

ORDINANCE NO. 9798-117

AN ORDINANCE APPROVING AN AGREEMENT FOR ART IN THE PARK

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF URBANA, ILLINOIS, as follows:

Section 1. That an Agreement for Art in the Park, in the form of a copy of said Agreement attached hereto and hereby incorporated by reference, be and the same is hereby authorized and 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 hereby authorized to attest to said execution of said Agreement as so authorized and approved for and on behalf of the City of Urbana, Illinois.

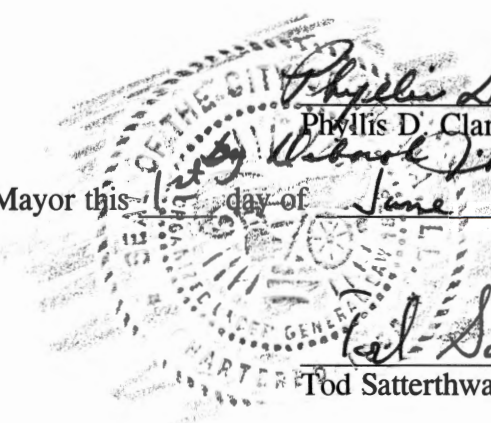
PASSED by the City Council this 18th day of May, 1998.

AYES: Hayes, Huth, Kearns, Patt, Taylor, Whelan, Wyman

NAYS:

ABSTAINED:

APPROVED by the Mayor this 18th day of June, 1998

  
Phyllis D. Clark  
Phyllis D. Clark, City Clerk

Tod Satterthwaite  
Tod Satterthwaite, Mayor

## AGREEMENT FOR ART IN THE PARK

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## AGREEMENT

This is an Agreement between the City of Urbana ("City") and John David Mooney ("Artist") prepared by the parties to address the completion of the "Art in the Park" project in Urbana, Illinois.

### I. DESCRIPTION

"Urbana Plaza" (sometimes referred to herein as "Park") is to be comprised of the landscaped area as developed north of the Urbana City Complex and fronting on the southeast intersection of Vine and Green Streets. (As shown on Exhibit A.)

### II. COMPONENTS

The design elements of "Urbana Plaza" ("Plaza Design") are comprised of landscaping, planting specifications, paving design and sculptural elements that include a central sculpture, a fountain, furniture, and a lighting design.

### III. DESIGNS

A. The parties recognize that the creation of "Urbana Plaza" will be a continuing process of consulting with each other and agreements regarding the design of "Urbana Plaza." To document the agreements as the work progresses, it is agreed that approvals of the City shall be required as the work progresses. The parties also recognize that the pay out of the trust fund should be tied to various stages of approval.

B. Approval as used herein shall mean acceptance by the City of the design, materials, workmanship, etc., as appropriate to the stage of development of the work and the element being approved. Approval shall be documented by an instrument or drawing being signed and dated by the Mayor of the City or the Chief Administrative Officer.

C. To protect each party from continuing to develop "Urbana Plaza" 'along the wrong path,' approvals may be required by either party at any stage, but there shall be in any event, the following minimum approvals:

1. Approval of the initial concept was granted by the Art in the Park Committee, and is hereby confirmed by the City Council. The artist will provide the City with a half-inch to scale study maquette of the primary sculptural element for a two-week period of review at the Urbana City Building. During that time the Art in the Park Committee and City Council shall offer any comments that they deem appropriate for the Artist to consider as he proceeds to final engineering drawings and construction of the sculptural element. Such review shall include the landscape plan and lighting plan.

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III. DESIGNS (continued)

2. Approval of the engineering drawings for the main sculpture and fountain and the lighting; and
3. Final approval of the installation of the sculptural elements and the lighting.

D. This agreement is intended to provide the necessary funds to proceed with the development and construction of the sculpture, furniture, and fountain. Work shall commence on this phase with the signing of this agreement and the timely submission of funds as delineated in Article VIII.

E. It is understood by the parties that other than funds in trust as discussed in Article VIII., the City will not spend City funds in any amount in excess of One Hundred Thousand Dollars (\$100,000.00) to implement the accepted "Urbana Plaza" project without further express consent of the City Council as evidenced by a line item in the annual budget or a budget amendment ordinance.

If the final "Urbana Plaza" design is not completely implemented within the One Hundred Thousand Dollar (\$100,000.00) limitation, John David Mooney shall have the sole right, after consultation with the City to determine what items or components shall be deleted and not constructed. The One Hundred Thousand Dollar (\$100,000.00) limitation does not affect future maintenance or insurance costs as set forth in other sections.

The artist anticipates the order of priority to be the following:

1. Base and installation of the sculpture, chairs, and fountain
2. Water pumps, basin, return, jets, filters, ozonators, and water treatment systems
3. Pavers
4. Lighting
5. Furniture for south patio
6. Irrigation systems

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III. DESIGNS (continued)

The city officials are invited by the artist to contribute to the development process by periodic visits to the artist's studio. These visits shall not only be meetings coordinating various procedures and schedules, but also will be development sessions, so that concerns can be addressed and solved mutually. The artist considers this coordinating process to be most important to a successful completion of the project. This is the manner by which the successful development and installation process of the landscape design took place.

Because the Park (with its component parts of landscaping and sculptural elements as delineated in Sections IV. and V. below) is a unique work of art, designed by the Artist, no interventions and/or additions outside of the final design, including but not limited to, landscaping which includes both earth works and plantings, sculpture, furniture, fountains, lighting, and paving, can be placed within the Park or in close proximity thereto, now or in the future, without conferring with the Artist. The park is a public park for the use of the citizens; temporary functions can be held within the confines of this park with the addition of necessary support equipment without conferring with the Artist.

