

CONTRACT TO CREATE A CIVIL RIGHTS MURAL

This contract ("Contract" or "Agreement") is made and entered into as of the _____ day of _____, 20__ by the City of Durham ("City") and Brenda Miller Holmes ("Grantee").

Sec. 1. Background and Purpose – This Agreement is entered into pursuant to the Interlocal Agreement dated November 3, 2008 between the City of Durham and Durham County, governing the scope and administration of the Cultural Master Plan implementation process, and in fulfillment of the purposes of the Public Art Grant Initiative Pilot Project fund approved by the Board of County Commissioners at the Board's June 22, 2009 meeting. the Project contemplated by this Agreement is in fulfillment of the terms outlined in the City Of Durham Request for Proposals, Public Art Pilot Project issued February 9, 2012 Pursuant to this Agreement, the Grantee, Brenda Miller Holmes, will oversee the design, creation and delivery of a mural (hereinafter, the "Project"), to be located on the eastern exterior wall of a building located at 112 W. Main Street in Durham or at such other location as may be mutually agreed by the City and the Grantee.

Sec 2. Scope of Work and Services to be Performed -- The Grantee shall perform the services and activities outlined in Appendix A, which shall include, but are not limited to the following: The Grantee shall organize and lead a process for public input into the design of a painted mural commemorating the history of the Civil Rights Movement in Durham, NC and shall lead a process to create and install the mural at the agreed upon location. In this contract, "Work" means the services and goods that the Grantee is required to perform and deliver pursuant to this contract and all of the Grantee's duties to the City that arise out of this contract. The Contractor represents and warrants to the City that it has or will acquire all necessary permission and authority to create the Work with regard to any applicable intellectual property rights or implications and building owner approval.

Sec. 3. Complete Work without Extra Cost. Use of Funds –

(a) Except to the extent specifically stated in this Contract, the Grantee shall obtain and provide, without additional cost to the City, all labor, materials, equipment, transportation, facilities, services, permits and licenses necessary to perform the Work.

(b) The Grantee affirmatively represents that Grantee shall provide the program of services set forth in Appendix A and that the use of city funds shall be limited to the categories of work detailed in Appendix A. Grantee shall maintain records of all financial statements, expenditures and costs incurred necessary for completion of the Work for a period of at least 5 years after final payment by the City. Upon request, the City shall have the right to inspect and audit such records.

Sec. 4. Grantee's Billings to City and Compensation -- The Grantee shall, upon execution of this Contract, submit to the City an invoice for \$5,000.00, along with a Project schedule for the educational lecture series outlined in Exhibit A. The City will pay the Grantee the sum of \$5,000.00 (Five Thousand Dollars), within one month of submission of the invoice. Upon submission and approval by the City of the design of the mural, and upon submission to the City of an invoice by the Grantee, the City shall pay the Grantee

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the sum of \$5,000 (Five Thousand Dollars), within one month of submission of the invoice. Upon completion of the Work, the Grantee shall submit to the City an invoice for \$10,000.00, a signed, notarized letter of acceptance of the mural and of agreement to maintain the mural for the usable life of the building or twenty five years, whichever shall be less, by the building owner and a final project report. The City will pay the Grantee the sum of \$10,000.00 (Ten Thousand Dollars), within one month of submission of the invoice. The City shall not be obligated to pay the Grantee any payments, fees, expenses or compensation other than those authorized by this section.

Sec. 5. Completion Date – The Project shall be completed within one year of the date of execution of this contract. The final invoice under this contract must be received by the City no later than one year following the date of this contract.

Sec 6. Insurance – The Grantee shall maintain insurance not less than the following

- a. Commercial General Liability, covering
 - i. premises/operations
 - ii. products/completed operations
 - iii. broad form property damage
 - iv. contractual liability
 - v. independent Contractors, if any are used in the performance of this contract.
 - vi. City of Durham must be named additional insured, and an original of the endorsement to effect the coverage must be attached to the certificate (if by blanket endorsement, then agent may so indicate in the GL section of the certificate, in lieu of an original endorsement)
 - vii. Combined single limit not less than \$1,000,000 per occurrence.
- b. Workers' Compensation Insurance, covering
 - i. statutory benefits;
 - ii. employees; owner's partners, officers, and relatives (who work on this contract and must be so stated on the certificate)
 - iii. Employers' liability, \$1,000.000.
- c. All Insurance shall be provided by companies authorized to do business in the State of North Carolina and with a Best rating of A-VIII or better
- d. Insurance shall be evidenced by a certificate:
 - i. providing notice to the City of not less than 30 days prior to cancellation or reduction of coverage
 - ii. certificates of insurance shall be addressed to:

City of Durham, North Carolina
Attention: Finance Director
101 City Hall Plaza
Durham, NC 27701

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Both the insurance certificate and the additional insured endorsement must be originals and must be approved by the City's Finance Director before Grantee can begin any work under this contract.

