



A Call for Creativity

Dear Iowa Artists:

On September 1st, the public was re-introduced to the wildly popular 2004 and 2014 cooperative effort between the University of Iowa Department of Athletics, the Cities of Iowa City, Coralville, North Liberty, Solon, Tiffin, Think Iowa City and Iowa City Area Sports Commission... ***Herky on Parade 20th Anniversary Edition!***

Now, we need you! There will be 75 Herky sculptures sponsored by local companies and organizations located throughout the Iowa City/Coralville area starting in May of 2024. As with the previous versions of Herky on Parade in 2004 and 2014, these sculptures need to be decorated by artists that have an eye and talent to transform these Herky sculptures into something wonderful. *Iowa artists are particularly encouraged to participate.*

We are inviting you to submit design(s) for the Herky on Parade sculptures. All artist proposals must meet these very basic design criteria:

- Designs must retain the physical look and feel of the original Herky sculpture design (e.g., the sculpture cannot be cut into pieces, etc.)
- Design may not be political, derogatory, judged to be in poor taste, or deemed inconsistent with the spirit in which our beloved Herky should be portrayed.
- Additional UI Branding Guidelines may also apply.

Artists who submit a design that is approved and selected by a sponsor will receive a \$2,000.00 honorarium. \$500 will be paid upon execution of the artist's agreement, and \$1,500 will be paid upon completion of the sculpture. The artist's name and hometown will also be included on the plaque that is permanently affixed to the base of the statute, along with the name of the sponsor and the name of the Herky sculpture.

Your participation is simple!

- Draw and color the design on the sketches included in the proposal package.
 - Please keep in mind that these proposals will be color copied for inclusion in several portfolios created and available for sponsor selection. Please attempt to provide a 2-D

(flat) sketch. Use of other materials/attachments other than markers/colored pencils/paints/etc. may not reproduce well. Keep your final submission within the standard 8 1/2" x 11" format if possible.

- Briefly describe the materials used to complete the project.
 - Please remember that anything you add to Herky will be vulnerable. Think “permanence” when planning and executing your design. We do **NOT** recommend adding hats, bags and other items made of fabric. They will deteriorate outside. Cowpainters, LLC (our production company) has some valuable tips and information available regarding Prep & Painting as well as recommended materials for decorating the sculptures. Resources are included for detailed information. Cowpainters, LLC are available for questions at (773)525-5720 or info@cowpainters.com.

- Provide a suggested name for the design.

Submit your proposal(s), including application form (see last page) no later than **Friday, December 1st by noon** to the following address:

Think Iowa City
900 First Ave/Hayden Fry Way
Attn: Ashley Smith/Monica Nieves

All questions can be directed to Ashley Smith or Monica Nieves at Think Iowa City at (319) 337-6592 or ashley@thinkiowacity.com and monica@thinkiowacity.com



Artist Fast Facts

Artists Agreement

If selected, you will be required to sign an Artists Agreement prior to starting. A copy of this agreement is attached for your information.

The basic components of this agreement are:

- The submitted artwork proposal and completed sculpture become the property of the Herky on Parade consortium. Submissions will not be returned. The artist waives all rights to the designs and completed sculptures.
- The submitted proposals will be reviewed by the Artist Committee for compliance with the preceding terms and conditions. Once approved, the selected artwork will be made available to sponsors for their review in selection. Upon selection, you will be notified immediately.
- You will agree that you are the original creator of your design, you would be liable for any structure additions that effect the sculptures' structural integrity, you will depict the artwork as accurately as the artwork that was submitted and selected and will be responsible for the safe application of the artwork to the sculpture.
- All completed Herky sculptures will be finished with a clear, automotive lacquer finish. This finish is very common in these projects and should not affect your artwork. It is necessary for “weatherproofing” the sculptures. The actual ONLY art medium that will not work is watercolor paints.
- Proposal submission deadline is **Friday, December 1, 2023, at noon.**
- Selection of proposals will occur no later than **February 1, 2024.**
- **Sculptures must be completed and returned no later than Monday, April 1, 2024.**
- The approximate dates and times for application of the artwork to the completion of the sculptures will be December 15-March 29, 2024. *These dates are subject to change
- Artists will receive a stipend of \$500 when the sculpture is picked up and \$1,500 upon successful completion and delivery of the sculpture.

General Guidelines

The Herky sculptures will be on exhibit from May 2024-September 2024 at which point they will be auctioned to the highest bidder or returned to their sponsor who may have pre-purchased rights to the sculpture. As in 2014, all proceeds from Herky on Parade will be directed to a local charitable organization.

All Herky sculptures will be placed in areas fully accessible to the public. Although some of the Herky sculptures could be indoors, most will be outdoors. All 75 Herky sculptures will be located throughout Johnson County. *It is important to keep in mind that Herky on Parade is an interactive event that allows the public to touch and feel the designs. Designs must be created with DURABILITY and public safety in mind. The audiences will be broad-based and of all ages and designs should be appropriate for public display.* A committee made up of organizers and local artists will evaluate all proposed designs and may reject a design if it, in its sole discretion, does not adhere to the preceding guidelines or align with the committee's intended vision for Herky on Parade.

