



MURAL INSTALLATION AND MAINTENANCE AGREEMENT

This MURAL INSTALLATION AND MAINTENANCE AGREEMENT (the “**Agreement**”) is deemed effective _____, 2021 (“**Effective Date**”) in the City of Duluth, County of St. Louis, State of Minnesota, by and between Zeitgeist Center for Arts and Community, a Minnesota charitable trust (“**Sponsor**”), Moira Villiard, a Minnesota resident (“**Artist**”), and City of Duluth, a Minnesota municipal corporation (“**City**”), on behalf of itself, and on behalf of its Indigenous Commission and its Public Arts Commission (each a “**Party**” and collectively, the “**Parties**”).

RECITALS

WHEREAS, City understands the importance of art in public places and the role that murals play in preserving our culture, conveying the history of our community, beautifying the City, and advancing the arts; and

WHEREAS, the site of Gichi-Ode’ Akiing, located at 214 East Superior Street, Duluth MN 55802 (“**Park**”), has historical and cultural significance to the Duluth area and to the Anishinaabe, and the story of Chief Buffalo remains a significant and underrepresented part of the history of Duluth’s ability to exist as a city; and

WHEREAS, City resolved in its 2035 Imagine Duluth Comprehensive Plan to “Encourage investment in public art across the City,” to “Continue to promote neighborhood attractiveness, including through permanent and temporary artistic endeavors in neighborhoods and Core Investment Areas,” to “Share culture: invest in means to make Indigenous culture and its impact on the City more visible, as well the contributions and impact of other past and present groups,” to “Promote the history of neighborhoods. Continue to make these places identifiable, especially based on historical development patterns and commerce,” and to “Expand opportunities for temporary and permanent installations of art of all types in neighborhoods”; and

WHEREAS, the Parties wish to further create, install, and maintain a Chief Buffalo Memorial Mural in Gichi-Ode’ Akiing Park; and

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City, Sponsor and Artist agree as follows:

ARTICLE I

INSTALLATION RESPONSIBILITIES

- A. The City approves the installation of the Chief Buffalo Memorial Mural (“**Mural**”) in the Park. A scale rendition of the Mural, including the color, shading and texture of the Mural, is attached hereto as **Exhibit A** (“**Rendering**”). The area within the Park where the Mural will be located, including the specific sections of walls the Mural will be painted on, is depicted on **Exhibit B** (“**Mural Area**”).

B. The City's approval of the Mural being painted in the Mural Area is contingent on the following conditions ("Mural Conditions"):

1. The Mural may only be painted on walls and wall sections explicitly approved by City;
2. The Mural may not be painted on walls which have vegetation attached;
3. The Mural must have a coat of polyurethane or another means of preventing wear;
4. There must be a maintenance agreement between City and Artist and/or Sponsor which details Artist's and/or Sponsor's response in the event of vandalism and/or graffiti.

C. The Parties will have the following roles in relation to the Mural:

1. City is responsible for removing graffiti from the Mural.
2. Artist is responsible for annual inspections of the artwork in the Mural and providing touch-ups and repairs on at least an annual basis and coordinating artist and installation subcontractors.
3. Zeitgeist provides a restricted financial account to hold the maintenance funds for the art repairs and can act as a contact for the City to call when art-related repairs are needed.
4. The City Indigenous Commission provides guidance and vision for the Mural and corresponding educational activities. The City will consult with the Indigenous Commission prior to making any major alterations to the original artwork.
5. The City Chief Administrative Officer, Duluth Public Art Commission and the City Indigenous Commission will approve designs for the Mural.

D. Completion of Installation. Artist shall complete the Mural within 60 days after the Effective Date ("Completion Date").

ARTICLE II TERM

- A. **Term and Termination.** This Agreement shall have a term of ten (10) years from the Effective Date, unless this Agreement is earlier terminated or extended by the Parties. This Agreement may be terminated as follows:

1. By the mutual written agreement of the Parties.
 2. In the event of a material breach of this Agreement by one of the Parties.
 3. If the City removes or abandons the Mural.
- B. **Extension.** City and Sponsor may mutually agree in writing to extend this Agreement after the initial ten (10) year term. No automatic renewal is implied.

