

PUBLIC ART AGREEMENT

This PUBLIC ART AGREEMENT (the “Agreement”) is made by and between the city of Marshall, a municipal corporation under the laws of the state of Minnesota (the “City”), and SammyJo Miller (“Artist”), an independent contractor.

WHEREAS, the City received grant funding for a public art piece to be designed and constructed by SammyJo Miller (the “Project”) and the guidelines for the grant are attached hereto as Exhibit A; and

WHEREAS, the City Council has determined that the installation of such an art piece at Independence Park will be a benefit to the community and enhance the park; and

WHEREAS, the City will manage the Project, which will be funded by a Southwest Minnesota Arts Council (“SMAC”) grant in an amount not to exceed \$9,894.00; with \$4,548 paid to the artist and \$1,363 reserved for the artist’s expenses allowed in the grant guidelines. The remaining portions of the grants include \$350 for city costs in promotional expenses, and an amount up to \$3,633 for materials necessary for the construction of the project.

WHEREAS, the City desires to enter into this Agreement which will govern the Project and the relationship of the parties during the Project; and

NOW, THEREFORE, the parties mutually agree as follows:

1. Services to be Provided. The Artist agrees to provide City with artistic professional services as set forth in this Agreement (“Services”). All Services and obligations shall be provided in a manner consistent with the level of care and skill ordinarily exercised by professionals currently providing similar artistic services.
2. Artist’s Obligations.
 - 2.1. The Artist shall provide an interactive work highlighting familiar symbols of local life, and inviting personal interaction and playful exploration, the design of which is substantially similar to the design presented to, and approved by, the City Council, which is attached hereto as Exhibit B. Exhibit B mock-ups are included for reference only. The Artist retains discretion to make creative and technical adjustments within the approved scope and budget as required by fabrication realities or professional judgement. Any significant changes to the Design must be approved by the City Administrator.
 - 2.2. The Artist is responsible for final design and creation of the project at a place designated by the City. The City will oversee preparation of the site, and installation and mounting of the project.
 - 2.3. All services performed by the Artist shall be performed in a professional manner and in strict compliance with all terms and conditions in this Agreement.

2.4. Except for material designated in the grant, the Artist is responsible for purchasing all supplies and other materials necessary to complete the Project. The grant funding includes \$2,070 for Midway Iron's metal material, cutting, and labor and \$1,563 for powder coating by AllPro Powder Coating.

2.5 Within five (5) years of the Project's completion, the Artist shall be available upon reasonable advance notice to repair and maintain the Project at the request of the City. Any such services shall be subject to a separate written agreement and compensation.

3. City's Obligations.

3.1. The City shall perform all obligations in strict compliance with all terms and conditions in this Agreement, including preparing the site, and overseeing installation and mounting of the project. Artist's responsibilities shall end upon delivery of the artwork and provision of installation guidelines. Artist may be reasonably available to answer questions related to installation but shall not be responsible for physical installation or site work.

3.2. The City shall provide and install a plaque on or near the Project containing a credit to the Artist and a copyright notice substantially in the following form "Artwork by SammyJo Miller © 2025. Commissioned by the City of Marshall in partnership with Visit Marshall, with support from the Southwest Minnesota Arts Council (SMAC)" The exact text of such notice shall be determined by Artist.

3.3. The City shall not knowingly permit any use of the Artist's name or misuse of the Artwork which would reflect discredit on the Artist's reputation as an artist or which would violate the spirit of the Artwork, to the extent that such use or misuse is within the City's direct control.

3.4. The City shall acknowledge SMAC's financial assistance on all publicity and promotional materials by including the statement that "this activity is funded in part with a grant from the Southwest Minnesota Arts Council made possible by the voters of Minnesota, thanks to a legislative appropriation from the arts and cultural heritage fund. The Legacy Logo will be incorporated, where practicable, into printed and other materials as per the usage guidelines.

3.5. The City agrees to follow the publicity plan in the grant guidelines which includes promoting the project through (i) its City of Marshall newsletter, website, and social media; (ii) print coverage in Marshall Independent and local radio mentions (e.g., KMHL); (iii) social media outreach via SJMiller Arts; (iv) social media outreach via the City's Facebook/Instagram pages and (v) flyers/postcards distributed through libraries, businesses, and downtown event partners

4. Budget and Payment Schedule.

4.1. The City agrees to pay the Artist in the amount of \$4,548 (the “Compensation”), which will fully compensate Artist for the Project and up to \$1,363 for expenses incurred by the artist and approved by the grant guidelines with copy of receipts available upon request from City to the Artist. The City will make payments to the Artist as follows:

- a. 50% at midpoint of artistic process as invoice from Artist to the City.
- b. 50% upon delivery of artwork at designated site.

