


## COUNCIL COMMUNICATION

	Number:	<b>19-487</b>	Meeting:	<b>November 18, 2019</b>
	Agenda Item:	<b>40</b>	Roll Call:	<b>19-1844</b>
	Submitted by:	<b>Benjamin R. Page, Park and Recreation Director</b>		

### AGENDA HEADING:

Approving amendment to agreement with Greater Des Moines Public Art Foundation (GDMPAF) for the installation and maintenance of “Miffy Fountain” sculpture in Western Gateway Park.

### SYNOPSIS:

Approval of an amendment to the agreement between the City and the GDMPAF for the installation of “Miffy Fountain” sculpture by artist Tom Sachs in the Western Gateway Park in downtown Des Moines. This Amendment clarifies the maintenance responsibilities for the landscaping.

### FISCAL IMPACT:

Amount: N/A

Funding Source: GDMPAF is responsible for costs associated with preparing the installation, maintenance, and display of the proposed “Miffy Fountain” sculpture.

### ADDITIONAL INFORMATION:

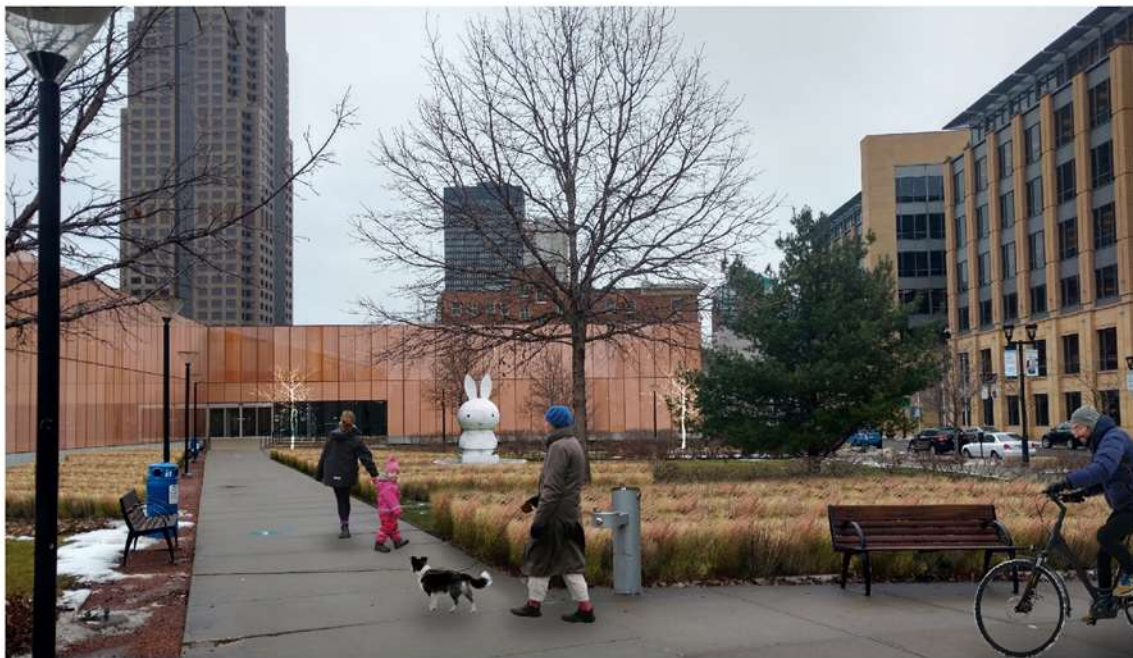
- On September 10, 2018, by Roll Call No. 18-1519, the City Council approved an agreement between the City and the GDMPAF for installation and maintenance of “Miffy Fountain” sculpture in Western Gateway Park, and the GDMPAF and the City wish to modify the Agreement as follows.

1. Article V, Section 4 of the Agreement is hereby stricken in its entirety and replaced with the following:

Section 4. The City, or their designee, shall maintain the landscaping, including the area abutting the Library and north of the sidewalk which abuts the Plaza on its north side and may remove it or alter it at its sole discretion. Notwithstanding the foregoing, the ornamental grasses immediately abutting the Plaza may not be removed by the City during the two (2) year period from the date of the construction closeout warranty. The Foundation warrants that the ornamental grasses will successfully grow and perform for a minimum of two (2) years from construction closeout and ensures that any re-planting will be completed by the Foundation’s contractor at the Foundation’s expense with that two (2) year time period.

- This amendment was requested by the GDMPAF, when they realized that the words “or better” were inadvertently added to the following sentence: The Foundation warrants that the plant material will successfully grow and perform for two (2) years or better from construction closeout. The GDMPAF only planned to warrant the plant material for two (2) years after construction closeout. While negotiating the amendment, it was mutually agreed that if the City was responsible for maintaining the landscaping, it should include the ornamental grasses immediately abutting the Plaza, instead of being the GDMPAF’s responsibility, which was in the original Agreement.
  - For reference, the following is Article V. Section 4 of the original agreement:

The City, or their designee, shall maintain the landscaping, including the area abutting the Library and north of the sidewalk which abuts the Plaza on its north side and may remove it or alter it at its sole discretion, except for the ornamental grasses immediately abutting the Plaza. The Foundation warrants that the plant material will successfully grow and perform for two (2) years or better from construction closeout and ensures that any re-planting will be completed by the Foundation’s contractor at the Foundation’s expense within that time period and beyond. The Foundation, or its designee, shall maintain the ornamental grasses immediately abutting the Plaza.



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- GDMPAF will retain the ownership of the artwork, provide for maintenance of the artwork, including maintenance and repair of the fountain portion of the artwork and take on sole responsibility for any and all utility costs such as but not limited to water and electricity.

**PREVIOUS COUNCIL ACTION(S):**

Date: September 10, 2018

Roll Call Number: [18-1519](#)

Action: [Agreement](#) with the Greater Des Moines Public Art Foundation for the installation and maintenance of Miffy Fountain Sculpture in Western Gateway Park and any associated Intellectual Property Agreement. ([Council Communication No. 18-456](#)) Moved by Gatto to adopt. Motion Carried 7-0.

**BOARD/COMMISSION ACTION(S):**

Board: Access Advisory Board

Date: April 18, 2018

Resolution Number: #18-23

Action: Motion by Gibson to approve the placement of the Artwork and the viewing area. Second by Green. Motion Carried 8-0-1.

**ANTICIPATED ACTIONS AND FUTURE COMMITMENTS: NONE**

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