Sec 7. Attachments

Appendix A. Scope of Services

Sec. 8. Notice – (a) All notices and other communications required or permitted by this contract shall be in writing and shall be given either by personal delivery, fax or certified United States mail, return receipt requested, addressed as follows:

To the City:

Peter Coyle, Office of Economic and Workforce Development
City of Durham
101 City Hall Plaza
Durham, NC 277701
The fax number is (919) 560-4986
The telephone number is (919) 560-4965

To the Grantee:

Brenda Miller Holmes
1006 Lansing Avenue
Durham, NC 27713
The telephone number is (919) 596-0675

(b) Change of Address. Date Notice Deemed Given -- A change of address, fax number or person to receive notice may be made by either party by notice given to the other party. Any notice or other communication under this Contract shall be deemed given at the time of actual delivery, if it is personally delivered or sent by fax. If the notice or other communication is sent by United States mail, it shall be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the United States Postal Service or upon actual delivery, whichever first occurs.

Sec 10. Indemnification – (a) To the maximum extent allowed by law, the Grantee shall defend, indemnify and save harmless Indemnitees from and against all Charges that might arise in any manner from, in connection with, or out of this contract as a result of acts or omissions of the Contractor or subcontractors or anyone directly employed by any of them or anyone for whose acts any of them maybe liable. In performing its duties under this subsection “a”, the Grantee shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to the City.

(b) Definitions. As used in subsections “a” above and “c” below – “Charges” means claims, judgments, damages, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses (including without limitation within “Charges” are (1) interest and reasonable attorneys’ fees assessed as part of any such item, and (2) amounts for alleged violations of sedimentation pollution, erosion, control, pollution,

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other environmental laws, regulations, ordinances rules, or orders –including but not limited to any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items that are the subject of this contract. “Indemnitees” means City and its officers, officials, independent contractors, agents, and employees, excluding the Grantee.

(c) Other Provisions Separate. Nothing in this section shall affect any warranties in favor of the City that are otherwise provided in or arise out of this contract. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this contract.

(d) Survival. This section shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this contract.

(e) Limitations of the Grantee’s Obligation. If this section is in, or is in connection with, a contract relative to the design, planning, construction, alteration, repair or maintenance of a building, structure, highway, road, appurtenance or appliance, including moving, demolition and excavating connected therewith, then subsection “a” above shall not require the Grantee to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or part, of the Indemnitees.

Sec 11. Warranty of Copyright License by Grantee. In this Agreement, the “Final Work” shall be the completed artistic rendering installed by the Grantee at the conclusion of the Project and upon completion of this Agreement. Grantee represents and warrants to the City that it shall obtain all necessary copyright licenses and rights necessary for the installation of the Final Work. Grantee warrants to the City that Grantee will obtain by written instrument from any entity or person contributing to the Final Work the necessary copyright interest to authorize Grantee to install and implement the Final Work, including rights in derivative works that may be associated with the Final Work. By execution of this Agreement, Grantee hereby transfers and assigns to the City a perpetual, royalty-free copyright license in the Final Work, authorizing the City to use, display, exhibit, promote, advertise, make and distribute copies of, photograph, video, and otherwise reproduce images of the Final Work for non-commercial and commercial purposes, in whole or in part, and to incorporate the image of the Final Work, in whole or in part, into other works (derivative works) for the City’s use under its statutory corporate authority.

Sec. 12. Miscellaneous

(a) Choice of Law and Forum. This contract shall be deemed made in Durham County, North Carolina. This contract shall be governed by and construed in accordance with the law of North Carolina. The exclusive forum and venue for all actions arising out of this contract shall be the North Carolina Court of Justice, in Durham County. Such actions shall neither be commenced in nor removed to federal court. This subsection (a) shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this section.

