

RESOLUTION NO. 2011-05-018R

A RESOLUTION AUTHORIZING AND APPROVING AN AGREEMENT WITH THE PUBLIC ART LEAGUE OF CHAMPAIGN-URBANA FOR TEMPORARY DISPLAY OF ARTWORK

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF URBANA, ILLINOIS, as follows:

Section 1. That an Agreement Between the City of Urbana and the Public Art League of Champaign-Urbana in substantially the form of the copy of said Agreement attached hereto, be and the same is hereby approved.

Section 2. That the Mayor of the City of Urbana, Illinois, be and the same is hereby authorized to execute and deliver and the City Clerk of the City of Urbana, Illinois, be and the same is authorized to attest to said execution of said Agreement as so authorized and approved for and on behalf of the City of Urbana, Illinois.

PASSED by the City Council this ____ day of _____, 2011.

AYES:

NAYS:

ABSTAINS:

Phyllis Clark, City Clerk

APPROVED by the Mayor this ____ day of _____, 2011.

Laurel Lunt Prussing, Mayor

Attachments: Exhibit A: Revised Agreement for the Temporary Display of Artwork between the City of Urbana and the Public Art League

AGREEMENT FOR TEMPORARY DISPLAY OF ARTWORK

This is an AGREEMENT FOR TEMPORARY DISPLAY OF ARTWORK made and entered into this **DATE**, 2011 by and between the CITY OF URBANA, ILLINOIS, a municipal corporation of the State of Illinois, located at 400 S. Vine Street, IL 61801 (hereafter called the "CITY"), and the PUBLIC ART LEAGUE, an Illinois 501(c)(3) non-profit corporation (hereafter called PAL).

WITNESSETH:

WHEREAS, the PAL seeks to improve the community aesthetic for public art and serve as a broker/dealer for public ARTWORK and the CITY for the purpose of leasing and/or selling the ARTWORK; and

WHEREAS, the CITY wishes to display ARTWORK temporarily on certain public property in Urbana, IL; and

Now, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, it is hereby agreed by and between the parties as follows:

1. RECITALS

- 1.1 The foregoing recitals are incorporated into and made a part of this AGREEMENT FOR THE TEMPORARY DISPLAY OF ARTWORK, and the parties acknowledge and agree that such recitals are true and correct.

2. TERM

- 2.1 The PAL and the CITY hereby agree to collaborate on a program to obtain and temporarily display ARTWORK for outdoor placement on certain public property in Urbana, IL 61801 for a period of six (6) years upon the terms herein provided.

The period of ARTWORK installation, display, and removal shall be in accordance with a lease agreement entered into by PAL and the ARTIST. The CITY and PAL agree that no lease period will last longer than twenty-four (24) months unless the renewal of the lease is mutually agreed upon by both parties.

3. PAL RESPONSIBILITIES

- 3.1 The PAL will identify potential ARTWORK by conducting an open call to artists who are willing to lease their work and/or offer their work for sale in the CITY.
- 3.2 The PAL will establish and oversee a jury panel that includes one representative from the Urbana Public Arts Commission to review artist submissions that are entered into a competition for the purpose of being given the opportunity to exhibit the ARTWORK in a designated public site in the CITY. PAL shall select entries for submitting to the City of Urbana for placement pursuant to this Agreement. In submitting an entry to the City, each entry shall be transmitted with an installation and maintenance plan. The plan shall include the following:
 1. Proposed locations;
 2. Site preparation requirements;

3. Installation and deinstallation requirements along with a designation of which person, such as the City, PAL, the ARTIST, an outside sponsor or contractor, will do the activities required for installation and deinstallation;
4. Any proposed barrier or signage in addition to the identification plaque provided by PAL;
5. Maintenance requirements; and
6. Proposed lease with the ARTIST.

3.3 If an entry is accepted by the City for display, PAL will enter into a lease with the ARTIST which will include the legal authority for PAL to consent to placement in the City right-of-way and other provisions as required by this Agreement.

3.4 The PAL will also endeavor to sell the ARTWORK to interested parties while on display, but the City shall have no responsibility in this regard. The PAL will provide and install an identification plaque next to the ARTWORK, prepared and designed by the PAL containing a credit to the ARTIST.

3.5 The PAL will be responsible for compensating the ARTIST in accordance with the lease agreement between PAL and the ARTIST.

