

MAINTENANCE AGREEMENT

This agreement is made this 17 day of May, 2023 between the City of Minneapolis acting by and through its Park and Recreation Board (“Park Board”), as Licensor and Thomasina Topbear (hereinafter known as “Licensee”).

WITNESSETH:

WHEREAS, the Licensee has been involved in the creation of a Strengthen Ecological Connections mural (“artwork”) to be placed in West Maka Ska Parkway retaining wall (hereinafter “the Site”);

WHEREAS, the Site for the installation of the artwork is on property owned and operated by the Park Board;

WHEREAS, the Park Board’s Board of Commissioners has approved the installation of the artwork at the Site after reviewing the Licensee proposal per the current policy and procedures on Public Art;

WHEREAS, Licensee has agreed to bear all costs associated with designing and installing the artwork at the Site;

WHEREAS, the Park Board has agreed to bear all costs associated with surface preparation, mural sealing, maintaining, and removing the artwork at the Site;

NOW THEREFORE, in consideration of the mutual covenants hereinafter stated, the parties hereto agree as follows:

1. License. The Park Board grants permission to Licensee to design and install the artwork on the Site which is depicted in **Exhibit A** which is attached hereto and made a part of this Agreement.
2. Artwork Design. The artwork will be built according to the staff reviewed and approved site plan as depicted in **Exhibit B and C**, which is attached hereto and made part of this Agreement.
3. Costs. Licensee shall be solely responsible for all costs associated with designing and installing the artwork on the Site through the Forecast Public Art contract in **Exhibit D**.
4. Right of Entry. Upon execution of a construction agreement between the Licensee and its contractor, the Park Board shall allow Licensee, and its contractors to enter upon the Site for initial construction and installation purposes Licensee shall be

solely responsible for any and all damage caused to the Park Board's property during either the construction/installation of the artwork on the Site

5. Maintenance. The Park Board shall be solely responsible for the Maintenance of the Artwork at the Site and all costs associated with the maintenance of the Artwork at the Site. Maintenance responsibility shall include, but not be limited to, the proper upkeep of the artwork for repair, replacement, or removal of all aspects of the Artwork. The Park Board shall determine when such actions need to occur and the maintenance activities covered under this Agreement may be conducted at any time by the Park Board. If any part of the Artwork is not maintained by the Park Board in the condition in which it was installed, reasonable wear and tear excepted, the Park Board can remove the artwork at its own expense. If minor damage occurs, MPRB will repair the damage and repaint. If more than 50% of the mural is damaged, MPRB will either remove the mural or reach out to the mural artist to reinstall the mural. After 10 years, the mural may be removed with or without damage. MPRB shall take into account the materials, colors, and maintenance consideration in Exhibit B to maintain the artwork.

Removal of the Artwork. Provided Licensee is in full compliance with all the terms of this Agreement, the Park Board shall use its best efforts to continue to display the Artwork at the Site for up to ten (10) years. If at any time the Park Board decides that the artwork needs to be removed, then the Park Board at its sole cost and expense shall remove the Artwork from the Site. If there needs to be modifications to the Site including, but not limited to, reconstruction or destruction of the building or Site on which the Artwork is installed, then the Park Board at its sole cost and expense shall remove the Artwork from the Site.

6. Public Access. The Parties shall seek to ensure ongoing public access to the Artwork for as long as it is displayed.

7. Security. Following the construction of the artwork, the Park Board shall be responsible for providing security to the Site in accordance with its practice of providing security to its other parks.

Term The term of this Agreement shall be one year.

8. Assignment of License. Licensee shall not assign or transfer their rights under this agreement, nor permit this Agreement to become transferred by operation of law or otherwise, nor do or suffer any acts to be done whereby the same may be or become assigned in whole or in part.

11. Liability. Each Party agrees that it will be responsible for its own acts and omissions, the acts and omissions of its officials, officers, and employees, and any liability resulting there from to the extent authorized by law. Neither Party shall be

responsible for the acts of the others and the results thereof. The Park Board is self-insured consistent with the limits established in Minnesota State Statute. Notwithstanding the foregoing, the terms of this Agreement are not to be construed as, nor operate as, waivers of the Park Board's statutory or common law immunities or limitations on liability.

12. Ownership Interests. The Artwork shall remain the property of the Park Board. The Site shall remain the property of the Park Board. Licensee shall not acquire any interest in the Site on which the Artwork is installed.

13. Risk. MPRB assume all risk of loss or damage to the Artwork including any loss or damaged caused by water, fire, windstorm explosion theft, or other cause.