ARTICLE III PAYMENT

The amount and procedures for payment by Sponsor to Artist shall occur in accordance with the Fiscal Agent Agreement by and between Sponsor and Artist dated February 7, 2020 attached hereto and incorporated by reference as **Exhibit C**(“**Fiscal Agent Agreement**”)

ARTICLE IV PERFORMANCE BY ARTIST

- A. **Artistic Freedom.** Nothing in this Agreement shall be construed to limit Artist’s artistic freedom in creating the Mural, so long as the Mural complies with the Rendering and the Mural Conditions. The Services (defined below) shall be performed and conducted in a manner that is consistent with the level of care and skill exercised by members of Artist’s profession currently working under similar conditions.
- B. **Legal Requirements.** Artist agrees that the installation of the Mural and all services ancillary thereto (“Services”) shall be performed in accordance with, and all materials furnished by Artist shall comply strictly with, all applicable laws, rules, regulations, ordinances, codes, and orders of all federal, state, and local governmental authorities, agencies, departments, or bureaus having jurisdiction and which affect the Services hereunder, without extra charge or expense.
- C. **Safety.** Artist shall be responsible for the health and safety, and shall provide and maintain a safe working environment, for all of Artist’s employees, agents, subcontractors, community participants, and invitees.
- D. **Handling of Tools, Equipment, and Materials.** Artist is responsible for the handling and distribution of Artist’s own tools, equipment, and materials.

ARTICLE V MAINTENANCE AND REPAIR

- A. **Mural Maintenance Fund.** Sponsor will maintain a maintenance fund (“Maintenance Fund”) to pay for necessary maintenance and repairs of the artwork in the Mural (but not the Park or other parts of the Mural or Mural Area), including materials and supplies, the

Artist's work time and Sponsor's role of administering this Agreement. If there is no money remaining in the Maintenance Fund, Sponsor will not provide additional funds. New funds must be sought to provide for such maintenance. Artist, City, and/or Sponsor may, in their discretion, apply for grants or other monies to fund the Maintenance Fund. Sponsor has sole and absolute discretion in deciding when and how to use the Maintenance Fund to maintain the Mural. It is the responsibility of the Sponsor and Artist to identify and secure additional funding for the Maintenance Fund within their reasonable discretion.

- B. **Maintenance of Mural Artwork.** Sponsor and Artist shall be responsible only for maintaining the artwork within the Mural (but not the Park or other parts of the Mural or Mural Area) for the duration of this Agreement, using the Maintenance Fund. In order to do so, Artist will conduct an annual inspection to identify art maintenance and repair touch-ups to the Mural and conduct those repairs, as needed, on an annual basis and in accordance with this Agreement. Sponsor may pay the Artist for this work in such amounts as may be reasonably agreed to between Sponsor and Artist and in accordance with the Fiscal Agent Agreement.
- C. **Maintenance of Mural.** City will be responsible for maintaining the Mural (except for the artwork within the Mural) in Good Condition. "**Good Condition**" means that the Mural is free of excessive dirt, debris, and any other object or substance interfering with the public's view of the Mural, such as spray paint or other graffiti. City shall repair normal damage to the Mural (except the artwork within the Mural) caused by excessive wear, vandalism, graffiti or other activities. If any of the City's repair work involves painting of the Mural or the Mural area, the City of Duluth's Planning and Economic Development division will agree to use the same paint color as the existing paint color on the portion of the Mural or the Mural area being repaired. If the City observes damage to the Mural artwork, the City will notify the Sponsor.
- D. **Artist's Right of First Refusal.** Sponsor will offer Artist the right of first refusal to perform maintenance or repairs on the Mural's artwork in accordance with Article V.B., above. If Artist indicates she will not perform the maintenance or repairs, Sponsor will consult with the Indigenous Commission to select and appoint another artist to complete the maintenance or repairs. After such consultation, Sponsor may contract with a third-party or assign staff to complete the maintenance or repairs, upon such terms and conditions as Sponsor deems appropriate in its sole discretion, and Sponsor may use the Maintenance Funds to pay for any costs or expenses related thereto.
- E. **Changes to Mural.** Significant changes to the content of the Mural shall only be made with written approval of the City Chief Administrative Officer and with prior consultation with the City Indigenous Commission and Duluth Public Arts Commission.
- F. **Modification of Mural Area.** The Parties acknowledge and agree that the State of Minnesota and/or its Department of Transportation may modify the Mural and/or Mural Area at any time without permission of the Parties. The Parties agree to indemnify, defend,

