

ITEM #: 31  
DATE: 06-13-23  
DEPT: ADMIN.

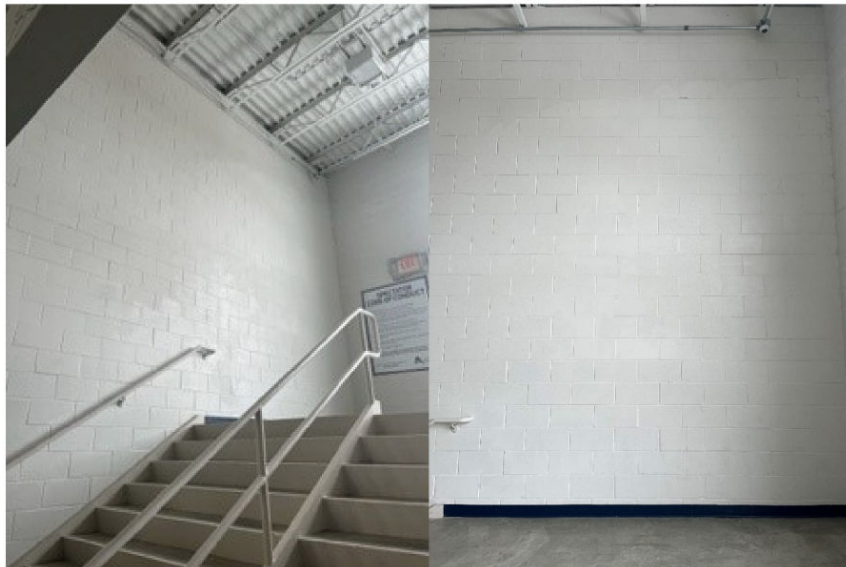
**COUNCIL ACTION FORM**

**SUBJECT:**       **CONTRACT FOR AMES/ISU ICE ARENA MURAL**

**BACKGROUND:**

The Public Art Commission (PAC) allocates a portion of its funding from the City Council each year to an Art in the Parks program. This year, following an inquiry from Parks and Recreation staff, PAC has undertaken a project to place a mural on the interior of the Ames/ISU Ice Arena. PAC has authorized the use of up to \$10,000 of Art in the Parks funding for this project.

A call for artists was issued on February 10, with responses due March 3. It was advertised on the City of Ames webpage and on several public art opportunity websites. The call for artists requested an artist or team of artists to design and install a mural on the open stairwell wall between the main entrance and the spectator seating area. The wall is approximately 11'6" wide by 15'1" high (see below).



The stated goals of the project were to 1) capture a unique, artistic representation of the variety of sports and activities that take place at the ice arena; 2) represent the values essential to success on the ice, such as teamwork, physical fitness, continuous improvement, persistence, positivity, and encouragement; 3) reflect the diversity of ice arena users; and 4) increase public awareness and appreciation for art.

Respondents were asked to provide a resume, references, a list of relevant past projects, images of previous installations, a letter of interest, a proposed lump sum fee to deliver a completed mural, and a sketch of a preliminary design concept or theme for the work.

Nine proposals were received and were evaluated by a team consisting of three City staff and three PAC commissioners. Four of the proposals were selected for a second round of evaluation, which consisted of clarifying questions and refined preliminary design concepts. The total scores after the second round were:

**Round 2 Scores**

<b>Artist</b>	<b>Total Points</b>	<b>Cost</b>
Josh Eller	2330	\$10,000
Jason Tetlak	2240	\$9,500
Russell Mason	2060	\$9,740
Trinity Rivard	1900	\$9,850

Following the second round of evaluation, the proposal from Joshua J. Eller, St. Paul Minnesota, was identified as the proposal best meeting the project criteria and goals. The proposal from Mr. Eller included a lump sum artist fee of \$10,000. The sketch that will be used as the basis to complete the mural is shown below. It contains depictions of ice hockey, figure skating, broomball, and curling, as well as participants of various ages, genders, and skill levels (see design concept below):



A contract has been prepared and has been signed by the artist. City Council approval is now requested. The contract calls for the artist to install the mural in the first part of August, which is when the facility is closed for planned maintenance. The paint is to be provided by the artist and is to be selected with an anticipated design life of 10 years. The artist is to provide a warranty against defects (e.g., peeling, fading, flaking, discoloration, etc.) for five years from the date of installation.

