

AFFILIATION AGREEMENT

between

Jefferson County Board of Education

and

Spalding University/Kentucky College of Art and Design

This Agreement (hereinafter "Agreement") is entered into as of this 1st day of July, 2017 between the JEFFERSON COUNTY BOARD OF EDUCATION (hereinafter "JCPS"), a political subdivision of the Commonwealth of Kentucky, with its principal place of business as 3332 Newburg Road, Louisville, Kentucky 40218 and SPALDING UNIVERSITY, INC., a Kentucky nonprofit corporation and private university acting through its affiliate the Kentucky College of Art and Design, Inc., a Kentucky nonprofit corporation and private college of art and design (hereinafter collectively, "SPALDING/KyCAD"), with their principal place of business at 845 South Third Street, Louisville, Kentucky 40203-2188.

WHEREAS, JCPS and SPALDING/KyCAD desire to collaborate for the provision of learning experiences for JCPS and SPALDING/KyCAD students.

NOW THEREFORE, in consideration of the premises and the mutual promises set forth in this Agreement and intending to be legally bound, JCPS and SPALDING/KyCAD agree that they will collaborate on the services described below.

1. Scope of Work:

SPALDING/KyCAD intern(s) will work with an artist-in-residence to be selected by SPALDING/KyCAD and approved by JCPS to design and paint a mural (hereinafter "Mural") at one (1) JCPS elementary school selected by JCPS. The design and painting of the Mural will be done by the intern(s) and the artist-in-residence under the supervision of JCPS staff. The design process will include meeting with JCPS administrators to determine the location of the Mural within the selected elementary school, theme, color scheme, and other specifics and creating concept sketches using both traditional and digital media. The Mural will then be painted at the selected elementary school using acrylic paints provided by SPALDING/KyCAD and selected for high durability, traditional brushes, and air brush techniques. After completion of the Mural, the intern(s) will do up to 5 classroom visits at the selected elementary school with the artist-in-residence, at times mutually agreed by JCPS and SPALDING/KyCAD.

2. Duties of SPALDING/KyCAD:

- a. SPALDING/KyCAD will select the intern(s) and the artist-in-residence and will be ultimately responsible for the design and painting services of the intern(s) and the artist-in-residence.

- b. SPALDING/KyCAD agrees to send JCPS at least thirty (30) days in advance a list of the names of SPALDING/KyCAD intern(s) and artist-in-residence who will provide design and painting services at the selected elementary school.
- c. SPALDING/KyCAD agrees to initiate communication, through appropriate faculty and/or staff members, with JCPS administrators in order to discuss and plan the learning experiences for JCPS students.
- d. SPALDING/KyCAD will require all employees, volunteers, contractors, students or interns performing services under this Agreement to have on file a Criminal Records Check, per Kentucky law and JCPS requirements, completed no more than five years ago. Employees, volunteers, contractors, students or interns convicted of any of the following, per JCPS Board Policy 03.6, shall not be considered:
 - Any conviction for sex-related offences;
 - Any conviction for offenses against minors;
 - Any conviction for felony offenses, except as provided below;
 - Any conviction for deadly weapon-related offenses;
 - Any conviction for drug-related offenses, including felony drug offenses, within the past seven years;
 - Any conviction for violent, abusive, threatening or harassment related offenses;
 - Other convictions determined by the Superintendent/designee to bear a reasonable relationship to the ability to perform services under this Agreement.
- e. SPALDING/KyCAD will ensure that the intern(s) and the artist-in-residence work under the supervision of JCPS staff and comply with all applicable laws and regulations and all applicable JCPS policies and procedures
- f. SPALDING/KyCAD will maintain an all-risk property and casualty insurance policy with respect to the facilities and a policy of commercial general liability in amounts no less than \$1,000,000/\$3,000,000 per policy and provide JCPS with a certificate of insurance upon request.
- g. SPALDING/KyCAD understands and agrees that the services of the intern(s) and the artist-in-residence may not interfere with the instructional program of JCPS.

3. Duties of JCPS:

- a. JCPS will select the elementary school at which the SPALDING/KyCAD interns(s) and the artist-in-residence will perform the services in this Agreement.

- b. JCPS will promptly advise SPALDING/KyCAD of the selected elementary school and will promptly advise SPALDING/KyCAD of JCPS's approval or disapproval of the intern(s) and the artist-in-residence proposed by SPALDING/KyCAD.
- c. JCPS will obtain any necessary written authorizations and/or permissions from parents and/or guardians of JCPS students to approve their participation in the services to be performed by the intern(s) and the artist-in-residence under this Agreement. JCPS will share such authorizations/permissions with SPALDING/KyCAD.
- d. JCPS will assist SPALDING/KyCAD employees, volunteers, contractors, students and interns with the interpretation of applicable JCPS policies and procedures for volunteers and visitors entering JCPS facilities.
- e. JCPS will maintain an all-risk property and casualty insurance policy with respect to the facilities and a policy of commercial general liability in amounts no less than \$1,000,000/\$3,000,000 per policy and provide SPALDING/KyCAD with a certificate of insurance upon request.

