

Date December 6, 2021

APPROVAL OF AMENDMENT TO AGREEMENT WITH THE GREATER DES MOINES PUBLIC ART FOUNDATION FOR INSTALLATION AND MAINTENANCE OF JUN KANEKO GLASS MURAL ON COURT AVENUE PUMP STATION FOR LICENSE FOR TEMPORARY REMOVAL FOR REPAIRS AND REINSTALLATION

WHEREAS, on April 8, 2013, by Roll Call No. 13-0616, the City Council approved an Agreement Between The City of Des Moines and the Greater Des Moines Public Art Foundation for Installation and Maintenance of Jun Kaneko Studio, LLC/Court Avenue Pump Station Glass Mural In the Principal Riverwalk ("Agreement"); and

WHEREAS, the "Expansion" glass mural ("Mural") was installed by the Greater Des Moines Public Art Foundation on the City pump station on Court Avenue pursuant to the Agreement; and

WHEREAS, the Agreement provides in Section V that the Greater Des Moines Public Art Foundation is responsible for maintenance of the Mural and Section I.6 provides that the installed Mural may not be removed without the approval of both parties; and

WHEREAS, the Greater Des Moines Public Art Foundation has determined that the Mural is in need of repairs which will require removal of the Mural for up to one year and desires to conduct such removal and reinstallation upon completion of its repairs; and

WHEREAS, the Greater Des Moines Public Art Foundation and City staff have prepared an amendment to the Agreement to allow this temporary removal of the Mural and reinstallation upon completion of repairs as set forth herein.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa, that the Amendment to the Agreement Between The City of Des Moines and The Greater Des Moines Public Art Foundation For Installation and Maintenance of Jun Kaneko Studio, LLC/Court Avenue Pump Station Glass Mural In the Principal Riverwalk for License for Temporary Removal for Repairs and Reinstallation, a copy of which is in the City Clerk's Office, is hereby approved and the Mayor is authorized and directed to execute such amendment on behalf of the City and the City Clerk is directed to attest to his signature.

Moved by Gatto to adopt.

APPROVED AS TO FORM:

Ann DiDonato

Ann DiDonato, Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
BOESEN	✓			
GATTO	✓			
GRAY	✓			
MANDELBAUM	✓			
VOSS	✓			
WESTERGAARD	✓			
TOTAL	7			

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.

W. Frank Cownie

Mayor

P. Kay Cmelik

City Clerk

**AMENDMENT TO THE AGREEMENT BETWEEN
THE CITY OF DES MOINES
AND
THE GREATER DES MOINES PUBLIC ART FOUNDATION
FOR INSTALLATION AND MAINTENANCE OF
JUN KANEKO STUDIO, LLC/COURT AVENUE PUMP STATION GLASS MURAL
IN THE PRINCIPAL RIVERWALK
FOR
LICENSE FOR TEMPORARY REMOVAL FOR REPAIRS AND REINSTALLATION**

THIS AMENDMENT to the Agreement Between the City of Des Moines and the Greater Des Moines Public Art Foundation for Installation and Maintenance of Jun Kaneko Studio, LLC/ Court Avenue Pump Station Glass Mural In the Principal Riverwalk is made and entered into this 6th day of Dec 2021, by and between the Greater Des Moines Public Arts Foundation (“GDMPAF”) and the City of Des Moines, Iowa (“City”), (“Amendment”).

WHEREAS, on April 8, 2013, by Roll Call No. 13-0616, the City Council approved an Agreement Between The City of Des Moines and the Greater Des Moines Public Art Foundation for Installation and Maintenance of Jun Kaneko Studio, LLC/Court Avenue Pump Station Glass Mural In the Principal Riverwalk (“Agreement”); and

WHEREAS, the “Expansion” glass mural (“Artwork”) was installed by the GDMPAF on the City pump station on Court Avenue pursuant to the Agreement; and

WHEREAS, the Agreement provides in Section V that the GDMPAF is responsible for maintenance of the Artwork and Section I.6 provides that the installed Artwork may not be removed without the approval of both parties; and

WHEREAS, the GDMPAF has determined that repairs to the Artwork will require removal of the Artwork for up to one year and desires to conduct such removal and reinstallation upon completion of its repairs; and

