



Roll Call Number

18-1519

Agenda Item Number

33

Date September 10, 2018

APPROVING AGREEMENT WITH THE GREATER DES MOINES PUBLIC ART FOUNDATION FOR THE INSTALLATION AND MAINTENANCE OF MIFFY FOUNTAIN SCULPTURE IN WESTERN GATEWAY PARK AND AUTHORIZING MAYOR TO EXECUTE AGREEMENT FOR SAME AND TO EXECUTE ASSOCIATED INTELLECTUAL PROPERTY AGREEMENT

WHEREAS, the City owns and maintains Western Gateway Park in downtown Des Moines; and

WHEREAS, on December 22, 2003, by Roll Call No. 03-2902, the City Council approved the negotiation of a contract for the establishment and administration of a Public Arts Program with the Greater Des Moines Community Foundation ("GDMCF"), which contract was entered into by the City and the GDMCF on March 19, 2004; and

WHEREAS, the GDMCF formed the Greater Des Moines Public Arts Foundation ("PAF") to conduct the affairs and activities of the Public Art Program under the Contract pursuant to the Clarifying Amendment dated July 12, 2004 and approved by the City Council by Roll Call No. 04-145 on July 12, 2004; and

WHEREAS, the Foundation is the owner of a 2008 sculpture by artist Tom Sachs, which sculpture also functions as a fountain and is made of cast bronze and white paint, titled "Miffy Fountain," Edition #2 of 5 with overall dimensions of 9.25 x 8.5 x 8.5 feet (the "Artwork"); and

WHEREAS, the Foundation desires to install and display the Artwork and a permeable stone paving viewing area to the south of the Des Moines Public Library to the east of 12th Street and north of Locust Street within Western Gateway Park for the enjoyment of the public; and

WHEREAS, the Foundation also desires to, at its sole cost, remove existing lawn and plants, plant shrubs, perennials and bulbs within the area immediately abutting the viewing area and at four other areas, to plant four trees, make all utility connections, and adjust all irrigation as necessary to accommodate the new plantings and turfgrass layout, as a gift to the City; and

WHEREAS, the Foundation 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; and

WHEREAS, City staff have negotiated an Agreement Between the City of Des Moines and the Greater Des Moines Public Art Foundation for Installation and Maintenance of Miffy Fountain Sculpture in Western Gateway Park, a copy of which is on file in the City Clerk's Office; and



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WHEREAS, the Access Advisory Board approved the placement of the Artwork and the viewing area at its April 18, 2018 meeting; and

WHEREAS, pursuant to the Agreement, the Artist is required to execute a Waiver of Visual Artist Rights Act and a Non-Exclusive, Limited Copyright License in connection with display of the Artwork; and

WHEREAS, it is in the best interests of the City to enter into the Agreement with the Foundation to allow the installation, display and maintenance of the Artwork in consideration of the enjoyment of the public and the maintenance obligations to be undertaken by the Foundation.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa, that the above described Agreement Between the City of Des Moines and the Greater Des Moines Public Art Foundation for Installation and Maintenance of Miffy Fountain Sculpture in Western Gateway Park, a copy of which is in the City Clerk's Office, be and is hereby approved and the Mayor is authorized and directed to sign said Agreement on behalf of the City and the City Clerk is authorized and directed to attest to the Mayor's signature.

BE IT FURTHER RESOLVED, that the Mayor is authorized and directed to execute on behalf of the City any necessary intellectual property rights agreements in connection with the Artwork, including copyright licenses and waivers of Visual Artists Rights Act, subject to approval as to form by the Legal Department.

(Council Communication No. 18 - 456)

Moved By Gatto to adopt.

APPROVED AS TO FORM:

Ann DiDonato, Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
BOESEN	✓			
COLEMAN	✓			
GATTO	✓			
GRAY	✓			
MANDELBAUM	✓			
WESTERGAARD	✓			
TOTAL	7			

MOTION CARRIED

APPROVED

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

J. M. Frankha Cownie Mayor

Diane Rauh City Clerk