



CITY of NOVI CITY COUNCIL

Agenda Item D
February 5, 2018

SUBJECT: Approval of Agreement for Loan and Temporary Display of Artwork between the City of Novi, MI and the City of Farmington, MI

SUBMITTING DEPARTMENT: Parks, Recreation and Cultural Services

CITY MANAGER APPROVAL: 

BACKGROUND INFORMATION:

The Farmington Downtown Development Authority has initiated a public art installation program and is requesting a municipal partnership in a loan of sculpture from the City of Novi Villa Barr Art Park. The sculptures would be set in prominent pedestrian areas with informational plaques on the piece and David Barr and recognizing the City of Novi's assistance.

The request was discussed with the Friends of Villa Barr group which includes representatives from the City of Novi, Novi Parks Foundation, the Michigan Legacy Art Park, the Dennon Museum Center, the Estate of David Barr and personal friends of David Barr. The group has been meeting over the past year to discuss the vision for Villa Barr Art Park, options for development, fundraising and establishment of an artist-in-residency program.

Overall, the Friends of Villa Barr group is concerned with diminishing the number of works on site considering the park is still in the initial stages of development. However, they are supportive of loaning work to the City of Farmington in an effort to bring greater interest and awareness to the Villa Barr Art Park. The group has recommended the trio of works, Avenue, Shift and Temple, be made available for loan with the following stipulations required to be agreed to by the City of Farmington:

1. Pay all associated costs with removal, transfer, and install of the sculpture pieces from Novi to Farmington and on return to Novi.
2. Formally acknowledge the loan and display information as provided by the City of Novi regarding the Villa Barr Art Park.
3. Provide necessary restoration work to the pieces prior to being returned to the City of Novi.
4. Pieces would be returned to the City of Novi by May 2019 unless a one-year extension is mutually agreed upon.

It is important to note that the trio of works recommended by staff and the Friends of Villa Barr will need to be moved in order for the parking and pathway project to be completed at Villa Barr in the summer of 2018. The City of Farmington has agreed to these stipulations and a formal agreement has been prepared by the Novi City Attorney Tom Schultz for Novi City Council consideration. (Note that Mr. Schultz is also the attorney for the City of Farmington, as indicated in the attached letter.)

RECOMMENDED ACTION: Approval of Agreement for Loan and Temporary Display of Artwork between the City of Novi, MI and the City of Farmington, MI

AGREEMENT FOR LOAN AND TEMPORARY DISPLAY OF ARTWORK
BETWEEN THE CITY OF NOVI, MI
AND THE
CITY OF FARMINGTON, MI

THIS AGREEMENT FOR LOAN AND TEMPORARY DISPLAY OF ARTWORK ("AGREEMENT") is made and entered into this ____ day of _____, 2018, by and between the CITY OF FARMINGTON (the "FARMINGTON"), whose address is 23600 Liberty Street, Farmington, MI 48335, and the CITY OF NOVI, (the "NOVI"), whose address is 45175 Ten Mile Road, Novi, MI 48375.

WITNESSETH:

WHEREAS, NOVI is the sole owner of the ARTWORK, which consists of three sculptures described more fully in **Exhibit A** attached hereto and made a part hereof (the "ARTWORK"); and

WHEREAS, FARMINGTON wishes to display the ARTWORK temporarily at locations to be determined by FARMINGTON within the City of Farmington (the "SITE"); and

WHEREAS, NOVI wishes to temporarily loan the ARTWORK to FARMINGTON for display at the SITE.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, parties agree as follows:

1. RECITALS

- 1.1 The foregoing recitals are incorporated into and made a part of this AGREEMENT and the parties acknowledge and agree that such recitals are true and correct.

2. SCOPE AND TERM

- 2.1 This AGREEMENT shall commence upon the date first above written and shall terminate one year after the ARTWORK has been placed at the SITE.

- 2.2 NOVI hereby agrees to loan the ARTWORK to FARMINGTON for temporary display at the SITE for a period of twelve (12) months from the date of installation ("Display Period"), pursuant to the following schedule unless altered by written AGREEMENT of the parties:

2.2.1 The ARTWORK shall be made available to FARMINGTON at the location of the ARTWORK at Villa Barr by April 1, 2018.

2.2.2 Removal from the current location at Villa Barr and installment at the SITE shall begin no later than April 15, 2018.

2.2.3 The ARTWORK shall be removed by FARMINGTON from the SITE and returned to Villa Barr (or such other location to be determined by NOVI)

by May 1, 2019; provided, however, that this Agreement and term shall be automatically extended an additional twelve (12) months, to May 1, 2020, unless one of the parties gives notice of objection to such extension by March 1, 2019.