and hold harmless each and every Party against any claims brought against a Party regarding modifications to the Mural and/or Mural Area by the State of Minnesota.

- G. Access to Water Utilities Under Mural Area.** The Parties acknowledge and agree that the City has existing water utilities under the Mural Area that it may need to access or modify during the Term, which could negatively impact access to and/or condition of the Mural.

ARTICLE VI REMOVAL OF THE MURAL

- A. **Removal.** The City has the right to remove or abandon the Mural. The City will consult with its Indigenous and Public Arts Commissions prior to removal of the Mural.

ARTICLE VII INTELLECTUAL PROPERTY

- A. **Ownership.** City shall own all rights in the Mural except as specified below.
- B. **Copyright.** Subject to the restrictions and usage rights and licenses granted to Sponsor and City hereunder, and unless otherwise agreed to by the Parties in writing, Artist shall retain all 17 U.S.C. § 106 copyrights in all original works of authorship produced under this Agreement.
- C. **Intellectual Property Licenses.** Artist hereby grants to City, and to City's assigns, a perpetual, irrevocable, and royalty-free license to display the Mural in the Mural Area. Any change to the location of the Mural must be approved by Artist.

Artist also grants to City and Sponsor, and their successors and assigns, a perpetual, irrevocable, and royalty-free license to make, display, distribute, and authorize the making, display, and distribution of photographs and other reproductions of the Mural. Sponsor and City may use such reproductions for any Sponsor-related or City-related purpose, including advertising, educational and promotional materials, brochures, books, flyers, postcards, print, broadcast, film, electronic, and multimedia publicity. Sponsor and City shall ensure that such reproductions are made in a professional and tasteful manner, in their sole and reasonable judgment. Sponsor and City shall make reasonable efforts to ensure that such reproductions include the following credit line and copyright notice where practicable:

"Chief Buffalo Memorial Murals" © [Year of completion] by Moira Villiard, Michelle Defoe, and Awanigiizhik Bruce.

Failure to include such credit line and notice in any reproductions shall not constitute a breach of this Agreement. Neither Sponsor nor City may license or sublicense its rights for any private or commercial purpose.

- D. **Third Party Infringement.** Artist represents and warrants that the Mural is the sole work of Artist and Artist's team of subcontractors (if any) and does not infringe the intellectual property rights of any third parties. Neither Sponsor nor City is responsible for any third-party infringement of Artist's copyright or for protecting Artist's intellectual property rights. Further, Artist agrees to indemnify, defend, and hold harmless Sponsor and City against any claims brought against Sponsor or City alleging that the Mural infringes the intellectual property rights of any third parties.
- E. **Publicity.** Sponsor and City shall have the right to use Artist's name, likeness, and biographical information, in connection with the display or reproduction and distribution of the Mural. Artist shall be reasonably available to attend any ceremonies related to the Mural.
- F. **Trademark.** In the event that Sponsor's or City's use of the Mural creates trademark, service mark or trade dress rights in connection with the Mural, Sponsor and City shall have an exclusive and irrevocable right in such trademark, service mark, or trade dress.

