

TEMPORARY RIGHT-OF-ENTRY

City of Des Moines, Iowa, a municipal corporation (hereinafter referred to as the "City") for and in consideration of One and No/100 Dollars (**\$1.00**) by the Edmundson Art Foundation, Inc. d/b/a Des Moines Art Center, an Iowa non-profit corporation (hereinafter referred to as the "Grantee"), does hereby grant to Des Moines Art Center, 4700 Grand Avenue, Des Moines, Iowa, a Temporary Right-of-Entry under, over, through and across the following described property:

THE AREA OF THE GREENWOOD POND: DOUBLE SITE ART INSTALLATION BY MARY MISS
WITHIN GREENWOOD PARK.

(hereinafter referred to as the "Property") for the limited purpose of allowing Grantee, its agents, contractors and employees access thereto for the purpose of the removal, demolition and restoration of the Greenwood Pond: Double Site Artwork by artists Mary Miss at Greenwood Park (hereinafter referred to as the "Project"). The said Right-of-Entry shall be for the limited purpose of allowing personnel and equipment thereon to perform all work required for the Project.

1. **PROJECT PLANS**. All work required for the Project shall be subject to all permitting requirements of the City and shall be completed in accordance with current Iowa Statewide Urban Design and Specifications (SUDAS) Standard Specifications. Grantee shall submit plans for the work to be completed for the Project to the City's Park and Recreation Director for review and approval, prior to commencing work on the Project. The Project plans shall include anticipated start and end dates, ingress and egress to the Property, staging, contractor parking, construction fencing, tree protection, erosion control, location of onsite signage which lists Des Moines Art Center project contact information, any other requirements of the City codes and ordinances, along with a detailed exhibit of said work to be completed, the exhibit is attached herein as Exhibit A.
2. **NOTICE TO PROCEED**. Grantee shall not commence work on the Project until a written Notice to Proceed is issued from the City's Permit and Development Services Department and the Parks and Recreation Director.
3. **FINAL ACCEPTANCE**. Grantee shall meet with the City for a final walkthrough of the work completed for the Project and shall address all of the City's concerns to the satisfaction of the City's Park and Recreation Director.
4. **TREE PROTECTION**. Grantee's work for the Project shall not include any cutting, recutting, trimming and removal of trees, branches, brush or other vegetation or plantings located on or adjacent to the Property, unless written pre-approval is granted by the City's Park and Recreation Director.
5. **DURATION**. It is understood and agreed that this grant allowing entry in, upon and onto the Property shall be in effect beginning on the date that the City signs this document until completion of the Project as above described and outline in the project plans.

6. **COMPENSATION.** It is a condition of this grant that the consideration paid by the Grantee for this Right-of-Entry shall constitute compensation only for the temporary rights herein granted. As further consideration, Grantee agrees to provide the following at Grantee's sole cost and expense:
 - a. Keep the Property free from nuisances and debris; and
 - b. Honor current Greenwood Park rentals and events occurring in the project limits and the adjacent Sylvan Amphitheater.
 - c. Maintain the Property in a safe condition.
7. **SECURITY.** The Grantee agrees that it will provide any and all security measures necessary for the Property. Grantee agrees that the City shall not be responsible, or be in any way liable, for any damages sustained as a result of the Grantee's use of the Property or the use thereof by Grantee's agents, contractors, employees, invitees, guests, or any other party.
8. **ACCESS AND EASEMENTS.** Grantee shall not interfere with or in any way prohibit the City or its authorized agents from use of the Property. The City and its authorized agents shall have the right to reasonably enter upon and inspect the Property, including ingress and egress and surrounding area. This Right of Entry is granted subject to any and all easements for existing utilities, restrictions and covenants on the Property.
9. **RESTORATION/REMOVAL OF EQUIPMENT.** Upon completion of the Project, Grantee shall restore the Property to its original condition or better as reasonably possible, including but not limited to restoration of grading, drainage, trees, landscaping and turf by sodding or seeding, replacement of concrete or asphalt driveways, trails, and walks removed for grading or access purposes, and replacement of fences or other structures that may be removed or damaged by Grantee during the course of the Project. It is further understood and agreed that Grantee will remove all of its equipment from the Property prior to the expiration of this Agreement, or within 10 days after the Project has been completed, whichever date comes first.
10. **NOTICES.** Notices to City pursuant to this Agreement shall be in writing and may be given by either party to the other by personal delivery, e-mail, regular mail, or overnight mail as follows:

CITY:

Daniel Calvert
DJCalvert@dmgov.org
 Park and Recreation Department
 City of Des Moines
 1551 E. Martin Luther King, Jr. PKWY
 Des Moines, IA 50317

AND

Kerry Enger
klenger@dmgov.org
 Real Estate Division
 City of Des Moines
 400 Robert D. Ray Drive
 Des Moines, Iowa 50309-1891

GRANTEE:

Kelly Baum
 John and Mary Pappajohn Director
kbaum@desmoinesartcenter.org
 Des Moines Art Center
 4700 Grand Avenue
 Des Moines, Iowa 50312

11. **TERMINATION.** This Agreement shall be continued for the fixed term herein provided, except that if Grantee shall fail to meet any of the terms included in this Agreement, as determined by City,

then this Agreement shall at the election of the City be terminated prior to the end of the fixed term upon providing written notice by City to Grantee in the manner provided above for notice to Grantee. In addition, either party may terminate this Agreement prior to the end of the fixed term, with or without cause, upon ten (10) days written notice to the other party in the manner provided above for notice to said party.