It is understood that the integrity of the artwork, (the entire complex, including earth mounds, landscaping, fountain, furniture, paving, etc.,) must be maintained. Because what might be considered "minor" changes or additions to the landscaping or to any of the Park's component parts may affect the desired visual effect of the artist's design, it is necessary that the city consult with the artist before making any changes, and the City shall give substantial consideration to the response.

Those above two paragraphs apply only so long as the Artist responds to a given suggestion within 30 days of mailing to his or his successor's last known address. If no response is given, the request will be considered to be approved.

The City agrees that if the City Council decides to remove any or all of the sculptural elements of "Urbana Plaza," the City shall make a good faith attempt to confer with and to notify the artist or his successors in writing of such intended action. A copy of the written notice shall be mailed to Carl Webber, who has the authorization to store and remove the sculpture components. The artist or his successors shall then have the right to remove such sculptural elements for a period of one hundred-eighty (180) days following the conference with the artist or his successors. If the artist, or his successors, do not remove such sculptural elements within the said one hundred-eighty (180) -day period, the City shall have the right to remove, relocate and/or dispose of them in any manner it so chooses.



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#### IV. LANDSCAPING

Under the preliminary Plaza Design, initial plantings commenced in October, 1994 and have continued. All additional plantings not able to be installed during 1995 - 1996 shall be placed in the park no later than 30 November 1998. The entrance maple tree on the north sidewalk, the Tupelo or central tree near the bench in the great mound, and plantings near the sculpture such as junipers, must be placed after the installation process in order to protect them from possible damage.

The City shall assume all development and landscaping responsibilities, including but not limited to: the installation and maintenance of all electrical, water and drainage work; water basin; irrigation systems; lighting systems and program timers; water pumps jets; filters; ozonators; and recirculation pumps. The City will be responsible for bringing water to the fountain and for the maintenance and operation of the fountain. The City shall provide and maintain the concrete bases to which the main sculpture shall be attached, as designed by John Frauenhoffer and approved by the Artist and the City's Public Works Office. Such responsibilities shall also include, but shall not be limited to: receiving and installation of all landscape elements which include, but are not limited to, earth mounds, trees, shrubs, and groundcover, sidewalk pavers, fragment pavers, patio pavers, fountain base and pavers ("Landscape Elements"), as well as the receiving and installation of all Sculptural Elements defined below, and providing the necessary bases and attachments for the sculptural elements, as defined below. Provided however, the City shall not be obligated to spend a total amount of money more than that which was agreed to in Article III (as expenses required under the preliminary design) nor shall the City be obligated to spend more than \$3,000 annually for the maintenance as set forth herein, excluding normal park maintenance and insurance. (Adjusted in future years for the inflation by reference to the Chicago All Item CPI)

In order to make the project (primarily landscaping and the fountain costs) fit within the City's budget of \$100,000 from this date, the Artist may make the determination to delete certain chosen materials or items, and to replace them with less expensive materials.

The Artist agrees to supervise the placement of the Landscape Elements in coordination with City representatives.

#### V. SCULPTURAL ELEMENTS

The sculptural elements shall consist of the main sculpture; fountain; furniture; lighting; (All sometimes referred to as the "Sculptural Elements.") The Sculptural Elements shall be constructed of materials acceptable to the City, which acceptance shall not be unreasonably withheld.

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V. SCULPTURAL ELEMENTS (continued)

A. Sculpture

The main sculpture of "Urbana Plaza" is the controlling design form from which every other aspect of the park plan emanates. This sculpture will incorporate a lighting system designed by the Artist. ("Main Sculpture") It will be both a day piece and a night piece. Located at the west end of the park in close proximity to Vine Street, the Main Sculpture will become the invitation to the park, for both the highway traveller and the pedestrian.

B. Fountain

The fountain sculpture ("Fountain") located inside the "great mound," draws the visitor into the central area of the park. The fountain area becomes a contemplative space enhanced by appropriate plantings, paving, and furniture. The fountain sculpture shall be placed on an appropriate base within the water basin.

The City will provide the fountain lighting, water basin, the water pumps, return, jets, filters, ozonators, and water treatments systems, only so long as the City's total expenses as listed are no more than \$100,000, as specified in Section III E.

C. Furniture

The design of the park furniture will relate to the form of the Main Sculpture. There will be several pieces created for the central area, including, but not limited to, a bench, stool, and chair. ("Furniture") All of the pieces are to be located within the "great mound" of the park. All Furniture will be constructed of durable and weatherproof materials acceptable to the City.

D. Lighting

Part of the Artist's gift to the City of Urbana is designated as a "Night Garden" which will be complimentary to the Main Sculpture. For that reason, the nighttime features of the Park are a major design element, and the lighting plan of the Park shall be a part of the Plaza Design so that all nighttime components of the park are consistent with the Artist's overall design. The Night Garden will be intended to be aesthetically pleasing. The City, being responsible for the security and safety of the design, may make suggestions relating to such security and safety. Such suggestions as to security and safety shall be considered as provided for in III. above.