WHEREAS, the GDMPAF and the City wish to modify the Agreement to provide for temporary removal of the Artwork and reinstallation upon completion of repairs as set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the City and the GDMPAF do hereby agree as follows:

The following new section shall be added to the Agreement:

TEMPORARY LICENSE TO REMOVE MURAL FOR REPAIRS AND TO REINSTALL
UPON COMPLETION OF REPAIRS

Section 1. The City does hereby conditionally grant unto the GDMPAF and its agents a License to enter upon City property in order to remove the Artwork for repairs to be performed by GDMPAF, and upon completion of such repairs, to install the Artwork, such work to be performed at the GDMPAF's sole cost and expense, and all work to be coordinated with the Public Works Director or his designee.

Section 2. The GDMPAF shall file with the Public Works Director proposed plans specifying the schedule showing dates and detailed plans, including the proposed areas in addition to the sculpture site, needed for the removal, and when repairs are completed, the reinstallation, work at least 7 days before beginning the work. The GDMPAF shall provide for a secure covering of the opening on the exterior wall of the pump station resulting from the removal of the Artwork to the reasonable satisfaction of the Public Works Director. All work must be coordinated with the Public Works Director and any contractors working on the site. GDMPAF agrees to provide or cause to be provided to the City all plans and details and means and methods for detaching and attaching to the Pump Station for the Artwork.

Section 3. All removal and installation work for the Artwork shall be completed in accordance with the plans and specifications approved by the Public Works Director to the reasonable satisfaction of the Director. In performing work or other activities upon the City property, the GDMPAF and its employees, agents and contractors shall perform the work in a manner to prevent damage to existing improvements or construction in progress and to minimize interference with the maintenance or construction of other riverfront improvements, and shall observe and comply with all terms and requirements contained in any permits issued by the City and shall observe and comply with all Federal, State and local laws, orders and regulations.

Section 4. The GDMPAF and its agents and contractors shall obtain, at their own cost and expense, and maintain in full force and effect, the types and amounts of insurance described in Attachment A of the PAF 2004 Agreement, which is shown herein as **Exhibit A**, which is incorporated herein by this reference. Neither the GDMPAF nor its agents and contractors shall commence such removal and reinstallation work until all required certificates of insurance and endorsements from the GDMPAF and its contractors have been submitted to and approved by the City. All certificates of insurance and endorsements shall be submitted to the Risk Manager, City Hall, 400 Robert D Ray Drive, Des Moines, Iowa, 50309. The GDMPAF and its agents and contractors covenant and specifically agree to indemnify, defend and hold the City and its officers, contractors, agents, employees and assigns harmless as provided in Exhibit A.

Any change in insurance coverage which does not comply with the requirements of Exhibit A must be reported to the City immediately in writing. Certificates as set forth in Exhibit A shall

be provided annually upon request of the City. The GDMPAF will notify the City in writing if the insurance value changes.

Section 5. The GDMPAF shall ensure that the licenses and permits necessary for removal and installation are obtained and that the area surrounding the removed and installed Artwork is promptly restored to a finished, safe, condition.

Section 6. The GDMPAF shall reinstall the Artwork by no later than one year after the date of removal, unless the Public Works Director provides a written approval of a later date. The covering of the opening resulting from the removal of the Artwork shall be immediately installed by the GDMPAF upon removal. This license to remove and to reinstall shall expire upon the occurrence of any of the following, as determined by the City: (a) default of performance by the GDMPAF in accordance with the terms and provisions of this license and the agreement; provided, however, before any such termination, the City shall give the GDMPAF written notice specifying the default(s) and stating that this license will be terminated five (5) business days after the giving of such noticed unless such default is remedied within the grace period; or (b) completion of the reinstallation of the artwork upon completion of the repairs.

Except as expressly provided herein, nothing in this Amendment shall be deemed to waive or modify any of the provisions of the Agreement. In the event of any conflict between the Agreement and this Amendment, this Amendment shall prevail.