4. CITY RESPONSIBILITIES

4.1 The CITY will review the entries submitted by PAL and, in consultation with PAL, agree on an installation and maintenance plan, including the location. The City may determine, in its sole discretion, to reject the entry for placement and will take into account, among other factors, public safety, work demands for installation or maintenance, appropriateness of the location, and such other factors as it determines relevant.

4.2 After a plan is agreed to by the City and PAL, and a lease signed by the ARTIST, with a copy provided to the City, a license agreement incorporating the plan and lease will be approved by the City and signed by PAL. The ARTWORK shall be installed in accordance with the terms of the plan. The City shall bear the costs of installation as necessary. License fees for installation and use of the right-of-way shall be waived by the City.

4.3 If the City determines, in its sole discretion, that at any time during the scheduled term of display, it no longer wishes to display the ARTWORK on its right-of-way, it shall notify PAL of its decision and PAL shall arrange for deinstallation within thirty days of the notification.

5. DISPLAY OF ARTWORK, BARRIER AND SIGNAGE:

5.1 DISPLAY OF ARTWORK: During the period of the CITY'S display of the ARTWORK, the CITY shall make the ARTWORK available for viewing by the public without charge. The CITY shall not charge any admission fee or similar fee as a condition of viewing the ARTWORK.

5.2 BARRIER AND SIGNAGE:

- a. At all times while the ARTWORK are on display the CITY may install such physical barrier as the CITY, in its sole discretion from time to time, deems appropriate in an attempt to prevent unauthorized persons from touching the

ARTWORK provided, however, that the CITY does not warrant or guarantee in any manner that unauthorized touching of the ARTWORK will not occur. Additionally, the CITY may post signage as the CITY, in its sole discretion determines to be appropriate, indicating that touching the ARTWORK is prohibited.

- b. At times while the ARTWORK is on display pursuant to the terms hereof, the PAL will post an identification plaque next to the ARTWORK, prepared and designed by the PAL, identifying the ARTIST and title of the ARTWORK.

6. RISK OF LOSS

- 6.1** The parties agree that the ARTIST shall bear all risk of loss or damage to any 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, transportation, delivery, installation, de-installation, and removal of the artwork, regardless of where such loss occurs.

7. INSURANCE:

- 7.1** OPTIONAL INSURANCE: The CITY and PAL agree that neither party will be required to obtain insurance for the value (sale price) of the ARTWORK in the event of any damage, loss or theft of the ARTWORK. The CITY and PAL agree that the ARTIST may provide insurance against the risk of loss, theft or damage to the ARTWORK.

8. HOLD HARMLESS:

- 8.1** HOLD HARMLESS: The PAL agrees to hold free and harmless the CITY and its officers, employees, agents, and servants, whether they are current or former, from and against all actions, claims, liabilities, assertions of liability, losses, costs, and expenses, in law or in equity, including but not limited to attorneys' fees at trial and appellate levels, reasonable investigative and discovery costs, court costs, or claims for bodily injury or death of persons and for loss or damage to property, except as provided for herein, of every kind and nature whatsoever, which in any manner directly or indirectly may arise or be alleged to have arisen, from the installation, de-installation, or display of the ARTWORK or as a result of the duties and obligations as required by this AGREEMENT.

The PAL agrees to include in its lease with the ARTIST a provision by which the ARTIST agrees to hold free and harmless the CITY and its officers, employees, agents, and servants, whether they are current or former, from and against all actions, claims, liabilities, assertions of liability, losses, costs, and expenses, in law or in equity, including but not limited to attorneys' fees at trial and appellate levels, reasonable investigative and discovery costs, court costs, or claims for bodily injury or death of persons and for loss or damage to property, except as provided for herein, of every kind and nature whatsoever, which in any manner directly or indirectly may arise or be alleged to have arisen, from the installation, de-installation, or display of the ARTWORK or as a result of the duties and obligations as required by this AGREEMENT.

- 8.2** HOLD HARMLESS: The CITY agrees to hold free and harmless the PAL and its directors, officers, employees, agents, and servants, whether they are current or former, from and against all actions, claims, liabilities, assertions of liability, losses,

costs, and expenses, in law or in equity, including but not limited to attorneys' fees at trial and appellate levels, reasonable investigative and discovery costs, court costs, or claims for bodily injury or death of persons and for loss or damage to property, except as provided for herein, of every kind and nature whatsoever, which in any manner directly or indirectly may arise or be alleged to have arisen, from the installation, de-installation, or display of the ARTWORK as a result of the duties and obligations as required by this AGREEMENT.