Vandalism does occur with these types of displays. Objects that are attached to these sculptures that can be easily removed are attractive for such vandalism, so it is important that these objects are secured to prohibit such removal. Repair of vandalized Herky sculptures will be aggressively explored if possible and evaluated on a case-by-case basis.

The fiberglass sculptures themselves will weigh approximately 50 pounds. Once completed, they will be permanently affixed to a concrete slab (approximately 3' x 5') that will weigh approximately 350-400 pounds. The concrete bases are being designed so that a forklift can be used to move them.

Designs

The fiberglass Herky may be painted, sculpted, transformed, and adorned but the structural integrity and inherent design and physical look of Herky cannot be compromised. The base of the Herky will be the area that is permanently affixed to the concrete bases. Bolts will be drilled through the fiberglass of this base so that area can be painted but not altered or covered with other materials.

Availability of blank sculptures

Selected artists are responsible for the pickup of blank sculptures, transportation and return of the completed sculptures. The sculptures will be available for pick up after January 1, 2024. Artists will work with Think Iowa City and the Artist Committee to establish pick up and drop off times. Artists can pick up and drop off Herky at 860 Quarry Road in Coralville. The \$500 stipend to the artist will be provided at the time of pickup.

Cowpainters, LLC (our production company out of Chicago) has some valuable tips and information available about Prep and Painting as well as recommended materials for decorating the sculptures. They can be obtained by contacting either Ashley Smith, Herky on Parade 3 Artist Committee at (319)337-6592.

Selection Process

Artists may submit as many designs as they wish. The Artist Committee will meet to review the proposals to ensure that the designs conform to the preceding guidelines or align with the committee's intended vision for Herky on Parade. All selected artists will be notified no later than February 1.

Completion of artwork

After the sculptures have been completed by the artists, the sculptures must be delivered by the artists to 860 Quarry Road in Coralville to be prepped for a clear coating process with automotive lacquer. This process and cost are supported through the Herky on Parade project and not the responsibility of the artist.

Artists will not be responsible for the installation or removal of Herky once they are being exhibited. Artists may be requested to provide possible touch ups once the exhibit is underway. If the artist is not available for necessary touch-ups, another artist may be asked to perform the work.

Herky sculptures may require touch-up prior to the auctioning of the sculptures and artists will be contacted prior to that time to determine availability/assistance. If requested, artists will be paid at a mutually agreeable hourly rate for this work.

Before a Herky is placed on exhibit, the completed sculpture will be inspected by a representative of the Artist and Streets Committees. If it is determined that the artist's completed Herky has been produced in substantial conformity with the artist approved design, the Herky will be approved, and the artist will receive the \$1500 honorarium.

Questions?

We are sure you will have a few! Please feel free to call us and we'll do our best to answer them. Direct any/all questions related to Herky artwork/designs to Ashley and/or Monica at (319)337-6592 or ashley@thinkiowacity.com and monica@thinkiowacity.com.

We look forward to receiving your designs and THANK YOU for your consideration!!!



A Call for Creativity

Application Deadline: Friday, December 1

Application Form

Please type or print clearly.

Name: _____

Name as it should appear on the plaque (limited to 40 characters, including space and punctuation):

Mailing Address: _____

City: _____ State: _____ Zip Code: _____

Daytime Phone Number: _____

Fax: _____ E-Mail Address: _____

Proposed title for your Herky (limited to 40 characters, including spaces and punctuation)

Artist Statement - Please include a brief description of your Herky design including information about the materials you intend to use, what inspired your design, etc.

Artist Signature:



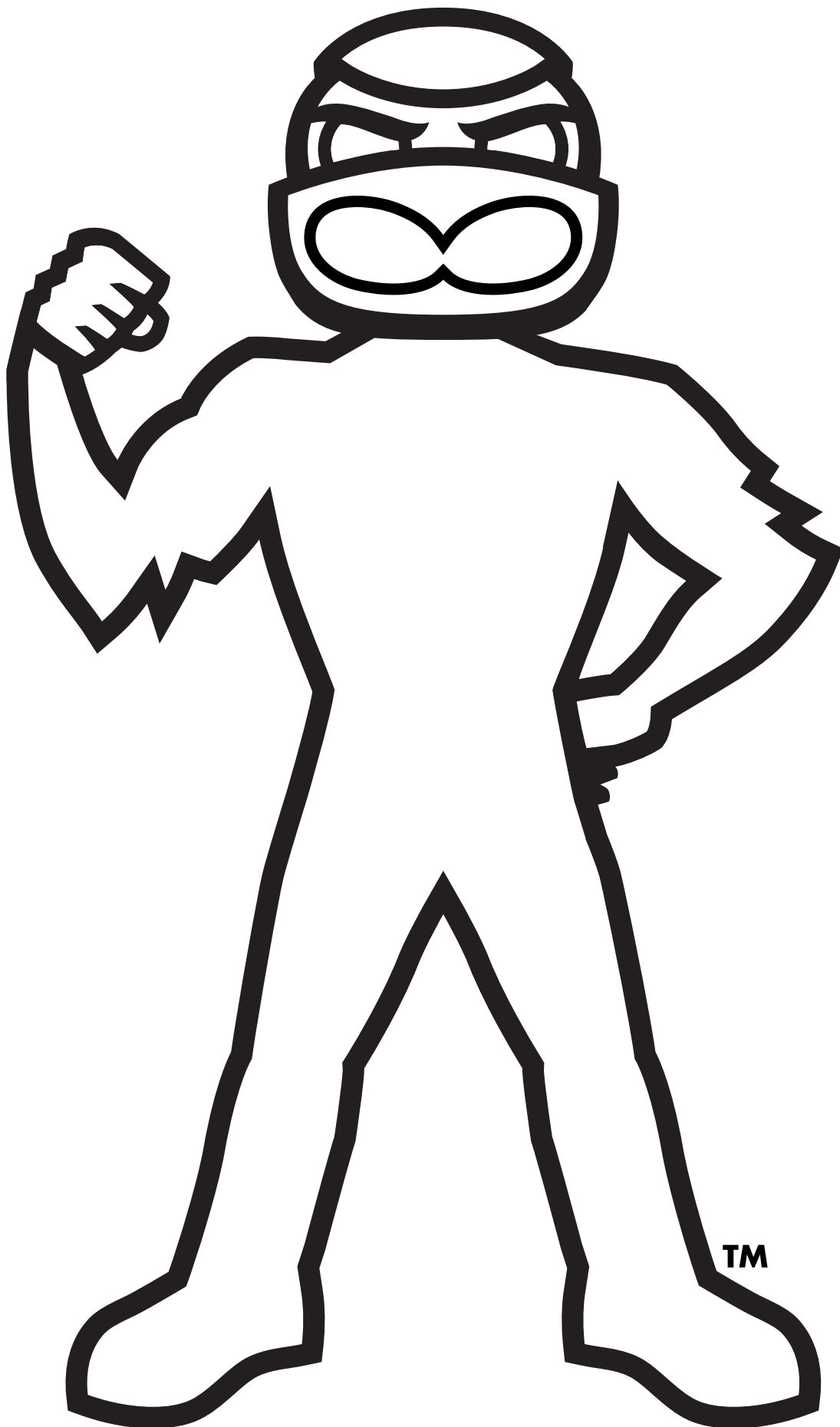
“Herky” is a registered trademark of The University of Iowa and may not be reproduced without written consent of The University of Iowa Trademark Licensing office. The attached artwork is intended for Herky on Parade proposals only and may not be reproduced for any other use.

Artwork: _____

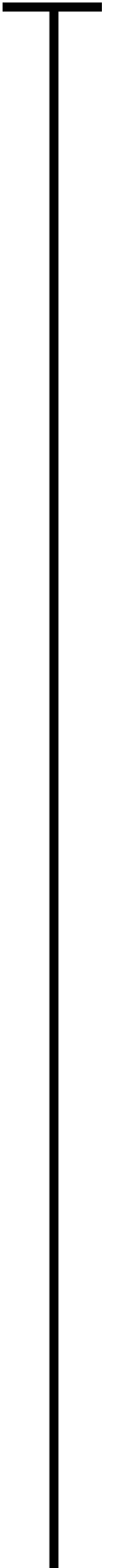
Name: _____

Phone: _____ Email: _____

FRONT (1 of 2)



6' 1"