**ALTERNATIVES:**

1. Approve the attached contract with Joshua J. Eller, St. Paul, Minnesota for installation of a mural at the Ames/ISU Ice Arena for the lump sum fee of \$10,000.
2. Direct staff to modify the agreement.
3. Do not approve an agreement for installation of an Ice Arena mural.

**CITY MANAGER’S RECOMMENDED ACTION:**

One of the purposes of the Public Art Commission is to develop public arts programming and recommend funding for public art within City facilities. This project aligns with two of

the City Council's adopted values: First, public art installations support the Council's value of a fun, vibrant, and healthy community that attracts and retains people. Second, this installation aligns with the Council's value of a diverse, equitable, and inclusive community.

The proposed artwork meets the requested criteria to reflect the diversity of Ice Arena activities and users. It also reflects individuals of various skill levels and supports positive values necessary for success on the ice. The proposed artist has a record of similar successful art installations. Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative No. 1 as described above.

**CITY OF AMES, IOWA  
PUBLIC ART AGREEMENT  
BETWEEN OWNER AND ARTIST**

THIS AGREEMENT is made on the 23th day of May 2023, between the City of Ames, Iowa, hereinafter referred to as the OWNER, and Joshua J Eller of St. Paul, Minnesota, hereinafter referred to as the ARTIST. The OWNER'S Representative shall be the Assistant City Manager of the City of Ames, Iowa.

WHEREAS, the OWNER desires the ARTIST to create a work of art, hereinafter referred to as the ART WORK, in the ARTIST'S unique style.

NOW, THEREFORE, in consideration of the mutual promises and undertakings contained herein, the parties agree as follows:

**Article 1. Scope of Services**

**1.1 General**

- a. The ARTIST and OWNER acknowledge that this ART WORK requires the good will of both parties, and they agree to make every effort to ensure the project's success within the established budget.

**1.2 ARTIST'S Obligations**

- a. The ARTIST agrees to design and install a site-specific mural at the Ames/ISU Ice Arena, the ART WORK, with consideration for any guidelines imposed by the OWNER and in a manner that satisfies any applicable statutes, ordinances or regulations of any governmental regulatory agency having jurisdiction over the project.
- b. The ARTIST agrees to make every effort to complete the ART WORK during the agreed upon installation period. In case of emergency, the OWNER and the ARTIST can renegotiate the stated completion date.
- c. The ARTIST agrees to provide a final sketch of the proposed ART WORK to OWNER'S Representative and obtain approval to proceed from the OWNER'S Representative prior to obtaining materials and commencing installation. The ARTIST agrees to install the ART WORK consistent with the sketch approved by the OWNER'S Representative, with any changes from that design to be made only with the written approval of the OWNER'S Representative. The ARTIST agrees to clearly discuss the parameters of the project with the OWNER'S Representative prior to obtaining materials and commencing installation, and to resolve all anticipated problems with construction and installation of the ART WORK, including but not limited to site preparation, technical needs, supplies, and labor.

- d. The ARTIST agrees to participate in publicity, education, and marketing efforts initiated by the OWNER in order to increase public awareness and enjoyment of the ART WORK and the installation process.
- e. The ARTIST agrees to carry commercial liability insurance of three hundred thousand dollars (\$300,000) and to be liable up to the limits of the policy, a copy of which will be made available to OWNER's Representative prior to the start of work.
- f. The ARTIST agrees to be open and friendly with the public and to represent the OWNER in a positive way.
- g. The ARTIST agrees to provide an itemized invoice to OWNER's Representative to OWNER's Representative within 30 days of the completion of the installation.
- h. The ARTIST will provide labor, equipment, and supplies necessary for installing the ART WORK such as brushes, drop cloths, and scaffolding.

### **1.3 OWNER'S Obligations**

- a. The OWNER agrees to produce publicity materials highlighting the sculpture following completion of the installation.
- b. Upon installation of the ART WORK, the ARTIST shall provide to the OWNER'S Representative written instructions for appropriate maintenance and preservation of the ART WORK.
- c. The ARTIST shall provide to the OWNER'S Representative a listing of the paints used in the installation so the OWNER may make touch-up repairs if necessary.