14. Indemnification. Licensee shall indemnify and hold harmless the Park Board, its commissioners, employees, agents, contractors and invitees from any and all claims, demands and actions and all related costs and expenses, including reasonable attorney fees for injury, death, disability, or illness of any person, or damage to property occurring on or about the Site during the construction and, installation of the Artwork by Licensee or its contractors. Licensee obligation under this section extends to the negligence or willful misconduct of Licensee, their employees, agents, or contractors.

15. Contacts. The following are designated as points of contact regarding all communication contemplated under this Agreement:

For the Park Board:

Carrie Christensen
Senior Planner
Minneapolis Park and Recreation Board
2117 West River Road
Minneapolis, MN 55411

For *Licensee name* : Thomasina Topbear

Licensee representative name

Title

Address

Address

16. Entire Agreement. This License contains the entire agreement between the parties and there are no other terms, obligations, covenants, representations, statements or conditions, oral or otherwise of any kind whatsoever. Any agreement hereafter made shall be ineffective to change, modify, discharge or effect this License in whole or in part unless such agreement is in writing and

signed by the parties against whom enforcement of the change, modification or discharge is sought.

<p>MINNEAPOLIS PARK AND RECREATION BOARD</p> <p>By: _____</p> <p>Printed Name _____</p> <p>Its: _____</p> <p>Date: _____</p> <p>By: _____</p> <p>Printed Name _____</p> <p>Its: _____</p> <p>Date: _____</p>	<p><u>LICENSEE NAME</u></p> <p>By: _____</p> <p>Printed Name _____</p> <p>Its: _____</p> <p>Date: _____</p>
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Exhibit A
Project Site

*Insert context aerial(s), maps and/or photos of park location here:
to be developed by MPRB staff for each project*

Exhibit A



Bde Maka Ska Parkway



Exhibit B

Site Plan and/or Artwork Concept Plan

Insert site plan and/or artwork concept plan here

Community Engagement Report: How did you engage community in the creation of your concept and how did that inform or impact your concept?

Exhibit B

Site Plan and/or Artwork Concept Plan



Exhibit C: Materials List and Maintenance Considerations:

Mural Concept:



SW 6953
Candid Blue
Interior / Exterior

Prime & Color the entirety of the wall Candid Blue by Sherwin-Williams

Engagement Summary:

The West Maka Ska Neighborhood organization was engaged for the project concept development. Initially with a subcommittee that has stewarded the mural project and again with the full neighborhood board. The concept evolved to work with the scale of the site and the message changed to “Strengthen your connections” through the engagement process.

Material List:

Mural will be painted using MTN 94 Spraypaint, exact colors list will be given at the completion of the mural. With background painted in an exterior paint & primer done by the parks department staff using Sherwin-Williams brand color Candid Blue #SW 6953

Mural Statement:

This mural was created to inspire Minneapolis residents along with everyone who uses the parks to learn about what it means to strengthen ecological connection with nature and their surroundings. I hope it inspires everyone to be good stewards of Bde Maka Ská along with being active participants in creating strong healthy relationships with nature wherever they may go.

FORECAST

2380 Wycliff Street | Suite 200 | St. Paul, MN 55114

ForecastPublicArt.org

AGREEMENT FOR ARTIST SERVICES

This Agreement is between Forecast Public Art (FPA), a Minnesota Non-Profit Corporation, whose business address is 2380 Wycliff Street, Suite 200, St. Paul, MN 55114, and Thomasina Topbear ("ARTIST"), with offices at 3419 Colfax Avenue North, Mpls, MN 55412, for services on the Parks for all project (the "Project").

Overview of the Project.

In fall of 2021, the Minneapolis Park and Recreation Board adopted a new comprehensive plan, [Parks for All](#), to guide the next 15 years of the park system. In celebration of the new vision, MPRB is hiring 9 artists to paint murals in the park system to represent the new goals in the physical park spaces that the plan represents. Each artist will develop a mural concept based on one of the goals. The murals will be painted at different parks across the system so that the pages of the new policy will come to life in the parks, build awareness about the plan, and foster a culture of accountability to the new vision by shining a light on the new community informed goals.

Numerous strategies are outlined to achieve each goal within the plan. Each of the nine murals will represent one of the following goals, and the representation of the goal will be developed by each selected artist, in collaboration with MPRB staff:

1. Foster belonging and equity
2. Steward a continuum of nature and recreation
3. Provide core services with care
4. Work from our strengths and determine our role in partnerships
5. Expand focus on health equity
6. Strengthen ecological connections
7. Connect through communications and technology
8. Cultivate a thriving workforce
9. Operate a financially sustainable enterprise

Forecast is hiring ARTIST to assist with (the Project), with the goal for the ARTIST to install a community-based mural for the Project.