Payment shall be contingent upon completion and delivery of the Work as described in this Agreement and the approved project scope. Acceptance shall not be unreasonably withheld if the Work conforms to the agreed specifications.

5. Term.

5.1. This Agreement shall be effective as of September 1, 2025 (the 'Effective Date') and shall become binding upon the parties upon the date of their signatures below (the 'Execution Date'). Unless extended by written agreement of the Parties, this Agreement will terminate no later than December 31, 2025, or upon completion of the Work, whichever occurs first.

5.2. Subject to the required approvals of the Southwest Minnesota Arts Council, the City may grant to the Artist a reasonable extension of time in the event that conditions beyond the Artist’s control, such as natural disasters, strikes, or similar force majeure events render timely performance of the Artist’s services impossible or unduly burdensome. All such performance obligations shall be suspended for the duration of the condition. Both parties shall take all reasonable steps during the existence of the condition to assure performance of their contractual obligations when the condition no longer exists. Failure to fulfill contractual obligations due to conditions beyond either Party’s reasonable control will not be considered a breach of contract, provided that such obligations shall be suspended only for the duration of such conditions.

6. Artist’s Representations and Warranties.

6.1. Warranties of Title. Artist warrants that the Design is original to the Artist, that the Design does not infringe upon the rights of any third party, and that the Design has not been offered for or accepted for sale elsewhere. For purposes of this Agreement, the ‘Design’ shall mean the specific arrangement and collection of the 13 illustrations in their final configuration as approved for this Project. Artist retains full rights of ownership and use in each individual illustration and in the general project concept, including the right to reproduce, license, or sell individual illustrations in other contexts. The Artist agrees not to sell or license the Design as a complete collection or arrangement to any other party.

6.2 The Artist warrants that the Design is free and clear of any liens from any source whatsoever.

6.3 The Artist warrants she has the full power to enter into and perform this Agreement and to make the grant of rights contained in this Agreement.

6.4 The Artist warrants that all services performed hereunder shall be performed in accordance with all applicable laws, regulations, ordinances, etc. and with all necessary care, skill, and diligence.

6.5 These representations and warranties shall survive the termination or other extinction of this Agreement.

7. Indemnity.

Artist shall indemnify the City only to the extent caused by Artist's negligence, willful misconduct, or violation of intellectual property rights. Nothing herein shall be construed as a limitation on or waiver of any immunities or limitations on liability available to the City under Minnesota Statutes, Chapter 466, or other law.

8. Insurance.

As Artist is not performing installation or site work, and fabrication is conducted by third-party vendors, the Artist shall not be required to obtain liability or fine art insurance. Artist agrees to ensure fabricator holds insurance and provide the City with the a copy of a certification of insurance from the fabricator satisfactory to the City. The City shall be solely responsible for providing insurance coverage for installation, site work, and long-term placement of the artwork.

9. Ownership of Documents.

Drawings, specifications, studies, sketches, renderings, images and other Documents, including those in electronic form prepared by the Artist (collectively, "Design Documents") are instrument of services for use solely with respect to this Design. Artist is and shall remain the author and owner of the Design Documents, and shall retain all common law, statutory and reserved rights therein including, but not limited to, copyright. One set of presentation materials, in electronic form, prepared and submitted under this Agreement shall be retained by the City for possible exhibition and to hold for permanent safekeeping.

10. Copyright Ownership.

Notwithstanding any term of this Agreement, the Artist retains all rights under the Copyright Act of 1976, 17 U.S.C. § 101 et seq., as the sole author of the Design for the duration of the copyright.

11. Reproduction Rights.

11.1. The Artist may, at the Artist's expense, cause to be registered with the United States Register of Copyrights, a copyright of the project in the Artist's name.

11.2. Third-Party Infringement. The City is not responsible for any third-party infringement of Artist's copyright and the City is further not responsible for protecting the intellectual property rights of Artist.

11.3 The City may reproduce the Artwork for editorial and promotional purposes, provided reasonable credit is given to the Artist in all such uses. "Editorial Use" shall mean use of Artwork or parts of it in an illustrative or informative manner or product (e.g. News story, book (but not book cover), magazine, editorial Web site, educational DVD, or journal) on subjects other than the City or muralism, and not for commercial use. In the event that the City receives a request to reproduce the Artwork for a Commercial Use, the City will notify the Artist immediately at the Artist's last known address and provide the Artist with material details concerning the request, including the requestor's name, company and contact information. The Commercial Use then shall be negotiated by Artist separately. "Commercial Use" shall mean the use of the Artwork or parts of it to advertise for profit goods and services; in films, broadcast, cable, or other audio-visual or transmission media; in wireless or digital media such as cell phones, ebooks, or other digital display devices or offered for sale as retail merchandise, including, but not limited to, posters or prints, clothing, and gift-related items, or book covers.