8.3 This condition shall survive the termination or expiration of this AGREEMENT.

9. MAINTENANCE AND REPAIRS:

The CITY recognizes and agrees that it will not intentionally alter, modify or change the ARTWORK.

10. TERMINATION:

Either party may terminate this AGREEMENT upon notice given as provided below. The parties shall meet and agree concerning the effect of termination on ARTWORK currently installed on City right-of-way. If the parties are unable to agree, the ARTWORK shall be maintained on the right-of way in accordance with the previously agreed plan. Notice of termination of this AGREEMENT shall be given to the non-terminating party in writing not less than thirty (30) days prior to the effective date of termination.

11. MISCELLANEOUS:

11.1 ENTIRETY OF AGREEMENT: This writing embodies the entire agreement and understanding between the parties hereto, and there are no other agreements and understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby. No alteration, change, or modification of the terms of the AGREEMENT shall be valid unless made in writing and signed by both parties hereto.

11.2 CAPTIONS: The captions of each paragraph and headings hereof are added as a matter of convenience and shall be construed to be of no affect in the construction of any provision or provisions hereof.

11.3 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 (i) when delivered by personal delivery, or (ii) five (5) business days after having been deposited in the U.S. Mail, certified or registered, return receipt requested, with sufficient postage affixed and prepaid or (iii) one (1) business day after having been deposited with an expedited overnight courier service (such as by way of example but not limited to: U.S. Express Mail, Federal Express, or UPS), addressed to the party to whom notice is intended to be given at the address set forth below:

If to the CITY: Christina McClelland
Public Arts Coordinator
Community Development Services
City of Urbana
400 S. Vine St.
Urbana, IL 61801

If to PAL: Public Art League
 P.O. Box 1601
 Champaign, IL 61824

Any party may change the address to which its notices are to be sent by giving the other party written notice of any changes in the manner provided herein, but notice of change of address is effective only upon actual receipt.

11.6 SURVIVING COVENANTS: The covenants and obligations set forth in this AGREEMENT shall survive the delivery, installation, and removal of the ARTWORK, unless otherwise provided for herein, and shall be binding upon the parties, its heirs, legatees, executors, administrators, assigns, transferees, and all its successors in interest.

11.7 INTERPRETATION: This AGREEMENT shall be interpreted under and in accordance with the laws of the State of Illinois.

11.8 JURISDICTION AND FORUM: The parties covenant and agree that the Laws of the State of Illinois shall govern this Agreement. The parties agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the State and/or Federal Court located in the County of Champaign, State of Illinois, and stipulate that those courts have jurisdiction and venue over each party for the purpose of litigating any dispute, controversy or proceeding arising out of or related to this Agreement. Further, each party hereby authorizes and accepts service of process sufficient for personal jurisdiction in any action against it as contemplated by this paragraph by registered or certified mail, return receipt requested, postage prepaid, to its address for the giving of notices as set forth in this Agreement.

11.9 CONSTRUCTION OF AGREEMENT: This AGREEMENT shall not be construed more strictly against one party than against another merely by virtue of the fact that it may have been prepared by one of the parties, it being acknowledged that both the PAL and the CITY have substantially and materially contributed to the preparation thereof.

11.10 SEVERABILITY: If any provision of this AGREEMENT is contrary to, prohibited by, or deemed invalid by applicable laws or regulations of any jurisdiction in which it is sought to be enforced, then such provision shall be deemed inapplicable and omitted, but such omissions shall not invalidate the remaining provisions of this AGREEMENT.

11.12 FURTHER ASSURANCES: The parties shall promptly execute all documents reasonably required and take such other steps in addition to the execution of this AGREEMENT to effectuate the intent and purpose of this AGREEMENT.

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

CITY OF URBANA, ILLINOIS

PUBLIC ART LEAGUE

By: _____
Laurel Prussing, Mayor

By: _____
David B. Wilcoxon, President

Attest: _____
City Clerk

By: _____
Treasurer/Secretary

Approved as to form: _____
City Attorney