# CITY OF WEST DES MOINES
# CITY COUNCIL MEETING COMMUNICATION

**DATE:** July 1, 2019

**ITEM:** Motion – Approval of Grant Agreement – Bravo Greater Des Moines – Public Art Grant

**FINANCIAL IMPACT:** Grant revenue of $50,000. The total project cost is $150,000 with the balance to be paid from budgeted funds in the Public Art account (437.400.470.5400.750).

**BACKGROUND:** The City has received a Bravo Greater Des Moines Public Art Grant in the amount of $50,000 for the Amphitheater Public Art Project. The grant application was approved by the Grant Review Team on March 21, 2019.

The Amphitheater Public Art Project will be installed at the planned City Campus Amphitheater in conjunction with or shortly following construction.

The Amphitheater Public Art Project Workgroup was formed and met twice in the fall of 2018. It is anticipated that the Workgroup will select an artist in the fall of 2019 and the artwork installed in conjunction with or shortly following completion of the Amphitheater.

Council approval of the attached grant contract is a requirement of the grant. The agreement has been submitted for review by the Legal Department.

**OUTSTANDING ISSUES:** None.

**RECOMMENDATION:** That the Council approve the Bravo Greater Des Moines Public Art Grant agreement.

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

**STAFF REVIEWS**

| | |
|---|---|
| Department Director | |
| Appropriations/Finance | |
| Legal | |
| Agenda Acceptance | |

**PUBLICATION(S)** (if applicable)

| | |
|---|---|
| Published In | |
| Dates(s) Published | |

**SUBCOMMITTEE REVIEW** (if applicable)

| | | | |
|---|---|---|---|
| Committee | Grant Review Team | | |
| Date Reviewed | 3/21/19 | | |
| Recommendation | **Yes** | No | Split |

GREATER DES MOINES

**GC19 PUBLIC ART GRANT (PAG)**
**GRANT AGREEMENT**

**RECIPIENT: West Des Moines Parks and Recreation Department**

**PROJECT: Amphitheater Public Art Project**

**GRANT AWARD: $50,000**

**TOTAL PROJECT COST: $150,000**

**FUNDING TERM: July 1, 2019-June 30, 2020**

Failure to adhere to the terms herein may result in forfeiture of the grant award and may impact the eligibility of West Des Moines Parks and Recreation Deptartment ("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 sufficient funds for the GC19 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 herby agrees that grant funding will be used 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. Any and all grant funds not expended in a manner agreed to by Recipient and Bravo will result in the return of funds to Bravo.

**2.4 Cost Variation** In the event that the actual project cost is less than the Total Project Cost amount specified in this Agreement, the Grant award may be reduced by the same ratio as the difference between the actual costs and the Total Project Cost specified in this Agreement divided by the Total Project Cost. Any Grant funds disbursed in excess of the reduced amount may need to be returned to Bravo.

Example: If the total amount spent to complete the Project is less than the Total Project Cost specified in this Agreement, Bravo shall calculate the amount of Grant funds to be returned as follows:

1. The actual amount spent on the project within the Funding Term is subtracted from the Total Project Cost specified in the Agreement to determine the change in the Project cost.
2. The change in the Project cost is divided by the Total Project Cost specified in the Agreement.
3. This percentage is multiplied by the original Grant Award.
4. The product is the amount of the Grant Award that Recipient must return to Bravo.

**2.5 Prior Costs** No expenditures made prior to the start of the Funding Term may be included as Project costs for the purposes of this Agreement.

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

**Section 3 – REPORTS**
Recipient shall prepare and submit reports as specified below in the form and content specified by Bravo. Upon the request of Bravo, additional progress reporting may be required during the duration of this Agreement.

1. Midterm Report shall be provided by January 15, 2020.
2. Final Report shall be provided by July 31, 2020.

**Section 4 – COVENANTS OF RECIPIENT**
**4.1 Affirmative Covenants** Until the terms of this Agreement are fulfilled, Recipient covenants to Bravo that:

(a) **Project work; Operation & Maintenance** Recipient shall complete the Project by June 30, 2020. For the purposes of this section, "complete" means the Project is fully constructed and operational at a level acceptable to Bravo or if the Project is a municipal public art plan, "complete" means the Project is in its final, publishable form.

(b) **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.

(c) **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 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) **Failure to Complete Project** The Project, in the sole judgment of Bravo, is not completed within the effective dates of this Agreement. For the purposes of this section, "completed" means the Project is fully constructed and operational or is in its final, publishable form.

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

(e) **Misspending** Recipient expends Grant funds for purposes not described in the PAG Application as approved by Bravo.

(f) **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.

(g) **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.

(h) **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.

(i) **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 (1) 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.

_____ _____
Authorized Officer Date