**GREATER DES MOINES
PUBLIC ARTS FOUNDATION**



Tim R. Hickman, President

CITY OF DES MOINES, IOWA


T.M. Franklin Cowrite, Mayor

APPROVED AS TO FORM:


Ann DiDonato, Assistant City Attorney

ATTEST:


P. Kay Cmehik, City Clerk

STATE OF IOWA)

) ss:

COUNTY OF POLK)

On this 6th day of December, 2021 before me a Notary Public in and for said County, personally appeared T.M. Franklin Cownie and P. Kay Cmelik, to me personally known, who being duly sworn, did say that they are the Mayor and City Clerk, respectively of the City of Des Moines, Iowa, a Municipal Corporation, created and existing under the laws of the State of Iowa, and that the seal affixed to the foregoing instrument is the seal of said Municipal Corporation, and that said instrument was signed and sealed on behalf of said Municipal Corporation by authority and resolution of its City Council on Dec 6, 2021 by Roll Call No. 21 - 1838, and said Mayor and City Clerk acknowledged said instrument to be the free act and deed of said Municipal Corporation by it voluntarily executed.



Notary Public for State of Iowa

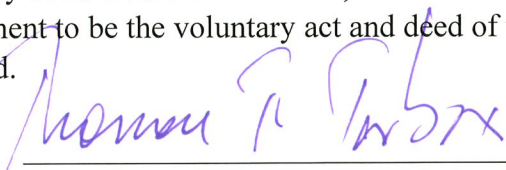


STATE OF IOWA)

) ss:

COUNTY OF POLK)

On this 2 day of December, 2021, before me the undersigned, a Notary Public in and for said County, in said State, personally appeared TIM R. HICKMAN, to me personally known, who, being by me duly sworn, did say that he is the PRESIDENT of the Greater Des Moines Public Art Foundation, an Iowa nonprofit corporation; that the instrument was signed on behalf of the corporation by authority of its Board of Directors; and that said officers acknowledged the execution of the instrument to be the voluntary act and deed of the corporation, by it and by them voluntarily executed.



Notary Public for State of Iowa

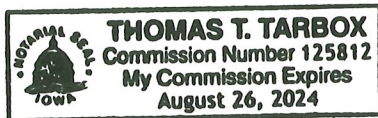


EXHIBIT A

(ATTACHMENT A FROM PUBLIC ART GDMPAF 2004 AGREEMENT)

INSURANCE AND INDEMNIFICATION REQUIREMENTS

1. GENERAL

The GDMPAF shall purchase and maintain insurance to protect the GDMPAF, the City of Des Moines, Iowa throughout the duration of the Agreement. Said insurance shall be provided by an insurance company(ies), “admitted” and “nonadmitted” to do business in the State of Iowa, having no less than an A.M. Best Rating of “B+”. All policies shall be written on a per occurrence basis, not a claims-made basis, and in form and amounts and with companies satisfactory to the City of Des Moines. Certificates of Insurance confirming adequate insurance coverage shall be submitted to the City prior to Agreement execution or commencement of work.

2. INSURANCE REQUIREMENTS

A. WORKER’S COMPENSATION & EMPLOYER’S LIABILITY INSURANCE: The GDMPAF shall procure and maintain during the life of this Agreement, Worker’s Compensation Insurance, including *Employer’s Liability Coverage*, in accordance with all applicable statutes of the State of Iowa. The coverage limits shall include \$500,000 each accident for Bodily Injury by Accident, \$500,000 each accident for Bodily Injury by Disease, and \$500,000 policy limit for Bodily Injury by Disease. **This requirement is waived if, under the law as stated in Chapter 85 of the Code of Iowa, the GDMPAF is not required to carry such coverage.**

B. COMMERCIAL GENERAL LIABILITY INSURANCE: The GDMPAF shall procure and maintain during the life of this Agreement, Commercial General Liability insurance on a per occurrence basis with limits of liability not less than \$1,000,000 per occurrence and \$2,000,000 aggregate combined single limit, Personal Injury, Bodily Injury and Property Damage. Coverage shall include the following extensions: (a) Contractual Liability, (b) Premises and Operations, (c) Products and Completed Operations, (d) Independent Contractors Coverage, (e) Personal and Advertising Injury, (f) deletion of Explosion, Collapse and Underground (XCU), where applicable.