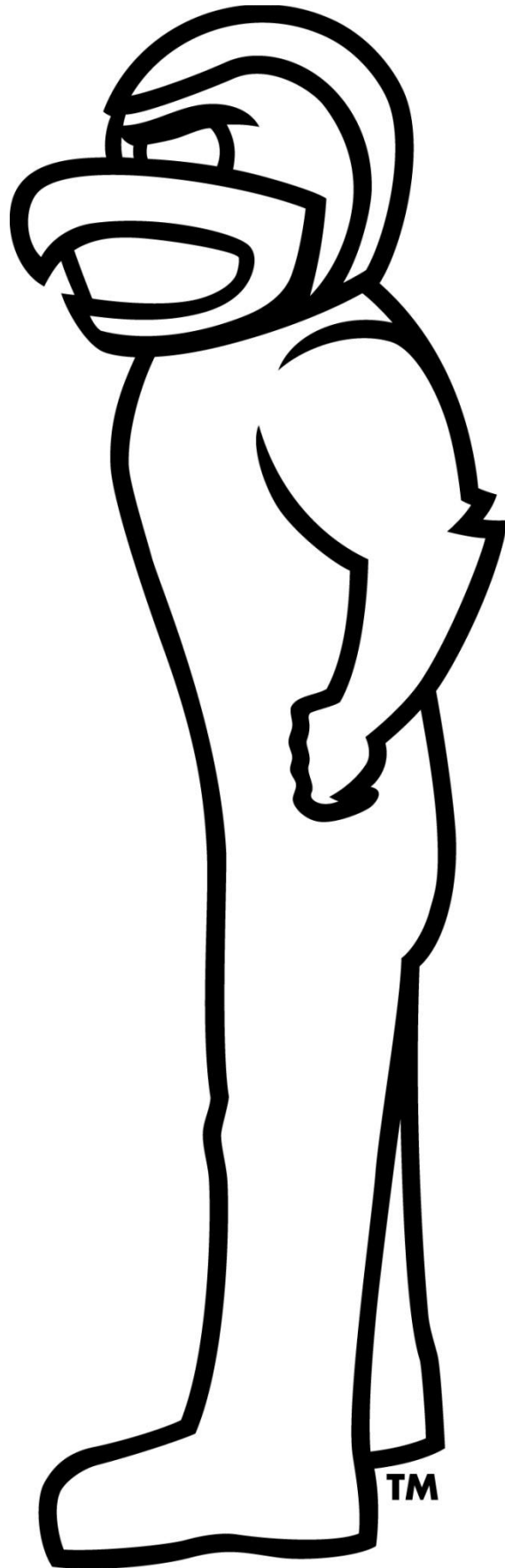
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Artwork: _____

Name: _____

Phone: _____ Email: _____

FRONT (2 of 2)





RECOMMENDED MATERIALS FOR DECORATING THE FORMS

Please regard all of this information as suggestions on how to proceed. The entire process depends upon an artist's knowledge of materials and proper application. If in doubt -- EXPERIMENT.

“Bondo Body Putty”: Comes in a tube, for filling small holes and making small repairs; and Bondo fiberglass body repair kit for making larger repairs. (Can be purchased at PepBoys, NAPA or other auto supply stores.)

“Paints”: All professional-grade artist acrylic or oil paints will do the job. For ease of application, good color stability, and national availability in art stores, we recommend Liquitex Soft Body (medium-viscosity) Acrylics. The high-viscosity paints are too “gluey” to move around with ease. You will need 59 ml (2 oz) tubes or jars, in the colors of your choice. (Two 7 oz. tubes should cover a medium sized form in one color.) Go to www.cowpainters.com, click on the Projects & Partners tab, then PARTNER LINKS in red and then **Dick Blick**. Once on **Dick Blick's** website, click on Paints, Acrylics, Liquitex Heavy Body paints, Soft Body paints. Drying time for acrylics is 20 minutes to the touch; oil paints take much longer. You should allow the paint to cure completely before the form is sealed with the clear coat. Typically curing time for acrylics is 7 days, with oils the curing time can be much longer.

“India Ink”: We don't recommend the use of pens or markers on the fiberglass forms because they tend to run when sealed. Another problem with markers is that even the inks marked lightfast tend to fade quickly in the direct sunlight.

“Golden Polymer Medium – Gloss”: 250 ml or 500 ml bottle for decoupage. Use full strength, immersing paper in medium, applying it to the form, and removing all air bubbles with your hands. Remove excess medium with almost-dry sponge. Let it dry for several days before varnishing. Make color copies on a laser printer or copy machine of any pictures or images from magazines that you wish to decoupage. The inks are more permanent and the paper will hold up better than photographic or magazine paper. Order from **Dick Blick**.

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Phone (773)525 5720 Fax (773) 525 5721

info@cowpainters.com <http://www.cowpainters.com>



“Lascaux UV-1 Gloss Varnish”: For a protective coating on your artwork before clear-coat at auto-body shop. You will need a 250 ml. bottle for small or mid-sized forms and 500 ml bottle for large forms. Order from *Dick Blick* or *Jerry’s Artarama* (check under PARTNER LINKS on Cowpainters website, Projects & Partners tab) as soon as you get your assignment, because it can’t be found in most stores and most art catalog houses run out and have to back-order it. **THERE IS NO GOOD SUBSTITUTE FOR THIS PRODUCT.** To use, dilute 3 or 4 parts varnish to 1 part water (you want it to be light) and filter through gauze. Use nylon brush, and have a large jar of water handy, to immerse your brush in if you have to pause when varnishing. It sets up quickly, so if you pause, don’t begin again until the varnish is dry (15 minutes or so). It goes on slightly cloudy, but dries crystal clear. Immediately remove air-bubbles if they form by touching lightly with brush. Takes about 1 hour to dry.