**ARTICLE VIII
INDEMNIFICATION; LIMITATION OF LIABILITY**

- A. **Indemnification.** Each Party agrees to indemnify, defend, and hold harmless the other Parties from and against any loss, cost, or damage of any kind including attorneys' fees for its breach of this Agreement, its negligence, or its willful misconduct.
- B. **Sponsor's Liability.** Sponsor's total liability under this Agreement, including any indemnity pursuant to this Article VIII, is limited to the amount in the Maintenance Fund at the time such liability arises.
- C. **No Consequential Damages.** In no event will any Party be liable to another Party for any incidental, special, punitive or consequential damages, lost profits, or any other indirect damages, whether arising in contract, tort (including negligence) or otherwise relating to or arising from the painting of the Mural.

**ARTICLE IX
MISCELLANEOUS PROVISIONS**

- A. **General.** No provision of this Agreement may be modified, waived or discharged unless such waiver, modification or discharge is agreed to in writing and signed by all the Parties. No waiver by a Party shall be deemed a waiver of similar or dissimilar provisions or conditions at the same or at any prior or subsequent time. Except for the Fiscal Agent Agreement, no agreement or representations, oral or otherwise, express or implied, with respect to the subject matter hereof have been made by any Party which are not expressly set forth in this Agreement. The validity, interpretation, construction and performance of this Agreement shall be governed by the internal laws of Minnesota. If any provision of this Agreement shall be held or made invalid by a court decision, statute, rule or otherwise, the remainder of this Agreement shall not be affected thereby. This Agreement shall be binding on, and shall inure to the benefit of the Parties hereto and their respective

successors and permitted assigns. Artist may not assign Artist's rights or obligations hereunder related to the creation of the Mural without the prior written consent of the other Parties. This Agreement may be executed in any number of counterparts, each of which shall for all purposes be deemed to be an original and all of which shall together constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Agreement in Portable Document Format (PDF) or by facsimile transmission shall be as effective as delivery of a manually executed original counterpart of this Agreement. In the event a Party institutes any legal proceeding against another Party regarding this Agreement, the prevailing Party is entitled to receive the costs incurred by such Party, including reasonable attorneys' fees. Minnesota Statutes, section 13.05, subdivision 11, may apply to this Agreement. It is understood and agreed that in performing the Services for City and Sponsor hereunder, Artist shall act in the capacity of an independent contractor and not as an employee, partner, joint venturer, or agent of City or Sponsor.

- B. **Notices.** Notices or other communications required by this Agreement will be sufficiently made or given if emailed to the address stated below, or if mailed by certified First Class United States mail, postage prepaid, or by commercial carrier (e.g., FedEx, UPS, etc.) when the carrier maintains receipt or record of delivery, addressed to the address stated below, or to the last address specified in writing by the intended recipient.

Sponsor: Zeitgeist Center for Arts and Community
 Attn: Amy Demmer
 222 E Superior St. Ste. 326
 Duluth, MN 55802
 amy@zeitgeistarts.com

City: City of Duluth
 Attn: Noah Schuchman
 Chief Administrative Office
 City Hall
 411 W 1st St.
 Duluth, MN 55802
 nschuchman@DuluthMN.gov

Artist: Moira Villiard
 315 N Lake Ave, Apt 403
 Duluth, MN 55806
 art.moira@gmail.com

IN WITNESS WHEREOF, the Parties have signed this Agreement effective as of the Effective Date.

CITY OF DULUTH

By _____
Emily Larson, Mayor

ATTEST: _____
City Clerk

Dated: _____

COUNTERSIGNED:

City Auditor

APPROVED AS TO FORM:

City Attorney

Moira Villiard

Signature

Zeitgeist Center for Arts and Community

Print or Type Name

Signature

Title
Authorized Representative

Exhibit A
Rendering of Mural

To be attached once approved by the Duluth Public Arts Commission

Exhibit B Mural Area

Map of the Mural Area at Gichi-Ode' Akiing with approved walls and wall sections indicated, provided by City on March 5, 2021.

