

**APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE DEKALB
PUBLIC LIBRARY FOR THE USE OF THE LIBRARY FOR A MURAL PROJECT.**

WHEREAS, the City of DeKalb (the "City") is a home rule unit of local government and may exercise any power and perform any function pertaining to its government and affairs pursuant to Article VII, Section 6, of the Illinois Constitution of 1970; and

WHEREAS, the City, the DeKalb Public Library (the "Library"), and Danielle Casali (the "Artist") negotiated an intergovernmental agreement to use the Library for the City's public mural in the same or substantially similar form as the attached and incorporated Exhibit A (the "IGA"); and

WHEREAS, the City's corporate authorities find that approving the IGA is in the City's best interests for the protection of the public health, safety, and welfare; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DEKALB, ILLINOIS:

SECTION 1: The recitals to this resolution are adopted and incorporated as Section One to this resolution.

SECTION 2: The City's corporate authorities approve, authorize, and direct the Mayor to execute the IGA, and further direct the City Manager to perform such acts as may be necessary to effect the IGA.

SECTION 3: This resolution and each of its terms shall be the effective legislative act of a home rule municipality without regard to whether such resolution should (a) contain terms contrary to the provisions of current or subsequent non-preemptive state law, or (b) legislate in a manner or regarding a matter not delegated to municipalities by state law. It is the intent of the City's corporate authorities that to the extent this resolution is inconsistent with any non-preemptive state law, this resolution shall supersede state law in that regard within its jurisdiction.

SECTION 4: This resolution shall be in full force and effect from and after its passage and approval as provided by law.

PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois at a Regular meeting thereof held on the 13th day of March 2023 and approved by me as Mayor on the same day. Passed by an 8-0 roll call vote. Aye: Morris, Larson, Smith, Perkins, McAdams, Verbic, Faivre, Barnes. Nay: None.




COHEN BARNES, Mayor

ATTEST:


Ruth A. Scott, Executive Assistant

INTERGOVERNMENTAL AGREEMENT FOR THE USE OF THE DEKALB PUBLIC LIBRARY FOR MURAL SERVICES

This Intergovernmental Agreement (the “Agreement”) is made and entered into on March 13, 2023 (the “Effective Date”), by the City of DeKalb, an Illinois municipal corporation (the “City”), the DeKalb Public Library, an Illinois local public library (the “Library”), and Danielle Casali (the “Artist”).

RECITALS

WHEREAS, pursuant to Article VII, Section 10 of the Illinois Constitution of 1970 and the Intergovernmental Cooperation Act, 5 ILCS 220/1, *et seq.*, the Parties are authorized to enter into intergovernmental agreements to jointly exercise, combine, transfer, and enjoy their powers, privileges, functions, and authority; and

WHEREAS, the City is a home rule unit of local government and may exercise any power and perform any function pertaining to its government and affairs pursuant to Article VII, Section 6, of the Illinois Constitution of 1970; and

WHEREAS, the Library is a local public library and may exercise those powers provided by law; and

WHEREAS, the City and Artist are parties to a Contract for Mural Services dated October 10, 2022 (the “Mural Contract”) for Artist to provide services relating to the creation, design, installation, painting, and supervision of a public collaborative mural at City Hall (the “Mural Project”); and

WHEREAS, the City and Artist wish to use the Library’s indoor meeting space for the Mural Project pursuant to the provisions of this Agreement; and

WHEREAS, the Library is willing to provide free indoor meeting space for the Mural Project pursuant to the provisions of this Agreement; and

WHEREAS, the City may exercise its home rule powers to perform its powers or functions under this Agreement; and

WHEREAS, the Library is not prohibited by law or ordinance from exercising its powers and performing its functions under this Agreement; and

WHEREAS, the Parties find that approving this Agreement is in their best interests to protect the public health, safety, morals, and welfare; and

NOW, THEREFORE, in consideration of the promises, undertakings and covenants set forth in this Agreement, the Parties agree as follows:

1.0 Recitals: The foregoing recitals are true, correct, material, adopted, and incorporated into this Agreement as if fully set forth in this section.

2.0 License: The Library agrees to allow the City, Artist, and their volunteers to access and use a dedicated art space with office in the Library's lower-level building located at 309 Oak St., DeKalb, IL 60115, in an area to be specifically determined by the Library, for the Mural Project during the term of this Agreement, subject to the provisions of this Agreement (the "License"). This License shall include the non-exclusive access and use of reasonable ingress and egress to the licensed space and publicly accessible common areas of the Library including, bathrooms, sinks, and garbage containers.