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V. SCULPTURAL ELEMENTS (continued)

D. Lighting (continued)

This lighting plan is to be developed during the summer and autumn of 1998 and finalized after all Sculptural Elements are in place. All reasonable care will be taken by the Artist and the City to prevent "light pollution" and any lighting which might be detrimental to the park design. As part of this lighting plan, the Artist shall specify placement and types of fixtures and lamps necessary. Provided, however, it is agreed that the existing lighting system on Vine Street, Green Street Lot 22 and the Lincoln Square parking lots cast light into the Park area; such existing light shall not be construed to be "light pollution." Notwithstanding any other references, the City will take reasonable steps to prevent light pollution while not allowing any detrimental effect on safety.

The central sculpture will have light focused on it, or light from it, as part of its nighttime configuration. The light shall not be focused into the residential areas, and shall not cause undue glare. All lighting, sculpture, and garden lighting, will be configured as an integrated scheme. The garden lighting shall use lighting fixtures associated with residential garden lighting schemes.

It is expected for safety and identity reasons that the lighting shall remain on for all hours of dusk and darkness. Nevertheless, the City may determine to turn off the illumination at midnight. The City may not turn off the lighting on the sculpture or in the park prior to midnight without a good and sufficient basis. In any case, the intentional and continuing turning off of any lighting prior to 9:00pm will be considered abandonment of the sculpture by the City.

The City shall be responsible for procuring and maintaining specified lamps and fixtures, and for installing them according to the Artist's plan and directions. Provided, however, the City shall not be obligated to spend a total amount of money more than that which was agreed to in Article III (as expenses required under the preliminary design) nor shall the City be obligated to spend more than \$3,000 annually for the maintenance as set forth herein, adjusted by the Consumer Price Index (CPI) as referenced above.

With the assistance of the Public Works Department, the Artist will supervise this installation and will direct testing of the light fixtures in coordination with city representatives. It is understood that both the testing and the finalization will take place during the hours after dark, and may occur over a period of several evenings. The testing period will precede the drawing of the lighting plan/specifications' document.



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### V. SCULPTURAL ELEMENTS (continued)

#### E. Additional Components (continued)

The City may wish to incorporate other additions to the Park which are not presently accounted for in the "Artist's Park Plan" which may include and are not limited to: trash containers, rails and guards, ports for lighting fixtures and additional furniture (such as tables, benches, or chairs for the newly added south patio area adjacent to the City complex.) Since any addition will affect the appearance of the Park, these additions must be of mutual consent, agreed to in writing. If the parties fail to agree, the matter shall be finally decided by the Art in the Park Committee. If there is no Art in the Park Committee, then the matter shall be decided by the Dean of the College of Fine Arts and the Chairman of the Department of Architecture at the University of Illinois.

All of these components are to be designed, fabricated, and supplied by the artist. If the artist so wishes, the fabrication may be by others, under his direction. The new South Patio area is designed for furniture and all furniture placed in that area is to be designed by the artist. Provided however, the City shall not be obligated to spend a total amount of money more than that which is agreed to in Article III as construction expenses to implement the final plaza design.

The City may wish the donors' participation to be marked by a bronze plaque; and the city may wish for an accompanying bronze plaque with a drawing of the park. This plaque describing the various components of the park could also serve as a guide to the visually impaired, and could be accompanied by a description in Braille. These plaques shall be designed by the Artist under this Contract, but the manufacturing of the plaques, if done, will be at the City's expense. These plaques could be designed as either wall pieces or pedestal pieces. The sculptural components shall bear a small plaque, identifying the artist, the year, and the title.

### VI. CONSTRUCTION

Generally, all construction in the Plaza and as elsewhere specifically described herein shall rest solely on the City, except construction of the Sculptural Elements. The services and materials to install the Sculptural Elements shall be ordered at the sole discretion of the City, although any expense not in the final design will be at the cost of the City (included in the \$100,000.) It is understood that these services and materials will be ordered and supplied in coordination with the installation timeline for all components of the Park.

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### VI. CONSTRUCTION (continued)

As to the Sculptural Elements, the Artist shall provide all personnel, supervision, labor, materials, supplies, and equipment during fabrication (except as otherwise provided herein,) and shall plan, schedule, and coordinate the construction and delivery of the Sculptural Elements. Any problems of installation caused by the site (such as underground utilities, tanks, or lack of properly supporting soil) shall be paid for, and cured by, the City. Investigation of any potential problems of installation will be completed by the City to the full extent possible before the installation process begins. However, the costs hereof shall be part of the \$100,000 cost limitation set forth in Article 3., except the repair of sidewalks.

The Artist shall supervise off-site construction of the Sculptural Elements and final delivery of all Sculptural Elements. The Artist, or his subcontractors shall perform all services and furnish all labor, supplies, materials, and equipment as necessary for the design and construction of the Sculptural Elements. The Sculptural Elements shall be delivered within 180 days of the approval of the final design and engineering drawings subject to causes beyond the reasonable control of the Artist.

### VII. SUPERVISION/RIGHT OF INSPECTION

The Park, Landscaping Schedule and Sculptural Elements are original creations by the Artist. The City shall install the Sculptural Elements with the Artist's supervision, which includes off-truck loading, and the Artist shall supervise the placement of the landscaping elements and park lighting in coordination with the City representatives, so as to insure fulfillment of the original artwork under the final design.

Since this Agreement is effective approximately four months later than anticipated, the contracting officer and the Artist will meet to appropriately adjust dates referenced herein.

