of all drawings, sketches and designs of the mural for maintenance and historical documentation purposes only.

7. FUNDING

Agency agrees that it will fully fund the execution and maintenance of this mural, and that no payment is expected from the City to complete or maintain the mural.

8. COPYRIGHT

Agency agrees that City owns the original work of art substantially as described in Exhibits A and B. Agency agrees that this work shall be a unique example of Agency's and its Artists' work. Agency grants City an irrevocable license to make two-dimensional reproductions of the work for non-commercial purposes, including but not limited to reproductions used in advertising, brochures, media, publicity and catalogues.

9. INDEMNIFICATION

Agency shall at all times hereafter defend, indemnify and hold harmless City, its officers, agents, employees, against any and all claims, costs, losses and liabilities of any kind, caused by acts or omissions of Agency, its employees, volunteers, or agents, or

accruing, resulting from, or related to the subject matter of this Agreement including, without limitation, any and all claims, demands, or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property.

10. NO ASSIGNMENT

This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. Neither Party shall assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party.

11. GOVERNING LAW AND VENUE

This agreement shall be governed by and construed in accordance with the laws of the State of Missouri. The venue for all litigation arising out of, or relating to this contract document, shall be in Boone County, Missouri, or the United States Western District of Missouri. The Parties hereto irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of Missouri. The Parties agree to waive any defense of forum non conveniens.

12. TERMINATION

With ten (10) days notice, either Party may terminate this Agreement. The parties agree that obligations under sections 4, 5, 6, and 9 shall survive the completion or termination of this Agreement.

13. NOTICES

Any notice, demand, request, or communication required or authorized by the Agreement shall be delivered either by hand, facsimile, overnight courier or mailed by certified mail, return receipt requested, with postage prepaid, to:

If to City:

City of Columbia
Office of Cultural Affairs
P.O. Box 6015
Columbia, MO 65205-6015
ATTN: Manager

If to Agency:

CHILDREN'S GROVE
PO Box 736
Columbia, MO 65205
ATTN: Board President

The designation and titles of the person to be notified or the address of such person may be changed at any time by written notice. Any such notice, demand, request, or communication shall be deemed delivered on receipt if delivered by hand or facsimile and on deposit by the sending party if delivered by courier or U.S. mail.

14. **NO WAIVER OF IMMUNITIES**

In no event shall the language of this Agreement constitute or be construed as a waiver or limitation for either party's rights or defenses with regard to each Party's applicable sovereign, governmental, or official immunities and protections as provided by federal and state constitutions or laws.

15. **AMENDMENT**

No amendment, addition to, or modification of any provision hereof shall be binding upon the Parties, and neither Party shall be deemed to have waived any provision or any remedy available to it unless such amendment, addition, modification or waiver is in writing and signed by a duly authorized officer or representative of the applicable Party or Parties.

16. **GENERAL LAWS**

Agency shall comply with all federal, state, and local laws, rules, regulations, and ordinances.

17. **ELECTRONIC SIGNATURE & COUNTERPARTS.**

This Agreement may be signed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. Faxed signatures, or scanned and electronically transmitted signatures, on this Agreement or any notice delivered pursuant to this Agreement, shall be deemed to have the same legal effect as original signatures on this Agreement.

18. **CONTRACT DOCUMENTS**

This Agreement includes the following exhibits, which are incorporated herein by reference:

<u>Exhibit</u>	<u>Description</u>
A	Approved Design Concept
B	Map showing Mural Site

In the event of a conflict between the terms of an exhibit and the terms of this Agreement, the terms of this Agreement control.

19. **ENTIRE AGREEMENT**

This Agreement represents the entire and integrated Agreement between Agency and City relative to the mural herein. All previous or contemporaneous agreements, representations, promises and conditions relating to the mural described herein are superseded.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have hereunto executed this Agreement on the day and the year of the last signatory noted below.

CITY OF COLUMBIA, MISSOURI

By: _____
John Glascock, City Manager *JD*

Date: _____

ATTEST:

Sheela Amin, City Clerk

APPROVED AS TO FORM:

Nancy Thompson, City Counselor/rw

CHILDREN'S GROVE

By: *Kim Dule Lowery*
Board President
Date: *3-18-21*

Exhibit A

Approved Design Concept



Rendering of mural at Flat Branch Park wall location

Exhibit B

Map showing mural site