Exhibit B-1: Acceptable Interior Wall and Top Wall Mural Spaces indicated in red.



Exhibit B-2: Acceptable Exterior Wall Mural Spaces indicated in blue.

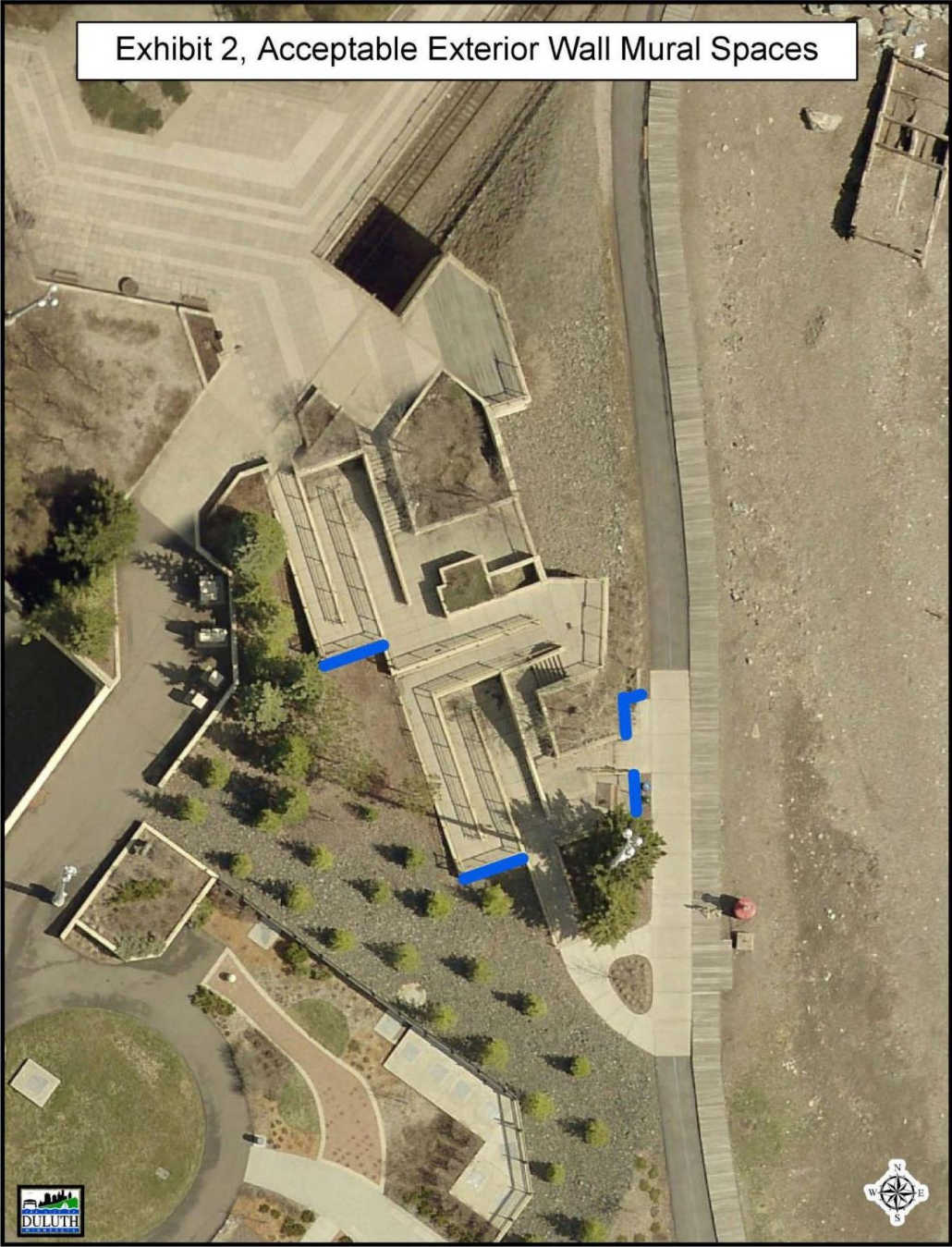


Exhibit B-3: Once the Mural is completed, photographs of each panel of the finished Mural will be attached to this Exhibit B-3 for reference in future maintenance and/or repairs.