### VIII. REIMBURSEMENT

Although the Artist is donating his time and artistic energies to design the overall Park and Sculptural Elements, he is also donating his time and materials to construct prototypes. In addition, the artist is donating his time for researching materials, design consultation, and supervision of the installation process. The City agrees to reimburse the Artist from the Trust Fund for all expenses incurred in the design and construction process. Such expenses shall include, but not be limited to those incurred for: the design, construction, and delivery of Sculptural Elements; the design, construction, and delivery of the fountain sculpture; the design, construction and delivery of all furniture; travel; lodging at the site of sculpture and furniture construction; long distance phone calls; construction costs of all

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VIII. REIMBURSEMENT (continued)

models, prototypes, and maquettes; the cost of creating all drawing documents; the cost of creating all illustrative documents; and any other expenses deemed reasonable by both Artist and City. Such expenses will not exceed \$150,000.

It is understood by the parties that of the \$150,000 required, approximately \$130,000 has been raised. The Art in the Park Committee will endeavor to raise the additional \$20,000 in the near future. If, however, the Art in the Park Committee is unable to raise the additional \$20,000, then the Artist must reduce the scope of the project so as to complete his work for a cost at no more than is raised. In no event will the City be responsible for any amount not raised or collected.

The Chief Administrative Officer will direct funds from the Trust Account in the amount indicated to be paid to the artist according to the following schedule upon written approval of the payment plan by the following persons or organizations:

Carle Foundation; Covenant Foundation; Ray Timpone; Lucille Webber; Busey Bank

Three-Phase Payment Schedule from the Trust funds for the development and construction of the sculpture and fountain:

|                                |          |
|--------------------------------|----------|
| Approximately 1 February 1998: | \$25,000 |
| Upon signing of the contract.  |          |

|  |          |
|--|----------|
| Approximately 1 April 1998:            | \$75,000 |
| Upon approval of engineering drawings. |          |

|                                 |           |
|---------------------------------|-----------|
| Approximately 1 October 1998:   | \$50,000* |
| Upon completion of fabrication. |           |

Note: Suppliers and fabricators of specialized pieces require payment in advance.

\* The City of Urbana, upon notification by the artist of the completion of fabrication, will direct funds from the Trust Account to be placed in escrow at Busey Bank in the amount of \$50,000, which will be released to the artist upon delivery of the completed sculpture and fountain to the site.



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IX. ADDITIONAL GIFT BY THE ARTIST

It shall be noted that these figures deal with costs of manufacture of the Sculptural Elements. In addition to the contribution of his fees, of his time, and of the designs, the Artist has contributed to the project a cash gift for expenses in a sum exceeding \$75,000 since the conception of the design in 1991, which will not be recovered through the distribution of funds so listed in VIII. These expenses include many costs including but not limited to portions of the totals for drawings, studies, models, and prototypes' materials and constructions, full-size wooden maquettes, assistants' salaries, computer time, and film reproduction costs, consultants' fees and expenses, travel, and presentation books used for fundraising purposes.

X. INSURANCE

A. Commencing with the date of fabrication of any of the sculptural elements which do not exist on the date of this agreement, the City will insure all existing pieces and future pieces of the sculptural elements against accidental damage or destruction. The amount of such insurance shall be \$165,000.00.

- B. 1. After the sculptural elements are permanently placed, the City shall insure such in the amount of \$165,000.00, which is the estimated cost for repair and restoration in the event such pieces are damaged or destroyed. The \$165,000.00 amount shall be adjusted from time to time by reference to the Chicago all item CPI.
2. In the event the sculptural elements are damaged or destroyed and the City elects to repair and restore the pieces, all of the insurance proceeds shall be paid to the City for such purpose. If, however, the City fails to undertake the necessary repairs within 180 days of the occurrence of the damage, the artist may reclaim the damaged pieces after 30 days' notice to the City of his intention to do so, if the City still fails, after receiving such notice, to undertake the repair within such 30-day limit. If the artist does reclaim the pieces, it is agreed that the insurance proceeds relating to the repair and restoration shall be paid to the artist for his use in effecting the repairs.



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X. INSURANCE (B. continued)

3. Any restoration or repairs shall be done only by the artist or persons designated by the artist, if the artist is living. Repairs required after the death of the artist shall be done by the City attempting to secure the services of the following, in order named:

- (a) The artist's appointed restoration representative;
- (b) The executor of the artist's estate;
- (c) The Director of the John David Mooney Foundation;
- (d) Other restoration professionals.

In any event, the City shall not be obligated to pay for repair and restoration services except out of the proceeds receivable from the insurance policy.

C. The City agrees to incorporate the "Urbana Plaza" in its general liability insurance policy.

XI. OWNERSHIP

The City agrees that if, for any reason and at any future time (with the approval of the Artist or his successor) any of the Sculptural Elements are removed from the Park other than temporarily for repair, then ownership of such works shall revert back to the Artist. If the Artist is not living, they shall be made available to his then successor.

XII. COPYRIGHT

To clarify the authorship and uniqueness of this Park, it is understood that the design of "Urbana Plaza," with all its component parts, is a copyrighted design (1991/92-1995) All Rights Reserved by the Artist, John David Mooney. It is understood that all photographs, drawings, working documentation, three-dimensional items, written materials, video and electronic media shall bear the accreditation: "Urbana Plaza" by Artist John David Mooney c 1991/92-1995 All Rights Reserved.

All working or presentation drawings shall bear (1) the Artist's name or signature; (2) the title of "Urbana Plaza"; and (3) Mooney Studio. If issued by the City of Urbana, such shall include (1) the City's logo; (2) the title of the City of Urbana Department of Public Works; (3) the title "Urbana Plaza;" (4) the Artist's name or signature; and (5) the Artist's copyright.