“MagicSculp Epoxy Putty”: Primarily used for altering the surface or adding sculptural elements to the form. This product comes in two tubs and you mix equal parts together to activate the product. An artist who works with MagicSculp often suggested using a little more hardener than resin to ensure that the mixture will harden completely. Complete directions for usage will be found on these websites, along with ordering information: www.magicsculp.com and www.restorersupplies.com, as well as sculpt.com. The product will adhere to the fiberglass form if you rough up the surface and drill a few small holes, so you can push the MagicSculp into the holes for a better bond. It is non-toxic, allows a couple of hours of working time before it sets up, and after dry (12 hours) can be sanded, if necessary, and painted with ease. The shelf life of MagicSculp is two years; it is best not to use this product after 2 years. MagicSculp is polymer-based and will fade in UV light. It is necessary to prime, paint, and Lascaux epoxy putty to prevent color fading.

“Mosaic tile or mirrors”: You will be applying mosaics over a primed surface, so follow the directions from your tile outlet. Treat the form as though it was a bathroom wall (example: use thin-set adhesive and sanded mortar) using whatever the tile store recommends. These forms should be sealed with mosaic sealer, not auto body clear coat.



PREP & PAINTING TIPS®

ARTIST INFORMATION HOTLINE: (773) 525-5720

Preparation: Your form is primed white with an acrylic urethane primer that is suitable for most types of paint. Wash the surface while looking it over carefully to see if there are any holes to fill or defects in the surface that must be fixed before proceeding. **If small holes are found:** fill with a bondo-type product sold in a tube and available at auto supply stores. Smooth with spatula and let set before sanding. For your health and safety, **always wear vinyl or rubber gloves and dust masks or respirators when prepping critters.** Work in a well-ventilated space. **CLEAN UP THE DUST WITH DAMP MOPS, DON'T SWEEP.** If you find any areas where the primer appears to be flaking off, stop and call the *Hotline* for suggestions. To assure a strong bond when painting the form, we also recommend that you rough up the surface primer a bit or gesso the form before beginning.

Paint and Varnish: We recommend acrylics by Golden, Windsor-Newton, Daler-Rowney, Pebeo, Lascaux, Liquitex and other professional-grade paint. You can also use the oil paints of your choice; please paint in thin layers when using oils, letting each layer dry thoroughly between applications. Latex wall or house paints are not recommended, as we use an acrylic urethane primer and they will not adhere. Craft-quality paints such as Delta Ceramcoat Acrylics are not formulated to withstand outdoor conditions and will peel quickly, do not use them. Avoid paints that do not have a high colorfast rating -- you don't want your design to disappear in the sunlight! If you are planning to **decoupage or apply mosaics** to your form, please call or email for additional information.

Clear-Coat: The art project should arrange for a final finish with an auto-body clear coat, which will create a hard-shell high-gloss finish with a UV-protection component. Our auto-body shop uses Sherwin Williams' automotive urethane 7000, cured at no more than 140 degrees for no longer than 40 minutes. It is recommended that you do not clear-coat over mosaic or mirrored surfaces.

Additions and Extensions: Remember that anything you add to the creature will be vulnerable. Vandals (and the weather) will try to remove add-ons, so think "permanence" when planning and executing your design. There are professionals in your community who can help you do this, such as auto-body shops and other professionals who work with fiberglass. If you wish to sculpt forms onto your fiberglass form, use epoxy putty. You may want to start with your local art supply or hardware store. If they are unable to provide the product you are looking for, however, you may find it online at www.magicsculp.com for epoxy putty and product tech support. To glue stuff onto your creature, use liquid nails or jewelers cement, epoxy adhesives or Bond 527 multi-purpose cement. We do NOT recommend that you add hats, bags and other items made of fabric. They will deteriorate outside. **REMEMBER THAT BUYERS WILL NOT BE HAPPY WITH FAULTY ARTWORK SO THINK PERMANENCE!!!**

Note: These tips have been compiled from the experiences reported to Cowpainters by public art project artists across the country and are provided for the information of our clients' artists. Please regard all of these tips as *suggestions* on how to proceed. The entire process depends upon an artist's knowledge of materials and proper application. If in doubt -- EXPERIMENT. We are happy to share this information with our clients, but Cowpainters cannot assume, and expressly declines, any warranty or liability for the finished artwork.

Cowpainters, LLC

women owned and operated

4426 N Ravenswood Ave Chicago, IL 60640

Phone (773) 525 5720

info@cowpainters.com <http://www.cowpainters.com>



We do not recommend using broken pottery because some of the colors will not be color-fast and may fade outdoors. It is also difficult to be certain that the mortar completely covers any broken edges, so that people will not get scratched or cut by them.

“Glues, Adhesives”: Of course you will want non-aqueous glues such as jewelers cement, Liquid Nails, Gorilla Glue, Loctite indoor/outdoor adhesive sealant or epoxy cements. Do not use Elmer’s glue or other water-soluble glues. Remember that people will try to peel off anything that you glue onto a form. You can also use MagicSculp epoxy putty as glue if you rough up the form and the item to be glued, and drill into each side so that the epoxy putty can form a true bond.

