

**Date** August 3, 2020

**APPROVAL OF PUBLIC ART GRANT AGREEMENT WITH BRAVO GREATER DES MOINES FOR TRAIL ARTWORK PROJECT**

WHEREAS, the Bravo Greater Des Moines (BRAVO) Public Art Grant program offers financial support to its local government partners for public art projects that generate more artistic and cultural expression in the Greater Des Moines region; and

WHEREAS, the City of Des Moines, through its Park and Recreation Department, applied for a BRAVO Public Art Grant to help pay for the costs of developing artwork specific to individual trails along Central Iowa Trail System to be used to identify such trails; and

WHEREAS, the goals and vision outlined by LiveDSM, PlanDSM, MoveDSM, and the Greater Des Moines Public Art Foundation were used as a cornerstone for the project's design and concept; and

WHEREAS, BRAVO has notified the City that it has been awarded a grant for \$20,000 toward the cost of such project; and

WHEREAS, BRAVO requires that the GC20 Public Art Grant Agreement, a copy of which is on file in the City Clerk's Office, be executed by the City.

NOW, THEREFORE, BE IT RESOVED by the City Council of the City of Des Moines, Iowa, that the GC20 Public Art Grant Agreement for the above described grant in the amount of \$20,000, a copy of which is on file in the City Clerk's Office, is hereby approved and the Mayor is hereby authorized and directed to execute such Grant Agreement on behalf of the City.

(Council Communication No. 20- **325** ) Moved by \_\_\_\_\_ to adopt.

APPROVED AS TO FORM:

/s/ Ann DiDonato  
Ann DiDonato, Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BOESEN				
GATTO				
GRAY				
MANDELBAUM				
VOSS				
WESTERGAARD				
TOTAL				
MOTION CARRIED			APPROVED	

**CERTIFICATE**

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

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

\_\_\_\_\_ Mayor

\_\_\_\_\_ City Clerk

## **GC20 PUBLIC ART GRANT AGREEMENT**

This GC20 Public Art Grant (PAG) Agreement must be signed and fully submitted by 3:00 on August 3, 2020. Failure to execute the Agreement by this date may result in forfeiture of the grant award.

RECIPIENT: City of Des Moines

PROJECT: Trail Artwork

GRANT AWARD: \$20,000

FUNDING TERM: July 1, 2020-June 30, 2021

Failure to adhere to the terms herein may result in forfeiture of the grant award and may impact the eligibility of City of Des Moines ("Recipient") for future funding from Bravo Greater Des Moines ("Bravo").

### **Section 1 – ELIGIBILITY**

Recipient represents and warrants that it is in good standing with Bravo and is a municipality with a current 28E Agreement with Bravo. An organization is in good standing with Bravo if it:

- i. Fully and completely meets all requirements in this Agreement;
- ii. Accurately represents its organization and its activities in all documents submitted to Bravo. This includes, but is not limited to grant application, final reports, mid-year evaluations (if applicable), financial reports and any other information requested by Bravo;
- iii. Continues to meet the grant eligibility criteria;
- iv. Submits grant information, documents and reports on or before the due date; and
- v. Has not been designated as an organization not in good standing by Bravo's Community Investment Committee.

### **Section 2 – FUNDING**

**2.1 Funding Source** The source of funding for the PAG Program is Bravo's local government partners, the cities of Altoona, Ankeny, Bondurant, Carlisle, Clive, Des Moines, Grimes, Indianola, Johnston, Norwalk, Pleasant Hill, Polk City, Urbandale, Waukee, West Des Moines and Windsor Heights and Polk County pursuant to 28E Agreements.

**2.2 Receipt of Funds** All payments under this Agreement are subject to the possession by Bravo of enough funds for the GC20 PAG Program. Any termination, reduction or delay of funds from Bravo's local government partners to Bravo may, in Bravo's sole discretion, result in the termination, reduction or delay of PAG funds to Recipient and/or termination of this Agreement.

**2.3 Use of Funds** Recipient hereby agrees that grant funding will be used within the funding term and for the awarded Project as described in the original application for funding or, if applicable, as described in the grant award notification provided to Recipient by Bravo. All grant funds not expended in a manner agreed to by Recipient and Bravo may result in the return of funds to Bravo.

**2.4 Prior Costs** Grant funds may not be used to pay for expenditures made or costs incurred outside the dates of the Funding Term.

**2.5 Disbursement of Funds** Full payment of Grant funds will be made upon execution of this Agreement.

### **Section 3 – REPORTS**

Upon the request of Bravo, Recipient shall prepare and submit reports as specified below. Additional progress reporting may be required during the duration of this Agreement.

1. Midterm Report provided by January 15, 2021.
2. Final Report provided by July 31, 2021.

### **Section 4 – COVENANTS OF RECIPIENT**

**4.1 Affirmative Covenants** Until the terms of this Agreement are fulfilled, Recipient covenants to Bravo that:

(a) **Notice of Proceedings** Recipient shall promptly notify Bravo of the initiation of any claims, lawsuits, bankruptcy proceedings or other proceedings brought against Recipient that would adversely impact the Project.