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XIII. REPRODUCTIONS

All rights to allow any reproduction may only be given by the Artist during his lifetime.

If the City of Urbana desires to make "Urbana Plaza" the focus of presentations, or at some future date, commission reproductions which may include, but are not limited to, photographs, videos, posters, T-shirts, postcards, lithographs, books, catalogues, maquettes or models, banners, furniture, additional pieces of furniture, and specially designed graphic pieces, it is agreed that the Artist will be commissioned to design such an item(s), to ensure continuity of design excellence and to maintain the artistic integrity of "Urbana Plaza," unless otherwise provided in this contract.

All reproducible items, including but not limited to the aforementioned items, referring to "Urbana Plaza," shall be designed by the Artist, or by others only with the written permission of the Artist and with the direct supervision of the Artist in the Artist's lifetime. In the event of the production of items which are produced for sale by the City and/or its licensees, or the sale or use (beyond covering the City's costs) of any item which relates to "Urbana Plaza" and any of its component parts, the financial participation of the Artist and the City shall be set out according to mutual agreement, unless otherwise provided in this contract.

After the death of the Artist, his financial and design rights shall be carried forth to the Artist's successor addressed herein (unless restricted by other terms of this contract.) After the death of the Artist, such items may be produced by others only with the written permission of the Artist's successor.

The Artist may make use of the design on any portion of the project and any of the project's components without the permission or participation of the City. The Artist, however, guarantees the City of Urbana that he will not reproduce an exact-dimensioned sculpture of the central sculpture of "Urbana Plaza."

It is understood and agreed, nevertheless, that although the design of "Urbana Plaza" and all of its component parts is a copyrighted design by the Artist, the City of Urbana may make incidental use of any portion of the design on City documents, newsletters, and other promotions of the City, generally, with appropriate accreditation as indicated in XII., so long as the City has the approval of the Artist, which will not be unreasonably withheld if the quality of the design is consistent with the concept of the Artist. This restriction does not apply, if otherwise allowed in this contract. All notification of such intended use of any part of "Urbana Plaza" must be submitted to the Artist for his authorization which may not be unreasonably withheld.

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### XIII. REPRODUCTIONS (continued)

Casual photographs and videos of "Urbana Plaza" may be taken for incidental use by the City without the approval of the Artist. Formal pictures, images or videos for publication, distribution or production may be taken by the City after obtaining the Artist's consent as described in this paragraph. Approval shall be sought in writing by delivering a request for such to the Artist at the address indicated in XVII. If a denial of that approval is not received by the City within thirty (30) days after mailing the notice, then the approval shall be deemed to have been granted. Approval under this paragraph shall not be unreasonably withheld so long as the quality and artistic view of the image, photograph or video is consistent with the concept of the Artist.

Creation of any reproduction, photographs, images, videos or drawings depicting "Urbana Plaza," which items may be made available for sale by the City, shall be permitted only with the consent of the Artist in accordance with an agreement regarding financial arrangements for such effort. If a project is done by a licensee or in any other manner on a for-profit basis, then the City must obtain the agreement of the Artist as to the financial arrangements which may include a royalty to the Artist. If however, a project is done by the City for civic purposes, then it is anticipated that the Artist would not receive a fee or an honorarium for his work involved in such project; however, he may request that his expenses involved in the project be covered by the proceeds of the sale. If the reproduction, photograph, image, video or drawing focuses on "Urbana Plaza," then the net proceeds from that sale will be used either to benefit or enlarge "Urbana Plaza", or for other purposes as may be agreed by the Artist and the City.

Any reproduction, image, photograph, video, drawing or other depiction of "Urbana Plaza" or any of its component parts must bear the accreditation as is indicated in Paragraph XII. above.

### XIV. DEFINITION OF SPACE

"Urbana Plaza," created as a unique entity/artwork including the sum of its component parts by the Artist, occupies a volume of space not dissimilar from a structure such as a building.

In the event of future construction involving structures adjacent to, or nearby, the park space cannot be used as a staging area, as an area for storage, or as a location for any type of materials beyond that which is needed on a daily basis. The park space may be used to access repair of the adjacent building as well as to access and allow the repair of underground or above ground utilities. After such repair, the park space shall be returned to its original condition. It is to be treated as a "building" within the perimeter of the tract and is not to be violated by other construction or buildings.



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XIV. DEFINITION OF SPACE (continued)

"Urbana Plaza" is to be considered a volume of space, a true piece of landscape architecture in its most definitive form, a volume where air rights cannot be intruded upon, and whose ground surface and "common walls" cannot be violated or intruded upon by any foreign materials or activity.

XV. INCORPORATION

This Agreement is intended to state the complete legal obligations of the parties to each other. The letter of Carl Webber, dated December 16, 1997, as attached, is an aid to interpretation. (Appended as Exhibit B.)

XVI. THIRD PARTIES

Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any other persons other than the City and the Artist, and their respective successors and assigns. Nothing in this Agreement is intended to relieve or discharge the obligations or liability of any third persons to either the City or the Artist.

XVII. NOTICE

All notices, demands, requests, consents, approvals, or other communications or instruments required or otherwise given under this Agreement shall be in writing and executed by the party or an officer, agent, or attorney of the party, and shall be deemed to have been effective as of the date of actual delivery, if delivered personally, or as of the third day from and including the date of posting, if properly mailed to the following addresses:

TO THE ARTIST: John David Mooney  
114 W. Kinzie Street  
Chicago, IL 60610

TO THE CITY: City of Urbana  
ATTENTION: Mayor of Urbana  
400 South Vine Street  
Urbana, IL 61801

AN INFORMATION COPY TO: Carl Webber  
Webber & Thies  
202 Lincoln Square  
Urbana, IL 61801

The parties may advise the other in writing of changes of address for this paragraph.