“Fabrics”: If you are going to apply a fabric such as cotton to the form, as a decoupage, you can use the Golden Polymer Medium as described above. There is an alternative product called Paverpol, which is available online. It is very similar to a Polymer Medium, but with more staying power. You may also use MagicSculp’s more viscous cousin, MagicSmooth. MagicSmooth is a two part epoxy resin medium that can be applied to heavier organic fibers/materials. There is also a fabric hardener often available through autobody supply stores. If you are going to harden fabric with this and apply it to the form, you should know it is an extremely toxic material that will need to be worked with outdoors, away from children and pets, and you will need to wear a respirator, rubber gloves and eye protection. We do not recommend this and would not do it ourselves. Please note that fabric fibers and dyes are not meant to withstand weather conditions. Textile dyes will fade! You will need to prime and paint any textile surface!

Note: These tips have been compiled from the experience reported to Cowpainters by public art project artists across the country and are provided for the information of our clients' artists. Please regard all of these tips as *suggestions* on how to proceed. The entire process depends upon an artist's knowledge of materials and proper application. If in doubt -- EXPERIMENT. We are happy to share this information with our clients, but Cowpainters cannot assume, and expressly declines, any warranty or liability for the finished artwork.



ARTIST AGREEMENT

This Agreement between the University of Iowa Athletic Dept (“University”) with offices at Carver Hawkeye Arena, Iowa City, Iowa 52242, the Iowa City/Coralville Area Convention and Visitors Bureau (“Think Iowa City”), Coralville, Iowa, 52241, and _____, a resident of _____, who has a studio/residence at _____ (“Artist”).

1. **SUBMISSION OF ARTWORK.**

1.1 **Submission.** The Artist intends to participate in the University’s HERKY ON PARADE festival, and in connection with that participation will submit or has submitted contemporaneously herewith, to the University, artwork, designs, and design details incorporating the University of Iowa mascot, Herky, in a manner acceptable to and on the form provided by the University. Once submitted, the Artwork, as herein defined, shall belong exclusively to the University, pursuant to the assignment provisions in Section 6. Artwork shall be defined as all artwork, drawings, designs, design details, design application, paperwork, or other materials, whether written, electronic or in any other format that result from the Artist’s services hereunder.

1.2 **Selection.** All Artwork submitted to the University will be reviewed and considered by a Selection Committee. Artwork that has been submitted but for which the Selection Committee does not have a signed Artist Agreement will not be considered. The Selection Committee will review the Artwork for compliance with the terms and conditions of this Agreement. Upon approval by the Selection Committee, the Artwork will be collated with other submissions by other artists into a book, which will then be presented to sponsors for their review for sponsorship. Artists of sponsored work will be contacted and notified of the identity of the sponsor and details for completion. Upon successful completion of the application of the Artwork to the fiberglass sculpture blank (“Sculpture”) a plaque with the Artist’s name, hometown, the sponsor’s name and the name of the Sculpture will be affixed to and displayed with the Sculpture. Regardless of whether an Artist has already secured a sponsor, the Artwork must still be reviewed and accepted by the Selection Committee. All Artwork submissions become the property of the University and will not be returned.

2. **CONDITIONS OF ARTIST PERFORMANCE.** Artist hereby agrees to abide by the following conditions of performance for any services undertaken pursuant to this Agreement:

a. Artist represents and warrants that the Artist is the sole author of all elements of the Artwork or has received the appropriate rights from third parties to display, reproduce or create derivative works of elements contained in the Artwork.

b. The Artwork will not be political, derogatory, obscene, lewd, profane, or defamatory in any way as solely determined by the University.

c. Only Artwork approved by the Selection Committee during the selection process and sponsored may be used. The Artist hereby acknowledges that Artist will have no right to use the Artwork in any manner for any purpose, except in connection with HERKY ON PARADE festival and in strict accordance to the terms and conditions of this Agreement and that without the express prior written consent of the

University, any unauthorized use of the Artwork will constitute an infringement of the rights of the University.

- d. The Artist agrees not to manipulate the original pose of the Sculpture.
- e. The Artist is legally liable for any structural additions to the Sculpture that effects the Sculpture's structural integrity.
- f. The Artist agrees to accurately depict the Artwork submitted, selected, and sponsored on the Sculpture.
- g. All additions to the Sculpture shall be weather and vandal resistant.
- h. Upon completion, each Sculpture will be sprayed (by organizer) with a protective clear coating consisting of clear automotive lacquer.
- i. Artist accepts all liability for the safe application of the Artwork to the Sculpture.
- j. Artist agrees to keep design and work completely confidential (with exception to sponsor and University/CVB project managers) through public launch date of May 1, 2024. Artist will not share any photos or video of work in progress or completed work to anyone via email, internet, social media, or in person prior to public launch date of May 1, 2024.