ARTIST and FPA agree as follows:

1. ARTIST's Services, Deliverables and Due Dates:

ARTIST tasks include [not necessarily in this order]:

- Contracting with Forecast
- Attending MPRB Orientation in-person and initial site visit
- Community engagement plan development and design of concept
- MPRB Staff Public Art Committee and Board of Commissioners approvals of design concept [attendance optional, but preferred]
- Develop Community engagement plan as part of design concept (2-3 sessions with stakeholders recommended)
- Development of maintenance plan w/ the assistance of MPRB staff.
- Installation of Mural
- Community Reveal and Celebration [attendance optional, but preferred]

2. TERM

This Agreement shall commence on 12/6/2022, 2022, and shall conclude no later than October 1, 2023.

Timeline:

November: Contracting
 December: Orientation
 December 2022 – March 2023: Community Engagement and Design of Concept
 March 2023: MPRB Design Concept Approvals
 March - May: Installation
 May – July: Community Celebration, tour, and mural unveiling.

3. COMPENSATION

In consideration for performance of the Services and delivery of the Deliverables, FPA shall pay ARTIST a total fee not to exceed \$9,000. ARTIST shall invoice FPA as follows:

- \$4000 following signing, engagement plan, design approval, and maintenance plan (for materials moving forward and labor to date)
- \$5000 upon completion

ARTIST will submit invoices to FPA according to above payment schedule. Please allow at least 30 days from FPA's receipt of ARTIST invoice.

4. TAXES

FPA will report all payments made to the ARTIST to the Internal Revenue Service on Form 1099. ARTIST is acting as an independent ARTIST under this agreement and is not an employee of FPA. ARTIST is solely responsible for all tax withholding and reporting requirements.

5. INDEPENDENT ARTIST

ARTIST understands and agrees that the ARTIST and any of its agents, employees, or other personnel are independent ARTISTS and not FPA employees. ARTIST shall be solely responsible for payment of salaries, wages, payroll taxes, unemployment benefits, or any other form of compensation or benefit to ARTIST or any of ARTIST's agents, employees, or other personnel performing the services or work or supplying equipment or materials specified

herein, whether it be of a direct or indirect nature. Further in that regard, it is expressly understood and agreed that for such purposes neither ARTIST nor ARTIST's agents, employees, or other personnel shall be entitled to any FPA payroll, insurance, unemployment, workers' compensation, retirement, or any other benefits whatsoever. Any changes to this agreement must be made in writing and approved by FPA before being considered part of this agreement. Failure to fulfill the terms of this Agreement will result in the termination of this Agreement.

6. CONFIDENTIALITY

ARTIST shall keep confidential all information regarding FPA and to which ARTIST may have access as a result of this Agreement, and which is non-public or proprietary in nature, and will not, except as required by law, disclose such information in any manner whatsoever, in whole or in part. This Section 6 shall survive termination or expiration of this Agreement.

7. COPYRIGHT

All materials produced by ARTIST in connection with the PROJECT shall remain the copyright of the respective artists. FPA and partners may use images of selected designs and any completed art for non-commercial, educational or promotional purposes in print or electronically and will credit the artist.

8. WAIVER OF RIGHTS UNDER THE VISUAL ARTISTS RIGHTS ACT (VARA): The Artist hereby confirms that he/she/they waives all rights that he/she/they may otherwise be deemed to have under the Visual Rights Act, 17 U.S.C. § 106A, or any other moral rights law of any state or country, in relation to the Project, for any and all uses of the Artwork, and will not impede, control, or demand any alterations, restoration, or any other changes to the Project at any time.

The mural is intended to remain on the site for no less than 1 year from the date of this Agreement to the longer commencement of redevelopment of the property or 10 years.

9. COMPLIANCE WITH LOCAL LAWS

In performing the work ARTIST shall comply with all applicable laws, ordinances and codes of federal, state and local governments.

10. INSURANCE

ARTIST agrees to carry professional liability insurance, as well as automobile insurance covering local transportation. Proof of insurance shall be provided to FPA upon request and required by MPRB for installation of the mural.

11. CHANGES AND TERMINATION

FPA may request changes in the scope of work. Any such changes, including term or increase or decrease in the amount of compensation, must be mutually agreed upon by FPA and the ARTIST and shall be incorporated in written amendments to this contract which must be signed by both parties to have effect. Either party may terminate this Agreement upon written notice to the other. FPA shall pay ARTIST for billable hours and expenses incurred up to the termination date. All notices shall be in writing and delivered personally, by certified mail, return receipt requested, or by overnight mail. Upon termination, ARTIST shall provide to FPA a

summary of work completed to date. This Agreement may be extended by mutual agreement of both parties due to unavoidable delays or changes in scope.

Forecast Public Art



Theresa Sweetland, Executive Director

Executive Director

Date: _____

ARTIST



Signature

Thomasina Topbear

Printed Name

12/6/2022

Date

612-380-1623

Phone