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XVIII. PARTIES

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective authorized successors and assigns, provided, however, that the Artist may not assign his responsibilities of initial design under this Agreement without the express written approval of the City. After initial construction of the "Urbana Plaza," and after the death of the Artist, then any act to be done under this Agreement by the Artist shall be done by his successor.

Reference to the Artist's successor shall mean the first of the following list who is living and reasonably available: (1) person(s) designated in writing by the Artist; (2) the Artist's closest living relative, as defined by the Descent and Distribution Laws of the State of Illinois; or (3) the Director of the John David Mooney Foundation. The initially designated successor and the initially designated restoration representative, is Barbara Jones.

The contracting officer ("CO") of the City of Urbana is designated as Chief Administrative Officer. The City can change the designated contracting officer by notification in writing to the Artist at any time. The CO has the overall responsibility for the administration of the contract. The CO alone is authorized to take action on behalf of the City of Urbana to amend, modify, or deviate from the contract terms, conditions, requirements, specifications, details and/or delivery schedules.

The Artist is advised that only the CO can change or modify the terms of this Contract or take any other action which obligates the City. Any such change, modification, or action must be set forth in a formal modification to the Contract. The authority of the CO is strictly limited to the specific duties set forth in his/her letter of appointment, a copy of which will be furnished to the Artist at time of award. Reliance by the Artist on direction from anyone other than the CO, the CO's designated administrative contracting office ("ACO") acting within the strict limits of his/her delegation, will be at the Artist's own risk and expense as such actions do not bind the City contractually. Any questions concerning the authority of a City employee to direct the Artist contractually should be referred immediately to the CO.

Should there be any need for any contractual changes, the CO or ACO will be responsive and reasonably available so that the solutions can be arrived at on a timely and mutual bases, to be incorporated as a modification to the Contract.

AGREEMENT/16

XIX. LIMITATION

Nothing in this Agreement, nor in the actions of the parties pursuant to this Agreement, shall be construed by the parties or any third person to create the relationship of a partnership, agency, or joint venture between or among such parties, and neither party can bind the other.

XX. PERSONAL RESPONSIBILITY

No covenant or agreement contained in this Agreement shall be deemed to be the covenant or agreement of any official, agent, employee or attorney of the City, in his or her individual capacity, and neither the members of the City Council nor any official of the City shall be liable personally under this Agreement or be subject to any personal liability or accountability by reason of the execution, delivery, and performance of this Agreement.

The City shall defend, indemnify and hold the Artist harmless from any and all claims, losses, liabilities and expenses (including reasonable fees and disbursements of counsel) he may suffer as a result of personal injury, property damage, or other claims by others arising out of the design installation, or operation of the Park, "Urbana Plaza," during and after the installation of the component parts, including landscaping and sculpture, or by any matter relative to this Agreement, except for claims based on intentional torts of the Artist.

Neither the City's review, approval, or acceptance of or reimbursement for expenses as provided herein, shall be construed to operate as a waiver of any rights under this contract. Rights and remedies of the parties provided for under this contract are in addition to any other rights and remedies provided by law.

XXI. TERM AND INTEREST

All rights, duties and limitations as to matters contained in this agreement which relate to the integrity of design and rights of reproduction and representation shall lapse 50 years after the death of the Artist.

All matters beyond those covered in the paragraph directly above (e.g., insurance and maintenance) shall terminate 21 years after the death of the last to die of all the descendants of Marie Mooney living at the time of the signing of this Agreement.



XXII. MAINTENANCE

Upon Completion, the Artist shall provide written instructions to the City for appropriate maintenance and preservation of the Sculptural Elements. The City shall properly maintain, clean, and repair the Sculptural Elements, (with a maximum cost of \$3,000/year, adjusted by the CPI,) and shall maintain the landscaping plan, replacing portions thereof as may be required. The amount not spent each year, up to the maximum cost, shall be placed in an interest-bearing account to accumulate in order to cover major repairs. It is anticipated that the structural elements should require little maintenance except that periodically, they may require a greater amount of maintenance such as repainting or replacement of neon tubing. Should this account increase beyond the amount reasonably required to repair the neon tubing and repaint the sculptural elements, then the Chief Administrative Officer of the City of Urbana may reduce annual amounts placed in the fund.

The City agrees to properly maintain and to retain the Sculptural Elements in locations specified under this Agreement. Proper maintenance and repair shall be continued by the City.

The Artist warrants that the Sculptural Elements will be delivered to the site, having been constructed in a good and workmanlike manner, which warranty shall extend only for a period of one year from delivery, and the Artist will, within that time, replace any defective parts or rework any defective craftsmanship in a timely fashion at no cost to the City, except reimbursement for materials.