3.0 License Hours: The City, Artist, and volunteers shall only access and use the License when the Library is open to the general public. The Library is typically open to the general public during the following times: 9:00 a.m. to 9:00 p.m. on Mondays through Thursdays; 9:00 a.m. to 5:00 p.m. on Fridays through Saturdays; and 1:00 p.m. to 5:00 p.m. on Sundays (the "License Hours").

4.0 License Fees: The Library shall not charge any fees for the License. The Library shall waive all fees for the License.

5.0 License Restrictions: The License shall be subject to the following provisions:

A. City, Artist, and volunteers shall comply with applicable Library's rules, regulations, and policies relating to the use of the License;

B. The Parties shall comply with the room capacity for the licensed space, which shall be 16 persons;

C. Artist shall be at all times present to provide supervision of volunteers;

D. Artist and volunteers shall keep and maintain the licensed space in good order and a clean condition including, but not limited to, cleaning the licensed space before leaving the licensed space;

E. Artist and volunteers shall not use the License outside of the License Hours, and Artist must ensure that Artist and volunteers leave the Library before the close of the License Hours;

F. Artist shall provide all materials and supplies for the Mural Project at the licensed space including, but not limited to, art materials and supplies, refreshments, safety items, and cleaning materials (except that Library shall provide and maintain garbage containers);

G. City or Artist shall maintain a registration system for volunteers to ensure compliance with the capacity limits, and the Parties shall use reasonable efforts to publicize the registration system to the general public;

H. Artist shall be solely responsible for maintaining the security of the work

product associated with the Mural Project;

I. Library shall provide Artist with two (2) keycards for Artist to access and use the licensed space, and Artist shall be responsible for the keycards at all times;

J. Library shall promote the Mural Project in its various media including, but not limited to, Library's website, fliers, and social media;

K. Library may recover the cost of property damage repairs proximately caused by the License from the City; provided, however, that Library first give the City notice of the alleged damage and a reasonable opportunity to perform the property damage repairs at the City's sole cost and expense;

L. City and Artist shall name Library as an additional insured on their respective general commercial liability insurance policies; and

M. To the fullest extent permitted by law, City and Artist shall defend, indemnify, waive, release and hold harmless the Library and its officers, employees, and agents from and against any and all causes of action, claims, costs, damages, liabilities, losses, judgments, and attorney's fees proximately caused by the use of the License. Notwithstanding the foregoing to the contrary and the contractual basis of this Agreement, the Parties shall be entitled to assert any and all defenses and immunities provided by law including, but not limited to, the Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1, *et seq.* The Parties' obligations under this paragraph shall survive the termination of this Agreement.

6.0 Term: The term of this Agreement shall begin on the Effective Date and expire on December 31, 2023, unless terminated earlier pursuant to this Agreement. Thereafter, this Agreement shall be automatically renewed for a month-to-month term; provided, however, that the final month-to-month term shall expire on June 30, 2024 with no further automatic extensions. Any party may terminate this Agreement by giving written notice to the other parties not less than thirty (30) calendar days before the end of the then-existing term of the Agreement. Except as may otherwise be provided by this Agreement, the Parties' obligations under this Agreement shall terminate upon the expiration of the term of this Agreement.

7.0 Miscellaneous:

7.1 Assignment. No party may assign this Agreement without the express written consent of the other Party, which shall not be unreasonably withheld.

7.2 Non-Waiver. The failure of any party to this Agreement to insist on the strict and prompt performance of the terms, covenants, agreements, and conditions of this Agreement shall not constitute or be construed as a waiver or relinquishment of any party's right to enforce any such term, covenant, agreement or condition, but the same shall continue in full force and effect. No action taken by any party to this Agreement shall

be deemed to constitute an election of remedies and all remedies set forth in this Agreement shall be cumulative and non-exclusive of any other remedy either set forth herein or available to any party at law or equity.

7.3 Choice of Law. This Agreement shall be governed by Illinois law.

7.4 Default. Upon a breach of this Agreement, any of the parties may secure the specific performance of the covenants and agreements in this Agreement or may exercise any remedies available at law or equity in an appropriate action, the sole venue for which shall be in the Circuit Court of DeKalb County, Illinois. In the event of a material breach of this Agreement, the Parties agree that the party alleged to be in breach shall have ten (10) calendar days after written notice of said breach to correct the same before the non-breaching party seeks a judicial remedy; provided, however, that said ten (10) calendar day period shall be extended for a reasonable period of time if the defaulting party has commenced to cure said default and is diligently proceeding to cure the same.