(b) Waiver. No action or failure to act by the City shall constitute a waiver of any of its rights or remedies that arise out of this contract, nor shall such action or failure to act

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constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

(c) Performance of Government Functions. Nothing contained in this contract shall be deemed or construed so as in any way to estop, limit, or impair the City from exercising or performing any regulatory, policing, legislative, governmental or other powers or functions.

(d) Severability. If any provision of this contract shall be unenforceable, the remainder of this contract shall be enforceable to the extent permitted by law.

(e) Assignment. Successors and Assigns. Without the City's written consent, the Grantee shall not assign (which includes to delegate) any of its rights (including the right to payment) or duties that arise out of this contract. The City Manager may consent to an assignment without action by the City Council. Unless the City otherwise agrees in writing, the Contractor and all its assignees shall be subject to all of the City's defenses and shall remain liable for all of the Contractor's duties that arise out of this contract and all of the City's claims that arise out of this contract. Without granting the Grantee the right to assign, it is agreed that the duties of the Grantee that arise out of this contract shall be binding upon it and its heirs, personal representatives, successors and assigns.

(f) Compliance with Law. In performing all of the Work, the Contractor shall comply with all applicable law.

(g) City Policy. THE CITY OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX AND URGES ALL OF ITS CONTRACTORS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBCONTRACTORS AND VENDORS UNDER CITY CONTRACTS.

(h) No Third Party Rights Created. This contract is intended for the benefit of the City and the Grantee and not any other person.

(i) Principals of Interpretation and Definitions. In this contract, unless the context requires otherwise: (1) The singular includes the plural and the plural the singular. The pronouns "it" and "its" include the masculine and feminine. References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. The words "include," "including," etc. mean include, including, etc. without limitation. (2) References to "Section" or "section" shall mean a section of this contract. (3) "Contract" and "Agreement," whether or not capitalized, refer to this instrument. (4) Titles of sections, paragraphs and articles are for convenience only, and shall not be construed to affect the meaning of this contract. (5) "Duties" includes obligations. (6) The word "person" includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities. (7) The word "shall" is mandatory. (8) The word "day" means calendar day.

(j) Modifications. Entire Agreement. A modification of this agreement is not valid unless signed by both parties and otherwise in accordance with requirements of law. Further, a modification is not enforceable against the City unless the City Manager or a deputy or assistant City manager signs it for the City. This contract contains the entire agreement between the parties pertaining to the subject matter of this contract. With respect to that subject matter, there are no promises, agreements, conditions,

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inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this contract.

(k) City Manager's Authority. To the extent, if any, the City has the power to suspend or terminate this contract or the Grantee's services under this contract, that power may be exercised by the City Manager or a deputy or assistant City Manager without City Council approval.

IN WITNESS THEREOF, the City and the Contractor have caused this contract to be executed under seal themselves or by their respective duly authorized agents or officers.

CITY OF DURHAM

City Clerk

By: _____
City Manager

Preaudit Certification:

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BRENDA MILLER HOLMES

By: _____

State of _____

ACKNOWLEDGMENT BY BRENDA
MILLER HOLMES

County of _____

I, a notary public in and for the aforesaid county and state, certify that Brenda Miller Holmes, personally appeared before me this day and acknowledged the execution of the foregoing contract or agreement with the City of Durham. This the _____ day of _____, 20_____.

My commission expires:

Notary Public

Appendix A

Brenda Miller Holmes

History of the Civil Rights Movement in Durham
Mural Project

Introduction

The goal of the project is to engage community members in learning about the powerful history of the Civil Rights Movement in Durham and then collaborate to create a mural based on this exploration. The finished mural will measure 25' x 33' and will be located in a prominent downtown location at the corner of Main and Mangum Streets. Central to the project will be youth involvement along with welcoming the greater community to participate and the design will be generated through an all-inclusive collaborative process, guided by muralist Brenda Miller Holmes. Durham's Civil Rights history is profoundly compelling and the mural project will allow participants to truly involve themselves in it and partner together to create a gift for the city. The result will be an artwork that will not only tell the story of this important history but has the potential to inspire deep cultural pride and positive change for the future.