12. **INSURANCE/RELEASE OF LIABILITY**. Grantee agrees to purchase and maintain insurance in accordance with the insurance requirements set forth in Exhibit "A" to protect the Grantee and the City of Des Moines, Iowa throughout the duration of this Temporary Right-of-Entry. Grantee shall not commit any act which shall invalidate any policy of insurance. Grantee shall defend, indemnify and hold harmless the CITY in accordance with the indemnification requirements set forth in Exhibit "A". Grantee shall be subject to all terms and provisions set forth in Exhibit "A" and the exhibits thereto.

ACCEPTANCE BY GRANTEE:

Des Moines Art Center

By: Kelly B —

Please Print: Kelly Baum

Date April 2, 2024

ACCEPTANCE BY CITY:

Executed on behalf of the City of Des Moines by authority of the City Council as defined in Ordinance No.15,639

Dwayne Myers
Dwayne Myers, Real Estate Division Manager
Date 4-2-24

Approved as to Form:

Glenna K. Frank
Glenna K. Frank, Assistant City Attorney

ATTACHMENT 1

CITY STANDARD ACCESS AGREEMENT – MAJOR

INSURANCE & INDEMNIFICATION REQUIREMENTS

For the purposes of this Attachment and all provisions included herein, the term “CITY” shall mean the City of Des Moines, Iowa, including its elected and appointed officials, employees, agents, volunteers, boards, commissions and others working on its behalf.

1. GENERAL

The GRANTEE shall purchase and maintain insurance to protect the GRANTEE and CITY throughout the duration of the Agreement to which these Requirements are attached (hereinafter “Agreement”). Said insurance shall be provided by an insurance company(ies), “admitted” and “non-admitted” 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. Certificates of Insurance confirming adequate insurance coverage shall be submitted to the CITY prior to Agreement execution or commencement of GRANTEE’S use or occupancy of CITY property including that of GRANTEE’S officers, agents, employees, contractors, subcontractors, and any other party working for, through, or on behalf of GRANTEE.

The City of Des Moines, Iowa hereby reserves the right to revise and enforce the requirements in this Attachment over the term of this Agreement but only after providing GRANTEE at least sixty (60) days advance written notification of any such change

2. INSURANCE REQUIREMENTS

- A. COMMERCIAL GENERAL LIABILITY INSURANCE: Commercial General Liability insurance on an occurrence basis with limits of liability not less than \$1,000,000 per occurrence and \$2,000,000 aggregate combined single limit covering Personal Injury, Bodily Injury and Property Damage. Coverage shall include: (a) Contractual Liability, (b) Premises and Operations, (c) Products and Completed Operations, (d) Independent Contractors Coverage, (e) Personal and Advertising Injury and (f) Explosion, Collapse and Underground – XCU (when applicable). ***Waiver of Subrogation in favor of the CITY is required as per Paragraph 2.G. below.***

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 including standard exclusions or a non-ISO equivalent form).

- B. UMBRELLA/EXCESS LIABILITY INSURANCE: The Liability Insurance requirements above may be satisfied with a combination of primary and Umbrella or Excess Liability Insurance. If the Umbrella or Excess Insurance policy does not follow the form of the primary policies, it shall include the same endorsements as required of the primary policies including a ***Waiver of Subrogation in favor of the CITY is required as per Paragraph 2.G. below.***
- C. WORKER’S COMPENSATION & EMPLOYER’S LIABILITY INSURANCE: As required by State of Iowa Workers’ Compensation Law, the GRANTEE shall procure and maintain Worker’s Compensation Insurance, including Employer’s Liability Coverage. The Workers’ Compensation Insurance shall be written with State of Iowa statutory limits. If, by Iowa Code Section 85.1A, the GRANTEE is not required to purchase Workers’ Compensation Insurance, the GRANTEE shall have a

copy of the State's Nonelection of Workers' Compensation or Employers' Liability Coverage form on file with the Iowa Workers' Compensation Insurance Commissioner, as required by Iowa Code Section 87.22. ***Waiver of Subrogation in favor of the CITY is required as per paragraph 2.G. below.***

- D. **ADDITIONAL INSURED ENDORSEMENT:** The General Liability Insurance policy shall include standard ISO endorsements CG 20 26 07 04 and CG 20 37 07 04 or their non-ISO equivalents. GRANTEE'S insurance shall be primary to that of the CITY and noncontributory to any other insurance or similar coverage available to the CITY whether the other available coverage is primary, contributing or excess.
- E. **GOVERNMENTAL IMMUNITY ENDORSEMENT:** The General Liability Insurance policy shall include the CITY Governmental Immunities Endorsement language as provided below. Standard ISO or insurance carrier "Waiver of Immunity" endorsements are not acceptable.