3. TIME FOR SUBMISSION AND COMPLETION.

3.1 The Artist must submit proposed Artwork to the University by noon on Friday, December 1st, 2023. Any submissions received after that time may be discarded and not included in the selection process or submitted to the Selection Committee.

3.2 Upon selection and sponsorship, the Artist will be notified of the time period allotted for and location for the completion of the Sculpture. The approximate dates and times for application of the Artwork to and the completion of the Sculpture are as follows: January 2nd – March 29, 2024. The foregoing dates and times are subject to change.

4. PAYMENT.

4.1 In consideration of the performance of the creative services described herein and in consideration of the assignment of rights to the University under this Agreement, the Artist has the opportunity to participate in this festival, to receive recognition from participation and if Artist's Artwork is sponsored Think Iowa City will pay the Artist a stipend of Five Hundred Dollars (\$500.00) at the time of sculpture pickup and One Thousand Five Hundred Dollars (\$1,500.00) upon the successful completion of the Sculpture within the time line set forth for completion. No stipend will be given to Artist if the Artwork is not sponsored.

4.2 The above stated amount of Two Thousand Hundred Dollars (\$2,000.00) is the full compensation given to the Artist for all costs and expenses associated with Artist's services hereunder. The University and Think Iowa City are not obligated and will not reimburse the Artist for any expenses, travel time, time, materials, or other charges incurred by the Artist.

4.3 Upon acceptance by the University and Think Iowa City of the completed Sculpture and the application of the protective clear coat, Think Iowa City will make final payment to the Artist of the above stated amount within seven (7) days.

4.4 In the event the Artist fails to comply with any terms or conditions of this Agreement or to provide in any manner the work or services as agreed herein, Think Iowa City reserves the right to withhold any payment until the University is satisfied that corrective action has been taken or completed and such action is

approved by the University. This option is in addition to and not in lieu of the University's and Think Iowa City's right to terminate as provided in this Agreement.

5. **NOTICE.** Dale Arens, Executive Director of The University of Iowa Athletics Hall of Fame, has been designated by the University as the Project Manager for this Agreement. All communications pertaining to this Agreement shall be directed to the Project Manager via phone at 319.384.1031 or mail at Dale Arens, UI Athletic Museum & Hall of Fame, 2425 Prairie Meadow Drive, Iowa City, Iowa 52242. The Project Manager shall have the authority to transmit instructions, receive information, authorize amendments or changes to this Agreement, and interpret and define the University's policies and decisions pertinent to the Artist's services covered by this Agreement.

6. **OWNERSHIP RIGHTS.**

6.1 It is understood and agreed that the Artwork and Sculpture is being developed by the Artist for the sole and exclusive use and benefit of the University and the University shall be deemed to be the sole and exclusive owner of all right, title, and interest therein, including all copyright and proprietary rights relating thereto. All work performed by Artist under this Agreement and all Artwork generated in connection therewith, including the Sculpture, shall be considered a "Work Made for Hire" as defined under the US Copyright Laws, and as such shall be owned by and for the benefit of the University.

6.2 "Herky" is a registered Trademark of The University of Iowa and may not be reproduced without written consent of The University of Iowa Trademark Licensing office. The attached artwork is intended for Herky on Parade proposals only and may not be reproduced for any other use.

6.3 The University, in its sole discretion, has a right to use or not use the Artwork and to re-use, reproduce, alter, modify, edit, or change the Artwork or Sculpture as it sees fit and for any purpose.

6.4 In the event that it is determined that any Artwork does not qualify as a "Work Made for Hire" the Artist will and does hereby assign to the University all right, title and interest that the Artist possess in and to the Artwork including but not limited to all U.S. and foreign copyright and proprietary rights relating thereto. Upon request, the Artist will take such steps as are necessary to enable the University to record such assignment, at the University's expense.

6.5 The Artist hereby expressly waives any and all rights that it has in the Artwork and to any and all uses of the Artwork whether embodied in a two-dimensional or three-dimensional compilation, a sculpture, a reproduction, modification, or derivative work. All rights that the Artist has under the Visual Artist Rights Act of 1990 are hereby waived.

6.6 The Artist will sign upon request any documents needed to confirm that any specific Artwork is a "Work Made for Hire" and to effectuate the assignment of all of its rights to the University.

6.7 Both during the term of this Agreement and thereafter, Artist will assist the University and its agents, upon request, in preparing US and foreign copyright and/or trademark applications that cover the Artwork or Sculpture. Artist will sign any such applications and deliver them to the University. The University will bear all expenses that it causes to be incurred in connection with such copyright or trademark protection.

6.8 All physical embodiments of the Artwork, including the Sculpture, and all rights appurtenant thereto are hereby owned, transferred and assigned to the University.