Leadership

Lead artist Brenda Miller Holmes is a muralist and art educator that has been conducting collaborative community mural projects in the North Carolina Triangle Area, The San Francisco Bay Area, and Internationally for the last ten years. She specializes in both large-scale permanent and small-scale portable community mural making and she is passionate

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about sharing this transformative experience with people of all ages. Brenda has ample experience directing large-scale collaborative murals and she has been the lead muralist on two National Endowment for the Arts funded projects creating two permanent outdoor artworks with elementary school age participants. In addition to her directing experience, she garnered vast project management experience in the position of Program Director at Precita Eyes Muralists in San Francisco, CA. In 2007 she had the honor of accompanying her mentor, Master Muralist Susan Kelk Cervantes, to China to assist in directing two murals in collaboration with over one hundred middle school students from Beijing, Shanghai, Tienjing, and Hangzhou, at the China National Children's Center in Beijing.

The project will be conducted in partnership with Monarch Services, a licensed staffing firm certified by the City of Durham as a disadvantaged business enterprise. It will serve as the fiscal agent for the project, handling all invoices and payroll. Monarch Services has generously donated the wall at 112 West Main Street for the project and will provide on-site studio and storage facilities.

The Process

The preliminary process will include coordinating 30 participants from Durham, 15 youth and 15 adults. Our target population for youth will be students from Chewning Middle School and Hillside High School and we are working with Mary Casey, Director of K-12 Arts Education for Durham Public Schools, to receive recommendations from the art faculty at these schools for students that show both promise in artistic talent and a level of commitment required to follow through with the project. Ms. Holmes has

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already formed relationships at Chewning both with the art teacher, Mr. Hensley, and with many students there through her work conducting five portable mural projects since September, working through the organization Innovation for Motivation.

Fundamental to the collaborative mural process is sharing knowledge and Ms. Holmes is committed to training future muralists as a part of each project. For this project we will select one youth and one adult assistant to train and take leadership roles. We will review recommendations from DPS art faculty to select the youth leader. Ideally, the adult leader will be a Durham student majoring in art at North Carolina Central University, and again, we will seek recommendations from the art faculty at the University. Both assistants will receive a stipend. Adult participants will be welcomed from the greater community and might include parents of participating students, other artists or anyone with a strong interest in the history and ability to commit to the duration of the project.

The project will begin with a series of four 1.5-hour educational lectures, including ½ hour question and answer sessions, teaching vital aspects of Durham's Civil Rights History. The lecture series will be required for those that will participate in the mural design but will also be open to the public. The first two lectures in the series will be conducted by Dr. Benjamin Speller. Dr. Speller has a Bachelor's Degree in history from North Carolina Central University, Master's and Doctoral Degrees in library science from Indiana University and he served as the Dean of the School of Library and Information Sciences at North Carolina Central University from 1983-2004. He is a scholar of Durham Civil Rights History and has contributed to exhibits for both the Black Wall Street Project and Preservation Durham, where he served as president from 2000-2004. The third lecture in the series

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will be conducted by Dr. Beverly Washington Jones. Dr. Washington Jones retired as the Ph.D. Provost, Vice-Chancellor for Academic Affairs, at North Carolina Central University, where she also earned a Bachelor of Arts and a Master of Arts. She made history as the first African-American woman to earn a Doctorate in history at the University of North Carolina at Chapel Hill. She is a passionate youth education advocate and specializes in the history of women in leadership roles in Durham. The forth lecture in the series will be conducted by North Carolina State Senator Floyd McKissick Jr. Senator McKissick received his Bachelor of Arts from Clark University, a Master of Arts in regional planning from UNC Chapel Hill, a Master of Arts in public administration from Harvard University and his Juris Doctor Degree from Duke University. He is the son of the late Floyd B. McKissick, Sr. a Durham Civil Rights activist that spoke at the 1963 March On Washington.

The next phase of the project involves participants taking the history they have learned and incorporating that information into visual imagery for the mural. The process will be led by Brenda Miller Holmes and will be done in six 2-hour workshops, resulting in a to-scale composite drawing of the final mural design. This part of the process involves group discussion around themes, individual research and drawing, sharing of individual ideas, and collaboration to coordinate these ideas into a cohesive mural design. Ms. Holmes will guide the process through an all-inclusive diplomatic method where everyone has a voice, everyone's ideas are incorporated, and the outcome of collaboration is a mural design that truly belongs to all that participated. Instruction through the process will include lessons in mural composition, unifying imagery, scale and color theory. Once complete, the composite drawing will be presented to the building owners at Monarch Services and to the Durham Public Art Committee for final approval.