If the sculptural elements are not maintained by the City, the artist or the artist's representative shall give written notice to the City, citing specifically in what manner the piece(s) have not been maintained. The City shall have 60 days following receipt of such notice to either do the necessary work to correct the problem or shall give the artist notice that the City disputes the allegations of lack of maintenance, in which case, the question of whether maintenance was required or not shall be the subject of binding arbitration by the Dean of the School of Fine Arts of the University of Illinois at Champaign-Urbana. The expenses, if any, of arbitration shall be borne by the parties equally. Unless the arbitrator decides that maintenance is required, the City shall have no obligation to do the work. If, however, the arbitrator decides maintenance work is required, the City shall perform the maintenance work required as specified by the arbitrator within 60 days of the written decision of the arbitrator or, if the City fails to so do, ownership of the subject sculptural element(s) needing maintenance shall revert to the artist, and the artist shall have the right to remove the subject piece(s).

AGREEMENT/18

XXIII. DEFAULT

Should either party to this Agreement violate the terms hereof, the other party shall give the violating party written notice of the violation. The violating party shall have ten (10) days to cure the violation, or such longer period as is reasonable if the violating party is making all reasonable effort to cure an item that may not be cured within the ten-day period. If the violation is not so cured, the violating party has all rights under Illinois law including the right to damages and to specific performance. The damages for a violation or for nonperformances of the Artist may not exceed the amount of this contract.

XXIV. DATE

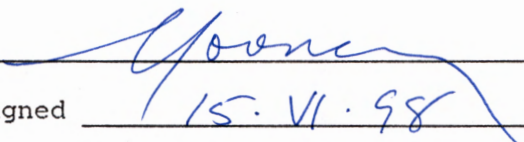
The parties hereby agree that the effective date of this Agreement shall be the date the Agreement is executed by the City, as indicated by the date beneath the Mayor's signature.

City of Urbana

  
\_\_\_\_\_  
Tod Satterthwaite, Mayor

Date Signed 7/6/98

John David Mooney

  
\_\_\_\_\_  
Date Signed 15. VI. 98

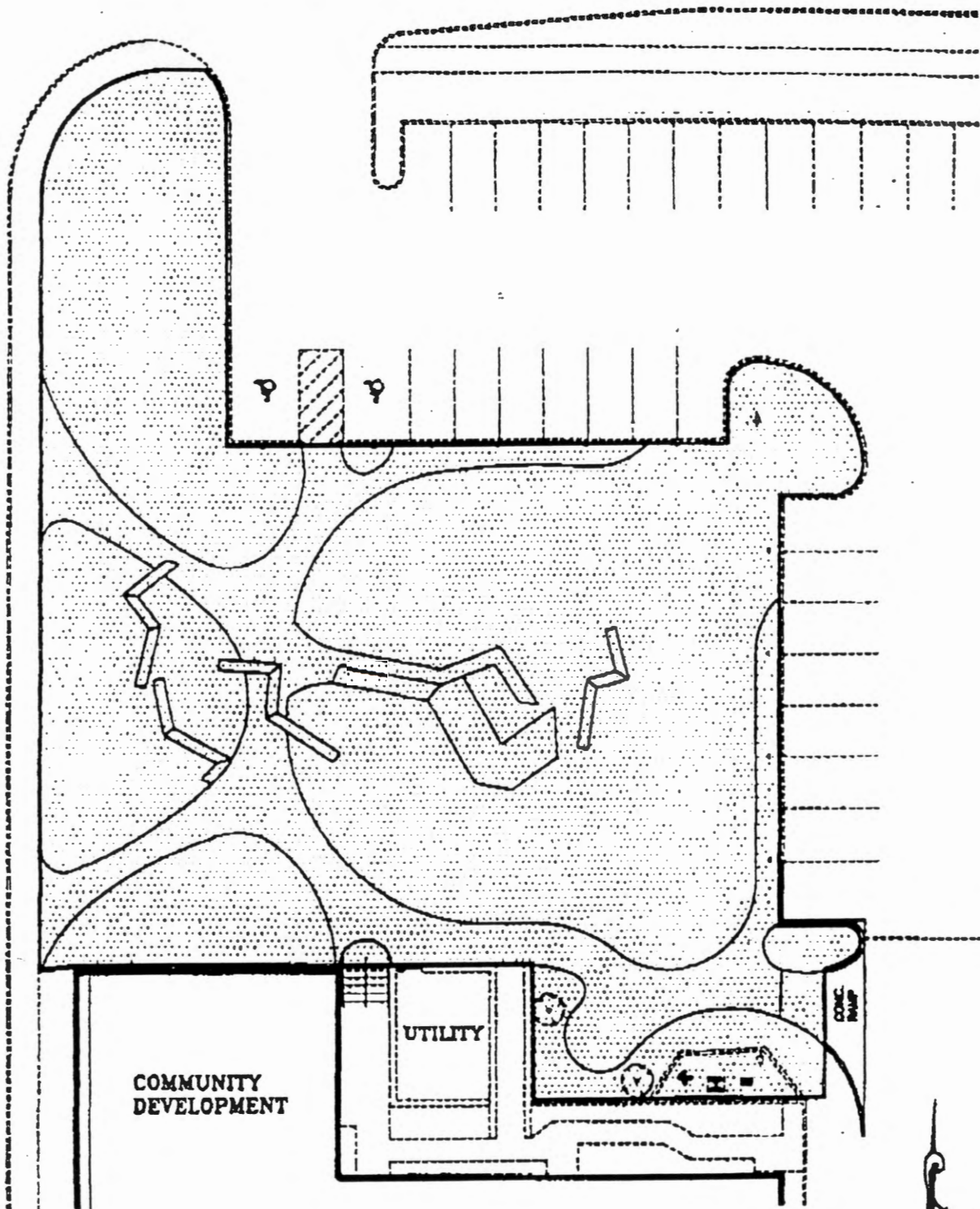


EXHIBIT

A

GREEN STREET

VINE STREET



CITY BUILDING

“Art-in-the-Park”

SCALE IN FEET  
0 5 10 20

## WEBBER &amp; THIES, P.C.

ATTORNEYS AT LAW

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P.O. Box 189

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December 16, 1997

Jack Waaler  
Urbana City Attorney  
400 S. Vine St.  
P.O. Box 219  
Urbana, IL 61801

Re: Art in the Park

Dear Jack:

I thought that our meeting was very fruitful and look forward to resolving the remainder of the issues.