Exhibit C
Fiscal Agent Agreement

FISCAL AGENT AGREEMENT – Duluth Indigenous Commission

This Agreement is made on this February 7, 2020 between the Zeitgeist Center for Arts & Community (hereafter referred to as “Fiscal Agent”) and Moira Villiard, representing Duluth Indigenous Commission (hereafter referred to as the “Sponsored Organization”), and is in regards to a fiscal sponsorship concerning funds supplied by the Duluth Superior Area Community Foundation (hereafter referred to as the “original funds”) during the time period of 02/07/2020 until all funds have been spent.

Purpose of Agreement

The Sponsored Organization has proposed that the Fiscal Agent sponsor an initiative (the “Initiative”): the Chief Buffalo Memorial Mural Project.

STATEMENT OF PURPOSE

The Duluth Indigenous Commission works to ensure the views of the Indigenous community are incorporated in the decision-making, future planning and stewardship of the city of Duluth. It endeavors to act as a guide in the development of public policy, planning and services so the Indigenous community is adequately represented, and also works to increase understanding and acceptance of the Indigenous community and culture.

Goals of The Chief Buffalo Memorial Mural Project include:

- Serve the interests of the Indigenous Community of the City of Duluth through creative placemaking
- Revitalize the underused space between Gitchi Ode Akiing and Canal Park as a storytelling wall that serves the purpose of promoting visibility for our region’s Indigenous community
- Provide access to the story of Chief Buffalo and his importance to all citizens in Duluth, through historical plaques, visual representations, and community collaboration, overseen by Chief Buffalo’s oldest living descendents.
- Host programming in Gitchi Ode Akiing, including 4 community mural painting sessions to complete the walls and at least 1 community feast to honor the space

The Fiscal Agent has determined that sponsorship of the Initiative would be consistent with its goals, and wishes to make arrangements with the Sponsored Organization for the implementation and operation of the Initiative.

1. The Fiscal Agent hereby agrees to sponsor the Initiative and to assume administrative, programmatic, financial and legal responsibility for the purposes of the requirements of funding organizations. The Sponsored Organization agrees to implement and operate the Initiative, in accordance with the terms of this agreement and with any requirements imposed by funding organizations.
2. All aspects of the Initiative associated with the funding flowing through the Fiscal Agent shall be operated in a manner consistent with the Fiscal Agent’s tax-exempt status and as described in this

agreement. No material changes in the purposes or activities of the Initiative shall be made without prior written permission of the Fiscal Agent and in accordance with any requirements imposed by funding organizations, nor shall the Sponsored Organization carry on activities or use funds in any way that jeopardizes the Fiscal Agent's tax-exempt status.

3. The Sponsored Organization shall not, and shall not permit the Initiative to, attempt to influence legislation or participate or intervene in any political campaign on behalf (or in opposition to) any candidate for public office or otherwise engage in the carrying on of propaganda (within the meaning of section 501(c)(3) of the Internal Revenue Code of 1986).

4. The Sponsored Organization will provide the Fiscal Agent with reports describing programs and services of the Initiative in accordance with the following schedule:

The Sponsored Organization agrees to provide to the fiscal agent copies of all agreements, documentation, and reporting associated with any and all original funding organizations according to the established timeline between Sponsored Organization and original funder.

5. The Sponsored Organization will provide all information and prepare all reports, including interim and final reports, required by funding organizations with the Fiscal Agent's assistance and final approval.

6. On behalf of the Sponsored Organization, the Fiscal Agent will establish and operate for the use of the Initiative a designated account ("Account") segregated on the Fiscal Agent's books. All amounts deposited into an Initiative's Account will be used in its support, less administrative charges, if any, and subject to the conditions set forth below.