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The final phase of the project will be the on-site realization of the mural. All participants will engage in every aspect of creating the mural from wall cleaning and prep to transferring the design and painting. Once the wall is cleaned, prepped and primed a grid will be placed on the wall that will allow participants to transfer the design based on the to-scale composite drawing. When the outline is in place and approved, the lines are varnished on, the grid erased and the painting begins. The process will take place over four weekends and participants are welcome to come out for as much of that time as possible but are required to work one full day per weekend. Additionally, during the prep and painting phase, the greater community will be welcome to come and participate. This is called a community paint-in and participants can direct volunteers in helping to realize the project. In addition to the four weekend paint-in opportunities, Ms. Holmes will schedule weekday hours to work and participants are welcome but not required during this time. The final step in securing the longevity of the mural will be to cover and seal it with an anti-graffiti protective varnish. The scaffolding is budgeted for a total of eight weeks to allow flexibility in the schedule for inclement weather and other scheduling conflicts that may not allow us to work four weekends consecutively.

Once the mural is complete, a celebration will be scheduled on site to commemorate the event and present the artwork to the community.

Site Significance

The mural site itself holds great significance in Durham's Civil Rights History. The wall at 112 Main Street overlooks a small city park that was once the site of the sit-ins at Walgreen's Drug Store in 1960. Directly across the street is the Kress Building, the site of the sit-ins at Kress during the same time

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period. The significance of the location makes it an ideal site to honor and celebrate Durham's powerful history.

Outcome

The objective of the project is to create a beautiful public artwork that honors a deeply important aspect of our cities history regarding the Civil Rights Movement and the impact that it will have is multifaceted. Firstly it will tell a story of great significance to Durham and inspire cultural pride. The project offers participants and the greater community the opportunity to get involved with this history and share it through their own vision as a gift to the city. The all-inclusive method of the creation of the mural brings together a diverse and multigenerational group of community members working together. The process of collaborative community artwork is transformative with the power to create understanding and unity amongst diversity. Lastly, but vital to the value of the project, is that this history has the ability to teach the youth and remind us all of the power of each persons effort in laying a foundation and paving the way as we continue to strive for equity and justice.

Management Plan

Brenda Miller Holmes will lead all aspects of project coordination, including outreach, participant selection, scheduling, materials acquisition, etc.

Ms. Holmes is also the lead muralist and artistic director for the project.

Monarch Services will act as the fiscal agent for the project, managing the finances including invoices and payroll.

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The two assistance will be training in directing collaborative community murals and will be present to help during both educational and design workshops and during all weekend hours scheduled on-site.

The teaching team includes Dr. Benjamin Speller, Dr. Beverly Washington Jones, and Senator Floyd McKissick Jr. Dr. Speller will lead the team in curriculum development.

Timeline

Project coordination will begin in September 2012 and continue through January 2013.

- Call for participants will begin in September and will be selected by December 1, 2012.
- Curriculum will be developed and presented to the team at the beginning of January
- Preliminary materials will be purchased

February 2013 – Four educational workshops scheduled, once weekly during Black History Month.

March 2013 – Mid- April 2013 – Six weekly design workshops scheduled. Preliminary design presented mid-April for approval.

May-June 2013 – Scaffolding goes up and painting commences. Weekend paint-ins scheduled.

June 2013 – Celebrate the completed mural

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Compensation

The proposal requests that the grant payment to be issued in 3 installments to insure proper funding for materials acquisition and to pay the teachers and assistants. We ask for 1/3 at the start of the project, 1/3 upon approval of the design, and the final 1/3 upon completion of the mural.

Budget

Educational workshop instructors	1000.00
Lead muralist	6050.00
Adult assistant / trainee	1500.00
Youth assistant / trainee	1000.00
Fiscal agent fee - Monarch	2500.00
Wall preparation materials	425.00
Paint, graphic supplies, brushes, etc.	3500.00
Anti-graffiti protective coating	475.00
Studio rental	800.00
Scaffolding	3500.00
Project Coordination / Admin	2750.00
Insurance	1500.00
Total	25,000.00