1. Future Direction

First, you asked that John David provide you with a clarification of paragraph two on page three. That paragraph relates to "changes or additions" to the landscaping or any of the park's component parts.

In response, he would first refer to the maintenance paragraph and suggest that the maintenance paragraph adequately addresses issues relating to maintenance.

Then, as to changes and additions, please note that John David has agreed that the City may merely consult with him before making any such changes. The language suggests that the City must give "substantial consideration" to his response. I believe that you were interested in John David providing a more broad explanation of the meaning of that sentence. He would suggest that he is willing to rely on the City to make determinations in post construction management that are in the best interest of the project. However, he also assumes that, if his comments are given substantial consideration, such consideration would be sufficient to protect the original intent and design of the Art in the Park project. This concern could be divided between concern about the sculptural pieces and concern about the landscaping and the surrounding area.



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As to the sculptural pieces, he would expect no change or nearly no change, would be made to those pieces unless, of course, it involved a matter of safety or significant issues concerning maintenance.

As to landscaping, the intent is to maintain the color, shape and texture of the plantings in order to maintain the original artistic design. As to landscaping and plantings, there is a specific plan which lists the present plantings. Earlier issued plans suggest alternatives to the present plantings. At the conclusion of the 1998 spring plantings which will consist primarily of ground covers, the artist will present the city with a plan which lists appropriate substitutions. This plan will serve as a handbook for management. It is John David's opinion that, for example, if a blue spruce were to die, it would be within the intent of the design to replace it with another blue spruce; and if there are no blue spruces available, then with a different type of spruce, such as a green spruce; and if a green spruce is not reasonably available, then it might be expected that some other type of fir tree would be used, keeping the shape, color and texture which the original plan specifies.

On the other hand, if a spruce were to die, it would not be within the anticipation of the plan that it would be replaced with a bed of petunias. One can probably imagine unusual circumstances where such a change might be required; but I think the wording of the agreement anticipates that the City would need to show some substantial reason for such a changes. With some limitation as to the opinion of the artist and a presumption that the original design would remain largely the same, this paragraph would appear to give the City a substantial amount of flexibility.

The agreement should make it clear that a substantial alteration which changes the nature of the design, would allow the artist to remove the sculptural portions of the project. Examples of a substantial alteration would be leveling the earth mounds, removing the fountain, or changing the primary sculpture.

## 2. Additional Amenities

John David assumes that if further amenities would be added to the Art in the Park project, they would be added after again giving substantial consideration to his suggestions to that addition, so long as he is living and able to make such suggestions. He would expect that under most such circumstances, the City would inquire about his suggestions, and if the item is somewhat minor, the suggestions would, no doubt, be under circumstances where there would be no fee charged.

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Page 3

3. Definition of Art Work

You have asked that we provide a definition for art work as it is used in paragraph two on page three. John David would suggest that on the first line of paragraph two, after the words "art work" add the following:

"the entire complex, including the earth mounds, landscaping, fountain, furniture, and paving, etc."

4. Insurance

You asked that I specify the interest which the artist might have in the sculptural elements of the park for purposes of insurance. John David's insurable interest is similar to a "remainder interest," since, if the sculptural elements are damaged and not rebuilt, they would be returned to him.

If, for example, lightning were to hit a portion of the sculptural elements and that portion was not rebuilt, then the insurance proceeds should be provided to John David so that he can refabricate the pieces and place them in a location where they would continue to be appreciated.

If that were not the case, and the structural elements were damaged and not refabricated, all of his volunteer time and effort and design work could only be accessible to him if he spent a considerable amount of his own money to replace the representation of his sculptural work. Admittedly, this is somewhat different from a circumstance where a buyer paid full value for a project.

He suggests that insurance be for the cost of refabrication. It would seem that the insurance policy could make it clear that if the sculpture were rebuilt, then the proceeds check for damages could be written only to the City. If, on the other hand, the City determines not to make the repairs, then the check could be written to the artist. In either case, then, the concept which he is giving to the City may be continued even if it might be in a different location. It would seem that there is no significant difference between this provision and the provision indicating that if the City no longer uses, or disposes of, the sculptural pieces, then they would be returned to John David.

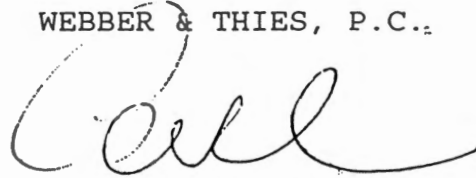


December 16, 1997  
Page 4

I hope this is a sufficient response to your requests and look forward to talking with you in the near future about these clarifications.

Very truly yours,

WEBBER & THIES, P.C.

A handwritten signature in cursive script, appearing to read 'Carl M. Webber', written in dark ink.

Carl M. Webber

cc: John David Mooney  
Mayor Tod Satterthwaite  
Bruce Walden  
Bill Gray  
Mike Brunk

EXHIBIT

C

TABLER.