7. The Fiscal Agent will disburse funds from the Account in the following manner:
As instructed in writing on properly filled-out Fiscal Agent vouchers accompanied by required documentation and only as authorized by this agreement.

Upon receipt of completed funding packet as determined by fiscal agent, including but not limited to Fiscal Agent Agreement, copies of all grant materials and correspondence between funding organization and sponsored organization, and within 2 weeks of receiving funds from funding organization.

Upon receipt of invoices from the Sponsored Organization.

8. All donations from individuals should be made payable to "Zeitgeist Center for Arts and Community" with the Sponsored Organization's name in the memo line.

9. Disbursements will be restricted to the support and implementation of the Initiative only.

10. The Sponsored Organization designates Moira Villiard to act as an authorizing official. The authorizing official shall act as principal coordinator of the Initiative's daily business with the Fiscal Agent, and shall have authority to sign disbursement requests and make decisions regarding operational

aspects of the Initiative consistent with the Initiative description in the grant material, funding correspondence's, and fiscal agreements.

11. The Fiscal Agent and Sponsored Organization will maintain all financial records relating to the Initiative according to generally accepted accounting principles; retain records as long as required by law, and make records available to auditors as required by law.

What's more, the sponsored organization agrees to provide all additional financial information related to the Initiative not included in reports to the granting organization.

12. The Fiscal Agent and the Sponsored Organization will reflect the activities of the Initiative, to the extent required, on their state and federal government tax returns and financial reports. All disbursements from an Account shall be treated as payments made to or on behalf of the Sponsored Organization to accomplish the purposes of the Initiative. The Sponsored Organization will provide the Fiscal Agent with proper documentation to accomplish this, including furnishing the Fiscal Agent with the Sponsored Organization's Federal Employer Identification Number if possible.

13. The Sponsored Organization will give proper credit to the Fiscal Agent in all publicity in the following form:

"Duluth Indigenous Commission's Chief Buffalo Memorial Mural is a sponsored Initiative of the Zeitgeist Center for Arts & Community."

14. In consideration of the Fiscal Agent's agreement to sponsor the Initiative, and to cover the Fiscal Agent's expenses in connection with the Initiative as outlined above, the Initiative will pay the following fees, charges and expenses:

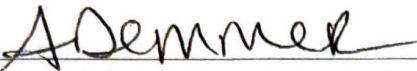

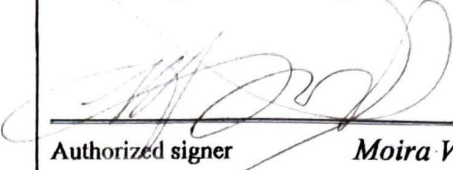

The Fiscal Agent will charge an hourly fee of \$39 for conducting activities related to this project.

15. This agreement will be subject to review at any time over the course of events and reporting requirements as outlined in any materials and correspondence between the Initiative and the original funder and can be terminated if any of the following events occur:

- a. The Fiscal Agent requests the Sponsored Organization to cease activities that it deems might jeopardize its tax-exempt status and the Initiative fails to comply within a period of ten (10) days;
- b. The Sponsored Organization fails to perform or observe any other covenant of this agreement, and this failure remains un-remedied fifteen (15) days after notice in writing.
- c. Upon expiration of four weeks after either the Sponsored Organization or the Fiscal Agent has given written notice of its intent to terminate the agreement.]

In the event this Agreement is terminated, the Fiscal Agent and Sponsored Organization will comply with any termination conditions imposed by original funding organizations.

In witness whereof, the parties hereto have executed this Agreement on the day and year first written above.

<p>Accepted for the Fiscal Agent:</p> <p> _____ Authorized signer Amy Demmer</p> <p> _____ Date</p>	<p>For the Sponsored Organization:</p> <p> _____ Authorized signer <i>Moira Villiard</i></p> <p> _____ Date</p>
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