CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

DATE: February 19, 2019

ITEM: Motion – Approval of Artist Agreement – Water Quality Temporary Artwork Proposal

FINANCIAL IMPACT: Cost not to exceed $2,000 to be paid from budgeted funds in the Public Art account (437.400.470.5400.750).

BACKGROUND: Funds are budgeted for a temporary artwork installation with the theme of water quality awareness. It is customary to pay a fee for the creation of a proposal specific to a work of art prior to contracting for the artwork itself, and the attached agreement formalizes this process. Staff and the Public Arts Advisory Commission recommend that an agreement be entered into with artist Cliff Garten to prepare one proposal at a cost not to exceed $1,000. The proposal will be reviewed by the project Work Group made up of members of the Commission and general public. If the proposal is not accepted, a second proposal may be requested for an additional $1,000.

Mr. Garten is currently completing the permanent artwork, *Even Water*, to be installed in Raccoon River Park in August. Preliminary plans are for the temporary installation to take place on September 21 during Illumifest with the dedication of *Even Water* occurring that same weekend.

The attached agreement has been reviewed by the Legal Department.

OUTSTANDING ISSUES: None

RECOMMENDATION: Staff and the Public Arts Advisory Commission recommend that the City Council approve the agreement with Cliff Garten for the Water Quality Temporary Artwork Proposal.

Lead Staff Member: Sally Ortgies, Director of Parks & Recreation

STAFF REVIEWS

Department Director	Sally Ortgies, Director of Parks & Recreation
Appropriations/Finance	Tim Stiles, Finance Director
Legal	Richard Scieszinski, City Attorney
Agenda Acceptance	

PUBLICATION(S) (if applicable)

Published In	
Dates(s) Published	

SUBCOMMITTEE REVIEW (if applicable)

Committee			
Date Reviewed			
Recommendation	Yes	No	Split

AGREEMENT BETWEEN ARTIST AND THE CITY OF WEST DES MOINES

THIS AGREEMENT is effective _____, by and between the City of West Des Moines, Iowa (WDM), having its principal offices at 4200 Mills Civic Parkway, West Des Moines, Iowa, and _____ (ARTIST), whose address is _____. ARTIST agrees to prepare and present a Design Concept for a temporary artwork that brings awareness to the issue of water quality and will be deployed at Illumifest on September 21, 2019.

ARTIST agrees to the following obligations:

1. The Design Concept shall consist of a visual rendering, written description and budget/timeline information associated with ARTIST's proposed art project. The artwork must be designed to be temporary, tell a story about water in West Des Moines and act to increase awareness of the importance of water quality and the citizen's relationship to water, and take into account safety issues. ARTIST will retain copyright of all design materials produced by ARTIST as part of this project.
2. ARTIST agrees to allow WDM to retain ownership of preliminary renderings, models and other proposal materials if ARTIST is selected for commissioning. If ARTIST is not selected for commissioning, ownership of preliminary renderings, models and other proposal materials remain the property of the ARTIST.
3. ARTIST agrees to allow WDM and Forecast Public Art (FPA) to share materials submitted by ARTIST as part of the proposal review process.
4. ARTIST agrees to present the Design Concept with the WDM Selection Group on _____ (date), at a time to be scheduled. This presentation can take place via video call, rather than in-person.
5. It is understood that WDM in no way shall be considered an agent or sales representative for ARTIST.
6. ARTIST agrees to fill out and return a W9 form to WDM to qualify for payment (form to be provided to ARTIST with this Agreement).
7. If initial Design Concept is not approved by the Selection Group and WDM's Director of Parks and Recreation issues a written request to ARTIST, ARTIST may create a second Design Concept governed by the terms and conditions of this Agreement.

Payment

8. ARTIST will be paid as follows: One thousand dollars ($1,000.00) upon completion of the ARTIST's presentation at the presentation meeting on _____(date). ARTIST must submit an invoice to WDM. Payment will be made within thirty (30) calendar days from receipt of ARTIST's invoice.