**CITY OF DES MOINES, IOWA
GOVERNMENTAL IMMUNITIES ENDORSEMENT**

1. **Nonwaiver 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 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. Those claims not subject to Code of Iowa Section 670.4 shall be covered by the terms and conditions of this insurance policy.
 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, Iowa agree that the above preservation of governmental immunities shall not otherwise change or alter the coverage available under the policy.
- F. **CANCELLATION & NONRENEWAL NOTIFICATION ENDORSEMENT:** The Workers Compensation Insurance, General Liability Insurance and Automobile Liability Insurance policies shall include a policy endorsement providing the CITY with no less than thirty (30) days Advance Written Notice of Cancellation, forty-five (45) days Advance Written Notification for Nonrenewal and ten (10) days Written Notification of Cancellation due to non-payment of premium. ***Written notifications shall be sent to: City of Des Moines, Real Estate Division, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa 50309.***

- G. **WAIVER OF SUBROGATION:** To the fullest extent permitted by law, GRANTEE hereby releases the CITY from and against any and all liability or responsibility to the GRANTEE or anyone claiming through or under the GRANTEE by way of subrogation or otherwise, for any loss without regard to the fault of the CITY or the type of loss involved, including loss due to occupational injury. This provision shall be applicable and in full force and effect only with respect to loss or damage occurring during the time of this Agreement. The GRANTEE'S policies of insurance shall contain either a policy provision or endorsement affirming the above stated release in favor of the CITY including its elected and appointed officials, agents, employees and volunteers, and others working on its behalf.
- H. **PROOF OF INSURANCE:** The GRANTEE shall provide the following proof of insurance to the CITY:
- Certificates of Insurance evidencing all insurance coverage as required in paragraphs A through G above utilizing the latest version of the ACORD form. The Certificate(s) of Insurance shall specify the Title of the Agreement under "Description of Operations/Locations/Vehicle/Special Items" and indicate Waiver of Subrogation by marking the corresponding boxes on COI and/or including a statement of compliance under Description of Operations.
 - A copy of the Cancellation and Nonrenewal Notification Endorsements required in paragraph 2.F. above, or its equivalent.
 - Copies of Additional Insured Endorsements ISO CG 20 26 07 04 and ISO CG 20 37 07 04 or their equivalents as required in paragraph 2.D. above.
- Mail Certificate of Insurance to: City of Des Moines, Real Estate Division, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa 50309.**
- I. **AGENTS, CONTRACTORS AND SUBCONTRACTORS:** The GRANTEE shall require all its agents, contractors and subcontractors who perform work and/or services on behalf of the GRANTEE to purchase and maintain the types of insurance customary to the industry or trade related to the services being provided.
- J. **RESPONSIBILITY FOR THE PROPERTY OF OTHERS** – GRANTEE shall assume full responsibility for all loss or damage from any cause whatsoever to any property brought onto CITY property that is owned or rented by GRANTEE, or any of GRANTEE'S employees, agents, contractors, subcontractors or any other party working for, through, or on behalf of GRANTEE.

3. INDEMNIFICATION REQUIREMENTS

To the fullest extent permitted by law, GRANTEE agrees to defend, pay on behalf of, indemnify, and hold harmless the CITY against any and all claims, demands, suits, damages or losses, together with any and all outlay and expense connected therewith, including, but not limited to, attorneys' fees and court costs, that may be asserted or claimed against, recovered from or suffered by the CITY by reason of any injury or loss, including, but not limited to, personal injury, bodily injury including death, property damage including loss of use thereof, and economic damages that arise out of or are in any way connected or associated with the Agreement and/or GRANTEE'S use or occupancy of CITY property including that of GRANTEE'S officers, agents, employees, contractors, subcontractors and others under the control GRANTEE.

GRANTEE's obligation to indemnify the CITY contained in this Agreement is not limited by the amount or type of damages, compensation or benefits payable under any workers' compensation acts, disability benefit acts, or other employee benefits acts.

The CITY shall not be liable or in any way responsible for any injury, damage, liability, claim, loss or expense incurred by GRANTEE arising out of or in any way connected or associated with the Agreement and/or GRANTEE's use or occupancy of CITY property including that of GRANTEE'S officers, agents, employees,

contractors, subcontractors and others under the control GRANTEE, except to the extent caused by or resulting from the negligence of the CITY.

GRANTEE expressly assumes responsibility for any and all damage caused to CITY property arising out of or in any way connected or associated with the Agreement and/or GRANTEE'S use or occupancy of CITY Property including that of GRANTEE'S officers, agents, employees, contractors, subcontractors and others under the control GRANTEE.

GRANTEE shall ensure that its activities on CITY property will be performed and supervised by adequately trained and qualified personnel, and GRANTEE will observe all applicable safety rules.