7.5 Force Majeure. If the performance of any covenant to be performed by any party is delayed as a result of circumstances which are beyond the reasonable control of such party including, but not limited to, acts of God, war, strikes, inclement weather conditions, inability to secure governmental permits, or similar acts ("Force Majeure"), the time for such performance shall be extended by the length of such delay; provided, however, that the party that seeks the benefit of this provision shall give the other(s) written notice of both its intent to rely upon this provision and the specific reason which permits the party to avail itself of the benefit of this provision. The Party invoking Force Majeure shall use reasonable efforts to remove or mitigate the Force Majeure.

7.6 Integration. This Agreement sets forth all agreements, understandings, and covenants between and among the parties. This Agreement supersedes all prior agreements, negotiations and understandings, written and oral, and is a full integration of the entire Agreement of the parties. Notwithstanding the foregoing to the contrary, nothing in this Agreement is intended to amended or supersede the Mural Contract.

7.7 Severability. If any provision, clause, word, or designation of this Agreement is held to be invalid by any court of competent jurisdiction, such provision, clause, word or designation shall be deemed to be excised from this Agreement and its invalidity shall not affect any other provision, clause, word, or designation.

7.8 Mutual Cooperation. The Parties stipulate that their mutual cooperation is essential to the performance of their respective duties under this Agreement. Therefore, the Parties agree to aid each other and to cooperate reasonably with each other in performing their respective duties under this Agreement.

7.9 Multiple Counterparts. This Agreement may be executed in multiple counterparts, all of which when taken together shall constitute one Agreement.

7.10 Headings. The headings of the Sections of this Agreement are for convenience and reference only and do not form a part of the Agreement or modify,

interpret or construe the understandings of the parties.

7.11 Copies. This Agreement may be reproduced by means of carbons, xerox process, or otherwise. Each such reproduction, if manually executed by the parties, shall be a duplicate original of this Agreement.

7.12 Third-Party Beneficiaries. No claim as a third-party beneficiary under this Agreement by any person, firm, or corporation shall be made or be valid against the parties.

7.13 Notices. Notices, including Notices to effect a change as to the persons hereinafter designated to receive Notice(s), or other writings which any party is required to or may wish to serve upon any other party in connection with this Agreement shall be in writing and shall be delivered personally, by e-mail, or registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to the City:

ATTN: City Manager
City of DeKalb
164 E. Lincoln Hwy
DeKalb, Illinois 60115

If to the Artist:

Danielle Casali
1317 Foxglade Ct.
St. Charles, IL 60174
email: danielleacasali@gmail.com

If to Library:

DeKalb Public Library
309 Oak Street
DeKalb, Illinois 60115-3369
Attn: Emily Faulkner, emilyf@dkpl.org

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives.

CITY OF DEKALB

By: Cohen Dan

Its: Mayor

DEKALB PUBLIC LIBRARY

By: _____

Its: _____

ARTIST

By: _____

Its: _____

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If to the City:

ATTN: City Manager
City of DeKalb
164 E. Lincoln Hwy
DeKalb, Illinois 60115

If to the Artist:

Danielle Casali
1317 Foxglade Ct.
St. Charles, IL 60174
email: danielleacasali@gmail.com

If to Library:

DeKalb Public Library
309 Oak Street
DeKalb, Illinois 60115-3369
Attn: Emily Faulkner, emilyf@dkpl.org

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By: Cohen Dan

Its: Mayor

DEKALB PUBLIC LIBRARY

By: _____

Its: _____

ARTIST

By: Danielle Casali

Its: Artist

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If to the City:

ATTN: City Manager
City of DeKalb
164 E. Lincoln Hwy
DeKalb, Illinois 60115

If to the Artist:

Danielle Casali
1317 Foxglade Ct.
St. Charles, IL 60174
email: danielleacasali@gmail.com

If to Library:

DeKalb Public Library
309 Oak Street
DeKalb, Illinois 60115-3369
Attn: Emily Faulkner, emilyf@dkpl.org

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CITY OF DEKALB

By: _____

Its: _____

ARTIST

By: _____

Its: _____

DEKALB PUBLIC LIBRARY

By: Marilyn M. Cleland

Its: Secretary