### **1.4 Final Acceptance**

- a. The ARTIST shall advise the OWNER'S Representative in writing when all services required prior to those described in Section 1.4.b have been completed in substantial conformity with the Proposal.
- b. The Owner's Representative shall notify the ARTIST in writing of its final acceptance of the ART WORK.

### **1.5 Indemnity**

- a. The ARTIST agrees to indemnify and hold harmless the OWNER from any claims or liabilities for any loss or other damage arising from the willful or non-willful acts of negligence by the ARTIST during the planning, creation, or installation of the ART WORK.

- b. Upon final acceptance of the ART WORK, and to the extent permitted by Iowa law, the OWNER shall indemnify and hold harmless the ARTIST against any and all claims or liabilities arising thereafter in connection with the ART WORK, the site, the installation, or this Agreement, caused by the OWNER'S negligence.

**1.6 Title**

Title to the ART WORK shall pass to the OWNER upon final acceptance. The OWNER may thereafter remove the ART WORK as the OWNER desires. The OWNER may modify the ART WORK if, in the OWNER's opinion, such modification is warranted.

**Article 2. Compensation and Payment Schedule**

**2.1 Fixed Fee**

The OWNER shall pay the ARTIST a fee of ten thousand dollars (\$10,000.00), which shall constitute full compensation for all services performed and furnished by the ARTIST under this Agreement.

**Article 3. Time of Performance**

**3.1 Duration**

The services to be required of the ARTIST as set forth in Article 1 shall be completed pursuant to the timetable as set forth in the Request for Proposal, unless mutually agreed by the ARTIST and OWNER'S Representative.

**Article 4. Warranties**

**4.1 Quality**

- a. The ARTIST represents and warrants, except as otherwise disclosed to the OWNER during the discussion with OWNER's Representative as provided in Section 1.2, that the execution and installation of the ART WORK will be performed in a workmanlike manner.
- b. The ARTIST agrees to furnish and use high quality paints that the manufacturer specifies as acceptable for the surface and environmental conditions (temperature, humidity, etc.) inside the Ice Arena. The ARTIST will be responsible for any surface preparation/priming necessary to install the ART WORK and any sealant or clear coat required to meet the OWNER'S performance requirements.

## **4.2 Warranty**

The ARTIST agrees to design and install the ART WORK with a minimum design life of ten (10) years, and the artist will warranty the ART WORK to be free from peeling, flaking, bubbling, chalking, cracking, fading, discoloration, deterioration, or other defects for a period of five (5) years from the date of installation. Any repairs necessary to restore the ART WORK to its original condition during this period will be made at the ARTIST's sole expense. Any aspect of the ART WORK that has been modified by the OWNER as described in Section 1.6 (Title) above, is not subject to this warranty by the ARTIST unless mutually agreed to.

During the five (5)-year warranty period, if any damage requiring repairs by the ARTIST occurs to the ART WORK, where the damage occurred due to the negligence or action of others, the OWNER may request that the ARTIST prepare an estimate for the cost of repairs. The OWNER may then elect whether to approve the repairs, which will be billable either to OWNER or, if known, the individual responsible for the damage. The cost of repairs shall be limited to costs for the ARTIST's transportation, lodging, meals, time, and materials.

## **Article 5. Reproduction Rights**

### **5.1 General**

The ARTIST grants to the OWNER and its assigns, an irrevocable license to make two-dimensional reproductions of the ART WORK for any purpose including commercial purposes, and by way of specification but not limitation, reproductions used in advertising, calendars, posters, brochures, media, publicity, catalogues, or other similar publications.

## **Article 6. ARTIST as Independent Contractor**

- 6.1** The ARTIST shall perform all work under this Agreement as an independent contractor and not as an agent or an employee of the OWNER. The ARTIST shall not be supervised by any employee or official of the OWNER nor shall the ARTIST exercise supervision over any employee or official of the OWNER.

## **Article 7. Assignment, Transfer, Subcontracting**

- 7.1** Neither this Agreement, nor any interest therein, shall be transferred by the ARTIST. Any such transfer shall void this Agreement.