9. The payment is intended to cover costs associated with research, travel, design, budgeting and writing regarding the temporary artwork proposed by the ARTIST for the water quality awareness project, in conjunction with Illumifest, and for participating in a presentation with the Selection Group. If the performance of this Agreement involves the services of others or the furnishing of equipment, supplies, or materials by others, the ARTIST agrees to pay for the same in full.

Insurance

ARTIST understands and agrees that ARTIST shall have no right of coverage under any and all existing or future WDM comprehensive, self, or personal injury policies. ARTIST shall provide insurance coverage for and on behalf of ARTIST that will sufficiently protect ARTIST, including any agents, employees, or other personnel retained by ARTIST, in connection with the services or work which are to be provided by ARTIST pursuant to this Agreement, including protection from claims for bodily injury, death, property damage, and lost income. ARTIST shall provide any required workers' compensation insurance coverage for ARTIST and all ARTIST personnel.

Independent Contractor

ARTIST understands and agrees that the ARTIST and any agents, employees, or other personnel employed by ARTIST are not WDM employees. ARTIST shall be solely responsible for payment of salaries, wages, payroll taxes, unemployment benefits, or any other form of compensation or benefit to ARTIST or any of ARTIST's agents, employees, or other personnel performing the services or work or supplying equipment or materials specified herein, whether it be of a direct or indirect nature. Further in that regard, it is expressly understood and agreed that for such purposes neither ARTIST nor ARTIST'S agents, employees, or other personnel shall be entitled to any WDM payroll, insurance, unemployment, workers' compensation, retirement, or any other benefits whatsoever.

Hold Harmless

ARTIST shall indemnify, defend, and hold harmless WDM, its officers, agents, and employees from and against any and all loss, damage, injuries, claims, cause or causes of action, or any liability of any kind whatsoever resulting from, or arising out of, or in connection with the services/work or equipment/materials provided by ARTIST pursuant to this Agreement.

Assignment

ARTIST shall not assign or otherwise transfer this Agreement or any right or obligations therein without first receiving prior written consent of WDM.

Suspension or Termination

WDM may suspend or terminate this Agreement at any time if it is found that the ARTIST has violated any term or condition of this Agreement. In such case, the ARTIST shall have no claims against WDM except for the value of the work performed up to the date the Agreement is suspended or terminated, subject to the "Payment" provisions provided herein.

Notices and Invoice

Any notice to the parties required under this Agreement shall be in writing, delivered to the person designated below at the indicated address unless otherwise designated in writing.

CITY OF WEST DES MOINES:	ARTIST:
City of West Des Moines	Name: _____
Attn: Sally Ortgies	Attn: _____
4200 Mills Civic Pkwy.	Address: _____
P.O. Box 65320	_____
West Des Moines, IA 50265	_____

Jurisdiction and Venue

This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Iowa. Jurisdiction shall be in the Iowa District Court in and for Polk County.

(signature page to follow)

IN WITNESS WHEREOF, the parties have duly executed this Agreement effective as of the date first above written. Please print and sign two copies, retain one for your file, and return the other signed copy to WDM at the above address no later than _____ (date).

_____
ARTIST

STATE OF IOWA)
) SS
COUNTY OF _____)

This record was acknowledged before me on the ___ day of _____, 2019, by _____.
(ARTIST)

_____
NOTARY PUBLIC

CITY OF WEST DES MOINES, IOWA

_____
Sally Ortgies, Superintendent of Parks

STATE OF IOWA)
) SS
COUNTY OF _____)

On this ____ day of _____, 2019, before me, the undersigned, a Notary Public in and for the State of _____, personally appeared Sally Ortgies, who, being by me duly sworn, did say that she is the Superintendent of Parks of the City of West Des Moines, Iowa, a municipal corporation, and that she executed this record on behalf of the City of West Des Moines.

_____
NOTARY PUBLIC