



## DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES

*Economic Development Division*

### **m e m o r a n d u m**

**TO:** Public Arts Commission

**FROM:** Lisa Hatchadoorian, Public Art Coordinator

**DATE:** October 6, 2014

**SUBJECT:** **Non-Endowed Fund Agreement between the Urbana Public Arts Commission and the Community Foundation of East Central Illinois**

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### **Introduction and Background**

Staff seeks approval to enter into an agreement with the Community Foundation of East Central Illinois for the purpose of raising funds to support the Public Arts Program. The agreement is modeled on the approved document set forth by the Legacy Tree Program in the Public Works Department, as crafted by Michael Brunk, City Arborist. The creation and adoption of this non-endowed fund agreement is an outgrowth of previous fundraising efforts and goals of the Public Arts Program, such as Keep It or Change It, Citizeninvestor.com and general fundraising and grant writing for the program.

The fund will be established with \$500. Subsequent funds raised for specific programs and the general operating of the Public Arts Program will be readily available to provide on-going support to the Public Arts Program. The agreement parameters include:

- The purpose of the fund is to assist in the annual funding of the Public Arts Program and other related activities, publications and projects as may be approved by the Public Arts Commission
- The intent and restrictions of fund distributions
- Procedures for terminating fund and disbursing remaining funds to the City
- Administrative provisions including maintaining the account as a separate fund, reporting of the account to the city, management fees and investment policies
- The considerations for amending the agreement

The Community Foundation of East Central Illinois is a publicly-supported 501(c)(3) tax-exempt philanthropic organization created in 1972 to encourage and receive contributions establishing endowments for the long-term benefit of east central Illinois. It supports and serves its donors by managing and administering endowed funds that have been donated for philanthropic purposes.

## **Fiscal Impact**

The fiscal impact to the Public Arts budget should be minimal after the initial amount of money needed to open the fund, which would be \$500. This initial donation to the foundation would come from the Public Arts budget. More specifically, from unexpended funds from FY 13-14 for the arts intern position in the amount of \$870. The Community Foundation of East Central Illinois does charge a yearly fee to administer the fund, which would come out to 1.35% of the balance of the fund for a moving four-quarter average.

## **Recommendation**

Recommend discussion of the attached agreement authorizing entry into and execution of an agreement with the Community Foundation of East Central Illinois.

Prepared by:



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Lisa Hatchadoorian  
Public Arts Coordinator

Attachment A. Non-Endowed Fund Agreement between the City of Urbana Public Arts Program and the Community Foundation of East Central Illinois

Attachment A.

**NON-ENDOWED FUND AGREEMENT  
BETWEEN THE  
CITY OF URBANA PUBLIC ARTS PROGRAM  
AND THE  
COMMUNITY FOUNDATION OF EAST CENTRAL ILLINOIS**

**THIS NON-ENDOWED FUND AGREEMENT** (hereinafter, "Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2014, between the City of Urbana Public Arts Program, (hereinafter, the "City") and Community Foundation of East Central Illinois, a not-for-profit corporation organized and operating in the State of Illinois (hereinafter, the "Community Foundation").

**Recitals**

**WHEREAS**, the City desires to establish a non-endowed fund with the Community Foundation; and

**WHEREAS**, the Community Foundation is an Illinois nonprofit corporation exempt from federal income taxes under Internal Revenue Code section 501 (c)(3), a public charity described in Code section 170(b)(1)(A)(vi), and accordingly an appropriate institution within which to establish such a non-endowed fund' and

**WHEREAS**, the Community Foundation is willing and able to hold and administer such a non-endowed fun, subject to the terms and conditions hereof.

**General Provisions**

**NOW THEREFORE**, the parties agree as follows:

1. **Gift and Fund Designation.** The City hereby transfers irrevocably to the Community Foundation a 500 dollar (\$500.00) donation to establish a non-endowed fund to be known as the Public Art Program Fund (the "Fund"). Subject to the right of the Community Foundation to reject any particular gift, from time to time, the Community Foundation may accept additional irrevocable gifts of property (cash, publicly traded securities or other assets) from the City or from any other source to be added to the Fund, all subject to the provisions hereof. All gifts, bequests and other devises to this Fund shall be irrevocable once accepted by the Community Foundation.
2. **Purpose.** The purpose of the Fund shall be to provide support to the Urbana Public Art Program, as approved by the Community Foundation's Board of Trustees. Such support shall be used to assist in the annual funding of the Urbana Public Art Program and such other commemorative activities, events, publications and other projects as may from time to time be approved by the City of Urbana Public Art Commission and shall be consistent with the mission and purpose of the Community Foundation.

3. **Distributions.** The income, all appreciation and principal of the Fund, net of the fees and expenses set forth in this Agreement may be committed, granted or expended solely for the purposes described in Paragraph 2 of this Agreement.
4. **Conditions for Acceptance of Gifts.** The City agrees and acknowledges that the establishment of the Fund is made in recognition of, and subject at all times to, applicable law and the terms and conditions of the Articles of Incorporation and Bylaws of the Community Foundation, as amended from time to time, including, but not limited to, provisions for:
  - a. Presumption of donors' intent;
  - b. Variance from donors direction; and
  - c. Amendment
5. **Restrictions on Distributions.** No distributions shall be made which shall jeopardize the charitable purposes of the Community Foundation. Distributions from the Fund shall be subject to the following restrictions.
  - a. **Prohibition Against Private Benefit.** No distributions shall inure or be payable to or for the benefit of any private individual, including, but without limitation, for school tuition for any individual, dues or membership fees, benefit tickets or for goods bought at charitable auctions. Distributions may not be used to satisfy any pre-existing pledge of the City. However, nothing in the immediate foregoing shall be deemed, construed or interpreted as prohibiting the City from purchasing or commissioning for the purchase of goods or services which are approved by the City of Urbana Public Art Commission and which are consistent with the goals and objectives of City of Urbana ordinances, policies and procedures.
  - b. **Prohibition Against Political Expenditures.** No distributions shall be made for lobbying, political contributions or to support campaign activities.
6. **Fund Termination.** The Fund can be terminated by the City with a two thirds (2/3) approval by the City's corporate authorities as defined in 65 ILCS 5/ 1-1-2(2) if one or more of the following conditions exists or arises: (i) if after two years following the date first appearing above the Fund fails to accumulate any donations; (ii) the City's corporate authorities determine that the Urbana Public Art Program is sufficiently funded through alternative means; (iii), the City terminates the Public Art Program; or (iv) no donations are made to the Fund for a period of 650 days from the date of the last donation made to the Fund.