**Article 8. Entire Agreement**

- 8.1 This writing embodies the entire Agreement and understanding between the parties hereto, and there are no other agreements and understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby.
- 8.2 No alteration, change, or modification of the terms of this Agreement shall be valid unless made in writing and signed by both parties hereto and approved by appropriate action of the OWNER.

**Article 9. Laws**

- 9.1 This Agreement is governed by the law of the State of Iowa with venue in the appropriate state and/or federal courts for Story County, Iowa.

**ARTISTS**

**Joshua J. Eller**

By: Josh Eller

Date: 05/20/2023

**OWNER**

**City of Ames**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
Mark Lambert, City Attorney

**REQUEST FOR PROPOSAL NO. 2023-140**  
**CALL FOR ARTISTS**  
**AMES/ISU ICE ARENA – MURAL**  
**SCOPE OF SERVICES**

The Ames Public Art Commission (PAC) and the City of Ames Parks and Recreation Department is commissioning a public art opportunity in Ames, Iowa.

**1. PROJECT DESCRIPTION**

The artist team is to design and create a large-scale mural on the interior of the Ames/ISU Ice Arena, 1507 Gateway Hills Park Drive.

The goals of this project include: 1) capture a unique, artistic representation of the variety of sports and activities that take place at the ice arena; 2) represent the values essential to success on the ice, such as teamwork, physical fitness, continuous improvement, persistence, positivity, and encouragement; 3) reflect the diversity of ice arena users; 4) increase public awareness and appreciation for art.

**2. PROJECT LOCATION AND MURAL WALL SPACE**

The Ames/ISU Ice Arena opened to the public in 2001. The facility hosts over 100,000 visitors each year for public skating, lessons, hockey and figure skating clubs, broomball, curling, and Iowa State University club and intramural league sports. The facility hosts a variety of state and regional tournaments each year. A spectator area provides seating for up to 1,004 fans to enjoy the action.

The wall face available for the mural is interior to the building. It is located on the north side of the open stairwell connecting the main entrance and the spectator seating area. The available wall space is approximately 11'6" wide by 15'1" high (173.45 total available square feet). The wall is constructed of concrete block and is currently surfaced with semi-gloss white latex paint.

The lower portion of the available wall is adjacent the stairway and landing and is susceptible to touching by passersby.

The installation of the mural will be during the scheduled facility maintenance closure from June to early August 2023.

**3. COST**

The cost of this project is \$10,000, inclusive of all costs for design, paint, materials, equipment (including any necessary scaffolding or ladders), travel/lodging, insurance, artist fee and labor, and any other costs necessary to deliver a completed mural installation. This project is funded by the Ames Public Art Commission “Art in the Parks” Program.

**4. ARTST RESPONISIBILITIES/WARRANTY**

The installation methods and materials must provide an expected lifespan of at least ten (10) years without peeling, flaking, bubbling, chalking, cracking, fading, discoloration, or other deterioration. The artist will provide a warranty against such deterioration for a period of five years from the date of acceptance of the work, inclusive of all materials and labor necessary to restore the work to its original condition.

The successful artist to furnish and use high quality paints that the manufacturer specifies as acceptable for the surface and environmental conditions (temperature, humidity, etc.) inside the Ice Arena. The artist will be responsible for any surface preparation/priming necessary to install the mural and any sealant or clear coat required to meet the City’s performance requirements. Prior to acceptance of the completed work, the artist must furnish the City with maintenance instructions and a list of the specific paints used so the City may perform touch-up work if required.

The artist will be responsible to obtain and maintain General Liability insurance coverage of \$300,000/single limit per occurrence. Provide to OWNER’s Representative prior to the start of work.

**5. TIMELINE**

May 23, 2023 – City Council Approval  
June - Design provided March 28, 2023, revised 1  
August 1-14, 2023 – Installation

The ARTIST is available to work during the first two weeks of August. The ARTIST estimates the mural will take 7 to 9 days to complete.

Day 1: Wall prep and design transfer

Day 2: Transfer any remaining design, begin painting

Day 3-7: Painting

Day 8-9 (if needed): Finalize and clean up details and add topcoat if desired

ARTIST will prepare the wall with cleaning, necessary priming, etc.

Ideally the building is 50 to 90 degrees F and between 40 to 70% humidity, but we don't anticipate the conditions being a problem given that the mural is indoors.