3. FARMINGTON'S RESPONSIBILITIES

- 3.1 FARMINGTON, using FARMINGTON'S own or hired personnel and equipment is fully responsible for the costs and handling involved in the removal of the ARTWORK from Villa Barr and its transportation to the SITE, and for its removal from the SITE and return to Villa Barr.
- 3.2 FARMINGTON hereby agrees to the installation and removal dates set forth above and that installation will occur during regular business hours unless specifically agreed to in writing by NOVI. In addition, FARMINGTON shall be responsible for the oversight of the installation and removal of the ARTWORK, which shall be done in a good, workmanlike, and professional manner.
- 3.3 FARMINGTON shall provide to NOVI Certificates of Insurance evidencing the required insurance set forth in Section 7.
- 3.4 FARMINGTON will solely determine the specific location for the exhibition of the ARTWORK on the SITE. The ARTWORK (sculptures) may be displayed together or may be displayed separately, at FARMINGTON's discretion.
- 3.5 FARMINGTON will prepare the SITE for installation in accordance with the information provided by NOVI pursuant to Section 4.2 below.
- 3.6 FARMINGTON will provide and install an identification plaque next to the ARTWORK, prepared and designed by FARMINGTON, containing a credit to the Artist.
- 3.7 FARMINGTON will maintain the ARTWORK to the extent possible in accordance with the recommended cleaning, care, and maintenance instructions provided by NOVI pursuant to Section 4.2 below. In the event the ARTWORK is in need of repair or restoration, FARMINGTON shall notify NOVI in writing and NOVI shall have the right of first refusal to make or supervise such repairs or restorations. Such right must be exercised by responding to FARMINGTON within ten (10) days from the date of such notice indicating that NOVI wishes to make or supervise the repairs or restorations. In the event NOVI does not respond within the time set forth in this Section, FARMINGTON may cause such repairs or restorations to be effectuated in its sole discretion, or it may request that the ARTWORK be removed and terminate this AGREEMENT.
- 3.8 FARMINGTON will not intentionally alter, modify, or change the ARTWORK.

4. SELLER'S RESPONSIBILITIES

- 4.1 A conditional report on the ARTWORK, which shall include the condition of the ARTWORK and other details regarding installation as may be reasonably warranted.
- 4.2 A description of all parts and materials utilized in the ARTWORK and the recommended care, cleaning, and maintenance instructions.

5. DISPLAY OF ARTWORK, BARRIER AND SIGNAGE

- 5.1 DISPLAY OF ARTWORK: During the DISPLAY PERIOD, FARMINGTON shall make the ARTWORK available for viewing at the SITE by the public. FARMINGTON shall not charge any admission fee or similar fee as a condition of viewing the ARTWORK.
- 5.2 BARRIER AND SIGNAGE: FARMINGTON may install a physical barrier as FARMINGTON, in its sole discretion, deems appropriate in an attempt to prevent unauthorized persons from touching or damaging the ARTWORK; provided, however, that FARMINGTON does not represent, warrant, or guarantee that unauthorized touching or damage of the ARTWORK will not occur. Additionally, FARMINGTON may post signage as FARMINGTON, in its sole discretion, determines to be appropriate, including signage indicating that touching or damaging the ARTWORK is prohibited.

6. RISK OF LOSS

- 6.1 FARMINGTON shall bear all risk of loss or damage to the ARTWORK including, but not limited to, theft, vandalism, or any other act by a third party, and damage caused by acts of god, war, or natural conditions/disasters including, but not limited to, floods, hurricanes, tornadoes, lightning, and any loss occurring during the storage, display transportation, delivery, installation, and removal of the ARTWORK, regardless of where such loss occurs, including all responsibility and risk for any deterioration or weathering caused to the ARTWORK.

7. INSURANCE

- 7.1 REQUIRED INSURANCE: FARMINGTON shall maintain the following insurance policies for the entire term of this AGREEMENT at its sole cost and expense:
 - 7.1.1 Worker's Compensation and Employer's Liability Insurance: Statutory Worker's Compensation Insurance and Employer's Liability Insurance with limits of no less than \$300,000 per occurrence.
 - 7.1.2 General Liability Insurance: General Liability Insurance, with limits of not less than \$500,000 for per occurrence, Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations. FARMINGTON shall obtain and provide NOVI proof of such insurance prior to transportation of the ARTWORK to the SITE.