If, for any reason, the Community Foundation dissolves, ceases to exist or ceases to hold or administer the Fund or otherwise ceases to function under this Agreement, then the net assets of the Fund shall be distributed to the City of Urbana, who will use the funds for the purpose for which they were donated.

7. **Continuity of the Fund.** The Fund shall continue as long as assets are available in the Fund and the purposes of the Fund can be served by its continuation. If the Fund is terminated, the Community Foundation shall disburse any remaining assets in the Fund to the City exclusively

for deposit in the City of Urbana's Public Art Program fund. In the event that the corporate authorities terminate the Public Art Program, any such disbursement made upon closing out the Fund shall be made to the City of Urbana fund for maintenance of permanent public art projects and/or sculptures, in the absence thereof, to the City of Urbana for general marketing efforts.

## **Administrative Provisions**

The Community Foundation agrees to administer the Fund as follows:

1. **Maintenance of Fund as Separate Account.** Unless terminated as otherwise provided in this Agreement, the Community Foundation shall maintain on its books and records the Fund as a separate fund, and shall account to the City for all contributions to the Fund, the Fund's principal and income balances, and all grant activity from the Fund. The City acknowledges that the Fund is an asset of the Community Foundation and neither the donors nor the City shall have any ownership interest in or to the Fund.
2. **Investment of the Fund.** Investment of the Fund shall be in accordance with the investment policies of the Community Foundation, as established from time to time. The Community Foundation is authorized to continue investment of the Fund in the assets received as contributions to the Fund, or to sell or exchange any of said assets and reinvest the proceeds in bonds, common or preferred stocks, notes, options, common trust funds, mutual funds, shares of any investment company or trust or other securities, in partnership interests, general or limited, joint ventures, real estate, or other property of any kind, regardless of diversification and regardless of whether the property would be considered a proper trust investment.
3. **Joint Investments.** The Community Foundation may invest the Fund jointly with other funds which the Community Foundation manages if the Community Foundation deems it advisable for the efficient and effective management of the Fund and/or to increase the overall return on or performance of the moneys which comprise the Fund and such one or more other funds maintained by the Community Foundation, including, but without limitation, by pooling all or any portion of the Fund with other donor advised or endowed funds in the Community Foundation of East Central Illinois Endowment Pool or such other investment pools as the Community Foundation may establish. The Community Foundation may hold any asset of the Fund in the name of a nominee, in bearer form or otherwise.
4. **Management Fees.** The Community Foundation shall be entitled to reimbursement for expenses and to compensation for management of the Fund in accordance with its customary fees, as established from time to time by the Community Foundation, such fees to be paid out of the Fund's income.
5. **Determinations by Community Foundation.** The Community Foundation's reasonable determination of any question of fact shall bind all persons so long as that determination is made consistent with applicable law including, but not limited to, any law pertaining to fiduciary rights and responsibilities.

6. **Controlling Law.** Any issue or dispute regarding the performance or interpretation of this Agreement shall be governed by the laws of the State of Illinois and any action to enforce, construe or interpret this Agreement shall be initiated and maintained in Circuit Court of the Sixth Judicial Circuit, Champaign County, Illinois.

### **Amendment**

**Community Foundation's Right To Amend.** The Trustees of the Community Foundation at any time or times may amend the terms of this Agreement by signed instrument filed with the Community Foundation's and Fund's records, provided that:

1. The Community Foundation shall never be permitted to administer the Fund in any manner or for any purpose contrary to Code Section 501(c)(3);
2. No amendment shall prevent gifts to the Fund from qualifying for charitable deductions under Code Sections 170, 2055 and 2522;
3. If the City exists at the time, the Community Foundation shall make reasonable efforts to obtain the consent of the City prior to any such amendment; and
4. The Community Foundation shall have no power to amend the terms of this paragraph except to further restrict the Community Foundation's amending power.

**Variance Power.** The Board of Trustees of the Community Foundation has the power to modify any restriction or condition on the distribution of funds from the Fund if, in the sole judgment of the Board of Trustees, such restriction or condition becomes incapable of fulfillment or is inconsistent with the Community Foundation's tax-exempt status. The Board of Trustees has the authority to modify the restriction without obtaining the approval of any participating trustee, custodian or agent of the Community Foundation.

### **Definitions**

**Code.** References to the "Code", as appear in this Agreement are to the Internal Revenue Code of 1986, as may from time to time be amended, and any and all rules, regulations, and letter rulings promulgated or issued by the Internal Revenue Service.

**IN WITNESS WHEREOF** the parties have caused this Agreement to be executed the day and year herein above written.

**COMMUNITY FOUNDATION OF  
EAST CENTRAL ILLINOIS**

**CITY OF URBANA**

By: \_\_\_\_\_  
Joan M. Dixon  
Its President & CEO

\_\_\_\_\_   
Laurel Lunt Prussing  
Its Mayor

Date: \_\_\_\_\_

Date: \_\_\_\_\_