Coverage shall be no less comprehensive and no more restrictive than the coverage provided by a standard form Commercial General Liability Policy (ISO CG 0001, Ed 07/98 with standard exclusions “a” through “o” or any subsequent ISO equivalent or a non-ISO equivalent form). Any additional exclusions shall be clearly identified on the Certificate of Insurance and shall be subject to the review and approval of the City.

C. UMBRELLA/EXCESS INSURANCE: The General Liability and Automobile Liability Insurance requirements above may be satisfied with a combination of primary and Umbrella/Excess Insurance. The Umbrella/Excess Insurance shall also be written on a per occurrence basis and shall include the same endorsements as required of the primary policy(ies).

D. CRIME INSURANCE: The GDMPAF, in order to protect the City's investment and the investments of others in the Public Arts Fund, shall procure and maintain during the life of this Agreement, Crime Insurance on an occurrence basis covering Employee Dishonesty for each loss at a limit of not less than \$100,000 and with a deductible acceptable to and approved by the City, The insurance carrier shall be liable for direct losses of money, securities, and other property of the GDMPAF caused by theft or forgery by any employee of the GDMPAF acting alone or in collusion with others who are not employees of the GDMPAF. Theft shall mean the unlawful taking of money, securities or other property to the deprivation of the GDMPAF. The above are the minimum Crime Insurance requirements to be maintained; however, these limits may be adjusted at the City's discretion subject to changes in the total value of Public Arts Fund administered by the GDMPAF.

F. FINE ARTS FLOATER: The GDMPAF shall procure and maintain during the life of this Agreement, either as a stand alone policy or a floater to an existing policy, Fine Arts coverage with a limit of not less than the total appraised value of all art owned by or on loan to the GDMPAF. The City shall verify the total appraised value by comparing the limit of coverage shown on the Certificate of Insurance and the total appraised value indicated in the annual report for the prior fiscal year filed with the City by the GDMPAF.

G. DIRECTORS AND OFFICER LIABILITY: The GDMPAF shall procure and maintain during the life of this Agreement, Directors and Officers Liability Insurance which extends coverage to include members of the Public Arts Board to be established by the GDMPAF under the terms of this Agreement.

H. SUBCONTRACTORS: The GDMPAF shall require that any of its agents and subcontractors who perform work and/or services pursuant to the GDMPAF's fulfilling the provisions of this Agreement meet the same insurance requirements as are required of the GDMPAF.

I. ADDITIONAL INSURED & GOVERNMENTAL IMMUNITY: Except for Workers Compensation, the insurance policies providing the coverages specified in B, C, and D above shall include the City of Des Moines, Iowa Additional Insured and Governmental Immunities Endorsements (see Exhibit 1).

J. CANCELLATION & MATERIAL CHANGE ENDORSEMENT: The insurance policies providing the coverages specified in A, B, C, D, E, F and G above shall include the City of Des Moines, Iowa of Des Moines Cancellation & Material Change Endorsement (see Exhibit 1).

K. PROOF OF INSURANCE: The GDMPAF shall provide to the City of Des Moines, Iowa a Certificate(s) of Insurance evidencing all required insurance coverage as provided in A through G and I and J above utilizing the latest version of the ACORD form. The Certificate(s) of Insurance shall specify under “Description of Operations/ Locations/ Vehicle/Special Items”: (1) the title of the Agreement and (2) the following statement, “*Where required, Additional Insured, Governmental Immunities, and Cancellation and Material Change endorsements have been included as per attached.*” These endorsements shall be attached to the Certificate(s) of Insurance so as to evidence their inclusion in the coverages required.