11.4 Any future co-branded reproduction projects (e.g., postcards, merchandise) shall be subject to a separate written agreement between Artist and City.

12. Alterations of Site or Removal of Artwork.

12.1. The Project may be removed, relocated, or destroyed by the City at the City's sole discretion. Before removing, relocating or destroying the project, the City shall make good faith effort to contact the Artist at the Artist's last known address or email address provided to the City. If, after thirty (30) days from the date of mailing or emailing such notice, the City has not heard from the Artist, then the City may remove, relocate or destroy the Project at its sole discretion. If the City hears from the artist within that thirty (30) days, the City agrees to use good faith efforts to collaborate with the Artist regarding a mutually agreeable plan for the removal, relocation or destruction of the Project.

12.2. This clause is intended to replace and substitute for the rights of the Artist under the Visual Artists' Rights Act to the extent that any portion of this Agreement is in direct conflict with those rights. The parties acknowledge that this Agreement supersedes that law to the extent that this Agreement is in direct conflict therewith.

12.3. Artist will provide a maintenance manual to the City upon completion of the Project to provide guidance to the City on cleaning and preserving the Project.

12.4 Artist agrees that the City may repair or restore Artwork at City's sole discretion without substantially altering the design, which was presented to, and approved by, the City Council, and which is attached hereto as Exhibit B. Artist agrees that doing so is not an infringement of Artist's copyright.

13. Remedies.
- 13.1. In the event of a termination of this Agreement by the City because of a breach by Artist, City may complete the Services either by itself or by contract with other persons or entities, or any combination thereof.
- 13.2. The foregoing remedies provided to City for breach of this Agreement by Artist shall not be exclusive. City shall be entitled to exercise any one or more other legal or equitable remedies available because of Artist's breach.
14. Records/Inspection. This Agreement is subject to the requirements of Minnesota Statutes, Section 16C.05, subd. 5 and the Minnesota Data Practices Act in Chapter 13 of the Minnesota Statutes. Artist agrees that the City or any authorized representatives may have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, or other materials during normal business hours and as often as deemed necessary and will maintain these materials, records, and documents for six years from the date of the termination of this Agreement.
15. Subcontracting; Assignment. Artist shall not subcontract or assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that may become due or moneys that are due) in the Agreement without the prior written consent of the City. Any assignment in violation of this provision is null and void. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
16. Independent Contractor. Artist shall be deemed an independent contractor. Artist's duties will be performed with the understanding that Artist has special expertise as to the services which Artist is to perform and is customarily engaged in the independent performance of the same or similar services for others. The manner in which the services are performed shall be controlled by Artist; however, the nature of the services and the results to be achieved shall be specified by City. Artist is not to be deemed an employee or agent of City and has no authority to make any binding commitments or obligations on behalf of City except to the extent expressly provided herein. All services provided by Artist pursuant to this Agreement shall be provided by Artist as an independent contractor and not as an employee of the City for any purpose, including but not limited to: income tax withholding, workers compensation, unemployment compensation, FICA taxes, liability for torts and eligibility for employee benefits.
17. Compliance with Laws. Artist shall exercise due professional care to comply with applicable federal, state and local laws, rules, ordinances and regulations in effect as of the date Artist agrees to provide the applicable services detailed this Agreement or any supplemental letter agreement.
18. Notices. The below-named individuals will act as the representatives of the Parties with respect to the work to be performed under this Agreement. Any termination notice issued

under this Agreement shall be either hand delivered or sent by U.S. Mail to the below-named individuals:

To City:
City of Marshall
344 W. Main St.
Marshall, MN 56258
Attn: City Administrator

To Artist:
SammyJo Miller

Attn: _____

Or such other address as either party may provide to the other by notice given in accordance with this provision.

19. Entire Agreement; Amendments. This Agreement, any attached exhibits and any addenda or amendments signed by the parties shall constitute the entire agreement between the City and Artist and supersedes any other written or oral agreements between the City and Artist. This Agreement can only be modified or amended in writing signed by the City and Artist.
20. Data Practices Act Compliance. Any and all data provided to Artist, received from Artist, created, collected, received, stored, used, maintained, or disseminated by Artist pursuant to this Agreement shall be administered in accordance with, and is subject to the requirements of the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13. This paragraph does not create a duty on the part of the Artist to provide access to public data to the public if the public data are available from the City, except as required by the terms of this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed or caused to be executed by their duly authorized officials, this Agreement for Professional Services in duplicate on the respective dates indicated below.

CITY OF Marshall

By: _____

Its: Mayor

Attest: _____

Its: Clerk

Artist

By: _____

EXHIBIT A

Grant Guideline Document

EXHIBIT B

Art Proposed