7. **REPRESENTATIONS AND WARRANTIES.**

7.1 Artist represents and warrants to the University and Think Iowa City that it is free to enter into this Agreement and that its performance hereunder will not conflict with any other Agreement to which Artist may be a party. Further, the Artist agrees not to enter into any other agreement with any third party that would create a conflict with the performance of its obligations hereunder.

7.2 Artist represents and warrants to the University and Think Iowa City that the Artwork is unique and original, is clear of any claims or encumbrances, and does not infringe on the rights of any third parties.

8. **INDEPENDENT CONTRACTOR**. It is agreed by the parties that, at all times and for all purposes within the scope of this Agreement, the relationship between the Artist and the University and Think Iowa City is that of an independent contractor and not of an employee. No statement contained in this Agreement shall be construed so as to find the Artist an employee of the University and Artist shall be entitled to none of the rights, privileges, or benefits of university employees.

9. **SUBCONTRACTING**. The Artist agrees not to enter into any sub-contracts for any of the work contemplated hereunder without obtaining the prior written approval from the Project Manager.

10. **INDEMNIFICATION**. Artist agrees to defend, indemnify, and hold the University, the State of Iowa, and the Board of Regents State of Iowa, its officers, directors, employees and agents, and Think Iowa City harmless against any and all costs, expenses, losses or damages, including reasonable attorneys' fees and costs, incurred through claims of third parties based on a breach by the Artist of any of the representations and warranties or any of the terms and conditions contained in this Agreement.

11. **INFRINGEMENT**. The University shall have the right, in its sole discretion, to prosecute or pursue all claims and lawsuits against third parties for infringement of its rights in the Artwork. Any lawsuit shall be prosecuted solely at the University's expense and all sums recovered shall be retained by the University. Artist agrees to fully cooperate with the University with prosecution of any such suit, and the University shall reimburse the Artist for any previously approved expenses that it might incur as a result of such cooperation.

12. **TERMINATION**.

12.1 This Agreement will continue in full force and effect until completion of the project as described herein unless terminated at an earlier date by either party. Either party to this Agreement may terminate this Agreement without cause by giving no less than twenty (20) days written notice of intent to terminate the other party.

12.2 The University and Think Iowa City reserve the right to suspend or terminate this Agreement, including withholding payment, if the Artist violates any of the terms or conditions of this Agreement or does not fulfill, in a timely and proper manner, its obligations under this Agreement as determined by the University and Think Iowa City. In the event that the University exercises its right to withhold payment or terminate under this section, it shall submit written notice to the Artist. This remedy shall be in addition to any other remedies available to the University and Think Iowa City at law or in equity. The University and Think Iowa City shall be entitled to recover reasonable attorneys' fees and costs associated with enforcing its rights hereunder.

12.3 In the event of termination, Artist will deliver all Artwork, other work product and all supporting documentation developed up to the date of termination. Termination of this Agreement by the University shall have no effect upon the assignment to the University of all rights in and to the Artwork and Sculpture.

13. **GENERAL**

13.1 **Headings**. The headings used in this Agreement are for convenience only and are not intended to be used as an aid to interpretation.

13.2 **Severability**. If for any reason a court of competent jurisdiction finds any provision of this Agreement to be unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remainder of this Agreement will continue in full force and effect

13.3 **Successors**. This Agreement will be binding upon and inure to the benefit of the parties hereto, their respective successors and assigns. Artist may not assign its rights or obligations under this Agreement without the prior written consent of the University and Think Iowa City.

13.4 **Waiver.** No waiver by any party of any breach of any provision hereof shall constitute a waiver of any other breach of that or any other provision hereof.

13.5 **Force Majeure.** The University and Think Iowa City shall not be held accountable under any theory of liability for any loss or for any failure to perform any obligation hereunder due to causes beyond its control including without limitation severe weather and storms, fires, floods, strikes, acts of God, failure of supplier, third party acts, third party failure to act, or acts of legislative, judicial, executive or administrative authorities, or any other cause beyond its reasonable control not contemplated herein.

13.6 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Iowa. Exclusive jurisdiction for litigation of any dispute, controversy or claim arising out of or in connection with this Agreement, or breach thereof shall be only in the Federal or State court with competent jurisdiction located in Johnson County, Iowa. Both parties hereby submit to personal jurisdiction in Johnson County, Iowa.

13.7 **Survival.** The respective obligations of the University, Think Iowa City and the Artist under these terms and conditions, which by their nature would continue beyond termination, cancellation, or expiration hereof, shall survive termination, cancellation, or expiration hereof.

13.8 **Entire Agreement.** This Agreement, including any schedules or exhibits attached hereto and incorporated herein by this reference, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all previous proposals, both oral and written, negotiations, representations, commitments, writings, and all other communications between the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the last day and year set forth below.

ARTIST

HERKY ON PARADE

Name Printed: _____

Dale Arens
University of Iowa Trademark Licensing Director

Date: _____

Date: _____

Think Iowa City

Nick Kaeding
Senior VP of Finance & Operations

Date: _____