3. INDEMNIFICATION REQUIREMENTS

A. INDEMNIFICATION (HOLD HARMLESS) PROVISION: To the fullest extent permitted by law, the GDMPAF agrees to defend, pay on behalf of, indemnify, and hold harmless the City of Des Moines, its elected and appointed officials, employees and volunteers and others working on behalf of the City of Des Moines, Iowa against any and all claims, demands, suits, or loss, including any and all outlay and expense connected therewith, and for any damages which may be asserted, claimed or recovered against or from the City of Des Moines, Iowa, its elected and appointed officials, employees, volunteers or others working on behalf of the City of Des Moines, Iowa, by reason of personal injury, including bodily injury or death, and property damages, including loss or use thereof, which arises out of or is in any way connected or associated with work and/or services provided by the GDMPAF pursuant to the provisions of this Agreement. It is the intention of the parties that the City of Des Moines, Iowa, its elected and appointed officials, employees, volunteers or other working on behalf of the City of Des Moines, Iowa shall not be liable or in any way responsible for injury, damage, liability, loss or expense incurred by the GDMPAF, its officers, employees, subcontractors, and others affiliated with the GDMPAF due to accidents, mishaps, misconduct, negligence or injuries either in person or property resulting from the work and/or services performed by the GDMPAF pursuant to the provisions of this Agreement, except for an to the extend caused by the negligence of the City of Des Moines, Iowa. The GDMPAF expressly assumes full responsibility for any and all damage caused to the City of Des Moines, Iowa premises resulting from the activities of the GDMPAF, its officers, employees, subcontractors, and others affiliated with the GDMPAF.

4. WAIVER OF SUBROGATION

A. WAIVER OF SUBROGATION: To the extent permitted by law, GDMPAF hereby releases the City of Des Moines, Iowa, its elected and appointed officials, its agents, employees and volunteers and other working on behalf of the City of Des Moines, Iowa, from and against any and all liability or responsibility to the GDMPAF or anyone claiming through or under the GDMPAF by way of subrogation or otherwise, for any loss or damage to property caused by fire or any other casualty. This provision shall be applicable and in full force and effect only with response to loss or damage occurring during the time of this Agreement. The GDMPAF’s policies of insurance shall contain a clause or endorsement to the effect that such release shall

not adversely affect or impair such policies or prejudice the right of the GDMPAF to recover thereunder.

Exhibit 1 of Exhibit A

**CITY OF DES MOINES, IOWA
ADDITIONAL INSURED ENDORSEMENT**

The City of Des Moines, Iowa, including all its elected and appointed officials, all its employees and volunteers, all its boards, commissions and/or authorities and their boards members, employees, and volunteers, are included as Additional Insureds. This coverage shall be primary to the Additional Insureds, and not contributing with any other insurance or similar protection available to the Additional Insureds, whether other available coverage be primary, contributing or excess.

**CITY OF DES MOINES, IOWA
GOVERNMENTAL IMMUNITIES ENDORSEMENT
(For use when including CITY as an Additional Insured)**

1. Non-waiver of Government Immunity. The insurance carrier expressly agrees and states that the purchase of this policy and the including of the City of Des Moines, Iowa as an Additional Insured does not waive any of the defenses of governmental immunity available to the City of Des Moines, Iowa under Code of Iowa Section 670.4 as it now exists and as it may be amended from time to time.
2. Claims Coverage The insurance carrier further agrees that this policy of insurance shall cover only those claims not subject to the defense of governmental immunity under the Code of Iowa Section 670.4 as it now exists and as it may be amended from time to time.
3. Assertion of Government Immunity. The City of Des Moines, Iowa shall be responsible for asserting any defense of governmental immunity, and may do so at any time and shall do so upon the timely written request of the insurance carrier. Nothing contained in this endorsement shall prevent the carrier from asserting the defense of governmental immunity on behalf of the City of Des Moines, Iowa.
4. Non-Denial of Coverage. The insurance carrier shall not deny coverage under this policy and the insurance carrier shall not deny any of the rights and benefits accruing to the City of Des Moines, Iowa under this policy for reasons of governmental immunity unless and until a court of competent jurisdiction has ruled in favor of the defense(s) of governmental immunity asserted by the City of Des Moines, Iowa.
5. No Other Change in Policy. The insurance carrier and the City of Des Moines agree that the above preservation of governmental immunities shall not otherwise change or alter the coverage available under the policy.

**CITY OF DES MOINES, IOWA
CANCELLATION AND MATERIAL CHANGES ENDORSEMENT**

Thirty (30) days Advance Written Notice of Cancellation, Non-Renewal, Reduction in coverage and/or limits and ten (10) days written notice of non-payment of premium shall be sent to: Risk Management Office, City of Des Moines, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa, 50309. This endorsement supersedes the standard cancellation statement on the Certificate of Insurance to which this endorsement is attached.