(b) **Indemnification** Recipient shall indemnify, defend and hold harmless Bravo and its officers, employees and agents from and against all losses, liabilities, penalties, fines, damages and claims, including but not limited to taxes and all related costs and expenses, including but not limited to reasonable attorneys' fees and disbursements and cost of investigation, litigation, settlement, judgments, interests and penalties arising from or in connection with the following:

- i. Any claim, demand, action, citation or legal proceeding arising out of or resulting from the Project;
- ii. Any claim, demand, action, citation or legal proceeding arising out of or resulting from a breach by Recipient of any representation or warranty made by Recipient in this Agreement;
- iii. Any claim, demand, action, citation or legal proceeding arising out of or related to occurrences that Recipient is required to insure against as provided for in this Agreement; and
- iv. Any claim, demand, action, citation or legal proceeding that results from an act or omission of Recipient or any of its agents in its capacity as an employer of a person.

**4.2 Negative Covenants** Throughout the Funding Term of this Agreement, Recipient shall not, without prior written disclosure to Bravo and prior written consent of Bravo:

(a) **Recipient's Interest** Assign, waive or transfer any of Recipient's rights, powers, duties or obligations under this Agreement.

(b) **Property/Collateral** Sell, transfer, convey, assign, encumber or otherwise dispose of any of the real property for the Project.

(c) **Restrictions** Place or permit any restrictions, covenants or any similar limitations on the real property for the Project.

(d) **Removal of Project Property** Remove from the Project site all or any part of the Project property.

(e) **Recipient Operation** Materially change the scope or use of the Project or the nature of the business and activities being conducted or proposed to be conducted by Recipient as described in Recipient's application, unless the change is approved in writing by Bravo. Bravo shall determine the materiality of the change.

## **Section 5 – DEFAULT; REMEDIES & TERMINATION**

**5.1 Notice of Event(s) of Default** Recipient shall promptly notify Bravo upon becoming aware of an actual or imminent Event of Default by Recipient.

**5.2 Events of Default** Each of the following shall constitute an Event of Default under this Agreement:

(a) **Material Misrepresentation** Any representation, warranty or statement made or furnished to Bravo by, or on behalf of, Recipient in connection with this Agreement to induce Bravo to make a Grant to Recipient shall be determined by Bravo to be incorrect, false, misleading or erroneous in any material respect when made or furnished.

(b) **Noncompliance** Recipient fails to comply with any of the terms contained in this Agreement or documents executed pursuant to this Agreement.

(c) **Recipient Changes** A material change in Recipient's eligibility, as defined in Section 1, that occurs without prior written disclosure to Bravo.

(d) **Misspending** Recipient expends Grant funds for purposes not described in the GC20 Public Art Grant Application as approved by Bravo.

(e) **Insolvency or Bankruptcy** Recipient becomes insolvent or bankrupt, or admits in writing its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors, or Recipient applies for or consents to the appointment of a trustee or receiver for Recipient or for the major part of its property; or if a trustee or receiver is appointed for Recipient or for all or a substantial part of the assets of Recipient and the order of such appointment is not discharged, vacated or stayed within sixty (60) days after such appointment; or if bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings or other proceedings for relief under any bankruptcy or similar law or laws for the relief of debtors are instituted by or against Recipient and, if instituted against Recipient, are consented to, or, if contested by Recipient, such proceeding is not dismissed by the adverse parties or by an order, decree or judgment within sixty (60) days after such institution.

(f) **Insurance** Loss, theft, damage or destruction of any substantial portion of the Project property occurs for which there is either no insurance coverage or for which, in the opinion of Bravo, there is insufficient insurance coverage.

(g) **Conveyance of Responsibilities** Recipient assigns, waives or transfers any of Recipient's rights, powers, duties or obligations under this Agreement without written permission of Bravo.

(h) **Conveyance of Property** Recipient sells, transfers, conveys, assigns, encumbers or otherwise disposes of any real property of the Project without written permission of Bravo.

**5.3 Notice of Default** Bravo shall issue a written notice of default providing therein a thirty (30) day period during which Recipient shall have an opportunity to cure. Notwithstanding this Section 5.3, if

Bravo determines cure is not possible or feasible, Bravo may immediately deem Recipient in default without prior written notice or opportunity to cure.

**5.4 Remedies Upon Default** Upon the occurrence of any Event of Default, Bravo shall have the right to terminate this Agreement and to require immediate repayment of the full amount of funds disbursed to Recipient under this Agreement without presentment, demand, protest, notice of protest, notice of intention to accelerate or other notice of any kind, all of which are expressly waived by Recipient.

**5.5 Termination for Convenience** In addition to termination due to an Event of Default or no allocation of PAG funds, this Agreement may be terminated in whole, or in part, when Bravo and Recipient agree that continuation would not produce beneficial results commensurate with the future disbursement of funds.

**5.6 Procedure Upon Termination** If this Agreement is terminated, Bravo may, in its sole discretion, allow reimbursement for costs expended up to the date of termination as determined by Bravo. Recipient shall return to Bravo all unencumbered Grant funds within one week of receipt of Notice of Termination.

**Section 6 – MODIFICATION**

This Agreement may only be amended through written prior approval of Bravo. Examples of situations where amendments are required include, but not limited to, extensions for completion of Project activities and changes to the Project including alternation of approved activities or inclusion of new activities. If the proposed amendment substantially alters the circumstances under which the Project funding was originally approved or if it is not in alignment with and does not uphold the investment priorities of Bravo, grant funds may need to be returned.

**Section 7 – RECOGNITION**

Recipient shall permanently recognize Bravo in its donor acknowledgment for the financial contribution to the Project.

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Authorized Officer

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Date

*Approved As To Form:*  
*Ann DiOrato*  
*Assistant City Attorney*