8. INDEMNIFICATION AND NOTICE

- 8.1 FARMINGTON hereby agrees to assume liability for and indemnify, hold harmless, and defend NOVI, its elected officials, officers, employees, agents, and attorneys of, from, and against all liability and expense, including reasonable attorneys' fees, in connection with any and all claims, demands, damages, actions, causes of action, and suits in equity of whatever kind or nature, including claims for personal injury, property damage, infringement of any kind, equitable relief, or loss of use, arising out of the execution, performance, nonperformance, or enforcement of this AGREEMENT, excluding only the sole negligence of NOVI, its commissioners, mayor, officers, employees, agents, and attorneys.
- 8.2 Each party shall immediately notify the other of any written claim regarding any matter resulting from or relating to the party's obligations under this AGREEMENT. Each party shall cooperate with the other in the defense or investigation of any such claim arising out of or relating to the performance of this AGREEMENT.
- 8.3 Nothing contained herein shall be construed as a waiver of any immunity from or limitation of liability to which FARMINGTON or NOVI may be entitled pursuant to the doctrine of governmental immunity.

9. WARRANTIES OF TITLE, QUALITY, AND CONDITION

- 9.1 NOVI represents and warrants that:
- 9.1.1 The ARTWORK is solely owned by NOVI and is free and clear of any liens from any source whatsoever;
- 9.1.2 The ARTWORK will not require care or maintenance in excess of those described in the maintenance recommendations submitted to FARMINGTON.
- 9.1.3 The routine cleaning, care, and maintenance instructions provided to FARMINGTON will maintain the ARTWORK within an acceptable standard for public display and that foreseeable exposure to the elements and general wear and tear will cause the ARTWORK to experience only minor repairable damages and will not cause the ARTWORK to fall below an acceptable standard for public display and the ARTWORK will not experience irreparable conditions including mold, rust, fracturing, staining, chipping, tearing, abrading, and peeling.

10. TITLE AND COPYRIGHT

- 10.1 TITLE AND COPYRIGHT: FARMINGTON recognizes and agrees that the title to the ARTWORK shall remain with NOVI, its successors or assigns. At no time shall title pass to FARMINGTON as a result of this AGREEMENT. The ARTWORK shall remain the sole property of NOVI, its successors or assigns, including, but

not limited to, copyrights under the Copyright Act of 1976, 17 USC § 101, *et seq.*; as amended, or any and all rights provided for by the Visual Artists' Rights Act of 1990 (Section 106A of the United States Copyright Act) as amended.

10.2 REPRODUCTION RIGHTS:

10.2.1 NOVI grants to FARMINGTON and its assigns an irrevocable license to make two-dimensional reproductions of the ARTWORK for non-commercial purposes, including, but not limited to, reproduction used in brochures, media publicity, and exhibition catalogues or other similar publications.

10.2.2 All reproductions by FARMINGTON shall contain a credit to the ARTIST (David Barr).

10.2.3 FARMINGTON is not responsible for any third-party infringement of NOVI'S copyright or ownership and is not responsible for protecting the intellectual property rights of NOVI.

11. DEFAULT AND TERMINATION

11.1 TERMINATION:

11.1.1 *Without cause.* Either party may terminate this AGREEMENT without cause upon thirty (30) days' written notice to the other party. FARMINGTON shall remove the ARTWORK immediately upon receipt of such notice from NOVI and deliver the ARTWORK to Villa Barr or such other location as is specified by NOVI.

11.1.2 *For cause.* If either party to this AGREEMENT shall willfully or negligently fail to perform its obligations under this AGREEMENT, or otherwise violate any of the covenants, terms, AGREEMENTs, or stipulations of AGREEMENT, the other party shall thereupon have the right to terminate this AGREEMENT by giving written notice to the defaulting party of its intent to terminate, specifying the grounds for termination. The defaulting party shall have thirty (30) days from the date of the notice to cure the default. If it is not cured by that time, this AGREEMENT shall terminate and the ARTWORK shall be returned by FARMINGTON to Villa Barr or such other location as is specified by NOVI.

12. MISCELLANEOUS

12.1 ENTIRE AGREEMENT: This AGREEMENT contains the entire AGREEMENT and understanding between the parties hereto, and there are no other AGREEMENTs and understandings, oral or written, regarding the ARTWORK that are not included herein. No alteration, change, or modification of the terms of the AGREEMENT shall be valid unless made in writing and signed by both parties hereto.