4. Payment:

JCPS and SPALDING/KyCAD agree that neither party shall be required to make any payment to the other party under this Agreement.

5. Intellectual Property:

SPALDING/KyCAD agrees that JCPS shall retain ownership in and all intellectual property rights to the Mural produced by the intern(s) and the artist-in-residence and shall have the right to make all artistic decisions regarding the future retention, modification and/or destruction of the Mural as may be necessary for JCPS to conduct its instructional programs at the selected elementary school.

6. Term:

This Agreement shall be effective for one (1) fiscal year commencing on July 1, 2017 and ending on June 30, 2018. This Agreement may be renewed for one (1) or more additional fiscal years by mutual written agreement of JCPS and SPALDING/KyCAD.

7. Termination:

The Agreement may be terminated by either party with or without cause upon no less than sixty (60) days written notice to either party. This Agreement may be terminated immediately by JCPS upon ten (10) business days written notice to SPALDING/KyCAD for its failure to cure a material breach of this Agreement.

8. Modification:

No waiver, alteration or modification of the provisions of this Agreement shall be binding unless in writing and mutually agreed upon by both JCPS and SPALDING/KyCAD.

9. Compliance with Law:

SPALDING/KyCAD shall be in continuous compliance with the provisions of KRS Chapters 136, 139, 141, 337, 338, 341, and 342 that apply to SPALDING/KyCAD or subcontractor for the duration of this agreement and shall reveal any final determination of a violation by the subcontractor of the preceding KRS Chapters.

10. Equal Opportunity:

During the performance of this Agreement, SPALDING/KyCAD shall comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Kentucky Equal Employment Act of 1978, KRS 45.550-45.640, and the American Disabilities Act, and shall not discriminate against any JCPS employee or student because of age, color, creed, disability, marital or parental status, national origin, race, sex, veteran status, religion, or political opinion or affiliation.

11. Confidentiality:

At all times during the term of this Agreement, SPALDING/KyCAD shall comply with the Family Educational Rights and Privacy Act of 1974. If SPALDING/KyCAD has access to JCPS student records, SPALDING/KyCAD shall limit its employees' access to those records to persons for whom access is essential to perform this Agreement.

12. Independent Parties:

In the performance of the duties and obligations imposed on each party by this Agreement, it is mutually understood and agreed that SPALDING/KyCAD is at all times acting as an independent contractor with respect to JCPS, and neither party shall be construed to be an agent or representative of the other party. Except as provided herein, JCPS shall not have any control or direction over the manner, methods or means by which SPALDING/KyCAD performs its work and functions.

13. Captions:

Section titles or captions contained in the Agreement are inserted only as a matter of convenience and reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provisions hereof.

14. Entire Agreement:

This Agreement contains the entire agreement between JCPS and SPALDING/KyCAD and supersedes any and all prior agreements executed contemporaneously with the execution of the Agreement and incorporated herein by reference shall remain in full force and effect.

15. Severability:

If any court of competent jurisdiction holds any provision of this Agreement unenforceable, such provision shall be modified to the extent required to make it enforceable, consistent with the spirit and intent of this Agreement. If such a provision cannot be so modified, the provision shall be deemed separable from the remaining provisions of this Agreement and shall not affect any other provisions of the Agreement.

16. Counterparts:

This Agreement may be executed in counterparts, in which case each executed counterpart shall be determined an original and all executed counterparts shall constitute one and the same instrument.

17. Applicable Law:

This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky.

18. Indemnification

To the extent permitted by law, JCPS shall indemnify and hold SPALDING/KyCAD harmless from any and all claims, demands, liabilities, damages, and expenses connected therewith for injury to persons or damages to property caused by the acts, omissions, or negligence of JCPS, its agents, servants, or employees. SPALDING/KyCAD shall indemnify and hold JCPS harmless from and against any and all claims, demands, liabilities, damages, and expenses connected therewith for injury to persons or damages to property caused by the acts, omissions, or negligence of SPALDING/KyCAD, its agents, servants, or employees. If the indemnification provisions are determined to be inapplicable under this clause, such inapplicability shall not affect either party's right to pursue common law indemnification or contribution claims. This indemnification shall survive and continue in full force and effect, notwithstanding the expiration or termination of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the first date written above.

JEFFERSON COUNTY BOARD OF EDUCATION:

By: _____

Date: _____

**SPALDING UNIVERSITY, INC., acting through the
Kentucky College of Art and Design, Inc.**

By: Joanne Seungman

Date: 5/10/2017

61352850.1
61600469.2