- 12.2 HEADINGS: The headings contained in this AGREEMENT are provided for convenience only and shall not be construed to constrict or expand the obligations and/or covenants set forth therein.
- 12.3 NOTICES: Any notices regarding this AGREEMENT given by either party to the other must be in writing and shall be deemed to have been given, delivered or made, as the cause may be upon mailing via U.S. mail in a properly sealed and postage prepaid envelope addressed to the following:
- | | |
|---|---|
| <p>If to FARMINGTON:
 David Murphy, City Manager
 Susan Halberstadt, City Clerk
 City of Farmington
 23600 Liberty Street
 Farmington, MI 48335</p> | <p>If to NOVI:
 Pete Auger, City Manager
 Cortney Hanson, City Clerk
 City of Novi
 45175 Ten Mile Road
 Novi, MI 48375</p> |
|---|---|
- 12.4 AUTHORIZATION: Both parties represent and warrant that they are authorized to enter into this AGREEMENT and that the individuals executing this AGREEMENT have full power and authority to bind their respective parties to the terms hereof.
- 12.5 CONSTRUCTION OF AGREEMENT: This AGREEMENT is a result of mutual drafting and review and shall not be construed more strictly against either party.
- 12.6 SEVERABILITY: If any one or more of the provisions of this AGREEMENT, or any exhibits attached hereto, are held to be invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed separate, distinct, and independent provision and shall not affect the validity of the remaining provisions hereof.

IN WITNESS THEREOF, the parties hereto have caused this AGREEMENT to be executed on the date first above written.

CITY OF FARMINGTON

By:
Its:

CITY OF NOVI

By:
Its:

www.farmgov.com

23600 Liberty Street
Farmington, Michigan 48335



Office of City Manager

Telephone 248-474-5500
Fax 248-473-7261

Novi Director of Parks, Recreation & Cultural Services
Jeff Muck
45175 10 Mile Road
Novi, Michigan 48375

October 10, 2017

Dr. Mr. Muck:

The Farmington Downtown Development Authority has initiated a sustainable public art installation program and is hoping to partner with the City of Novi. Specifically, we would like to explore a municipal partnership in a loan of sculpture from the David Barr public estate to help inaugurate our public art program.

Farmington Mayor Pro Tem Steve Schneemann, who is a renowned local architect, interned with the late David Barr for four years; after the internship, Barr remained a friend and mentor of Schneemann's. Schneemann actually worked on several of the sculptures currently on display at Villa Barr, and traveled with the artist to install his work. He would be uniquely qualified and willing to help with personal and professional insight on the moving, restoration, installation of any pieces the City of Novi would be willing to lend to the Farmington DDA.

We envision the sculptures to be set in prominent pedestrian areas that are visible day and night. Our plan is to include plaques with the piece title and artist name, as well as any interpretive information available. Visitors to Downtown Farmington could experience David Barr's work with full credit to the City of Novi.

The Farmington community recognizes the importance of public art and would like to launch its program in early spring, 2018. We believe that such partnerships enhance the public art mission that seems to be consistent throughout many neighboring communities.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "David M. Murphy". The signature is fluid and cursive, with a long horizontal stroke at the end.

David M. Murphy,
City of Farmington Manager



JOHNSON ROSATI SCHULTZ JOPPICH PC

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Phone: 248.489.4100 | Fax: 248.489.1726

Thomas R. Schultz
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January 18, 2017

David Murphy, City Manager
City of Farmington Hills
23600 Liberty Street
Farmington, MI, 48335

Jeffrey A. Muck, Director
Parks, Recreation, Forestry and Cultural Services
City of Novi
45175 Ten Mile Road
Novi, MI 48375-3024

RE: Agreement for Loan and Temporary Display of Artwork between the City of Novi, Michigan, and the City of Farmington, Michigan

Dear Mr. Murphy and Mr. Muck:

Attached is the final version of the proposed Agreement relating to the loan of artwork from Novi to Farmington. I prepared the Agreement at your joint request. It relates to the loan of three specific art pieces – Avenue, Temple, and Ship.

The Agreement is for one year, with a one-year extension possible. Farmington would be responsible for removal of the three pieces from their current location at Villa Barr and the transportation and installation at the proposed locations in Farmington (which the City of Farmington has yet to determine), as well as return and reinstallation at Villa Bar at the end of the Agreement.

The Agreement places risk of loss on Farmington, and Farmington has some restoration obligations prior to return.

As you both know, I represent both the City of Novi and the City of Farmington. The Agreement from my perspective is intended to be neutral, and is based on various form agreements that we found from other communities. There is no monetary consideration or compensation in the Agreement. I would ask that your receipt of this letter constitute notice of any potential conflict relating to the dual representation, and any approval of the Agreement include a waiver of any conflict.

David Murphy, City Manager
Jeffrey A. Muck, Director
Parks, Recreation, Forestry and Cultural Services
January 18, 2018
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If you have any questions regarding the above, please do not hesitate to call.

Sincerely yours,

JOHNSON, ROSATI, SCHULTZ & JOPPICH, P.C.

Thomas R. Schultz

TRS/sls
Attachment

