



City of La Quinta

CITY / SA/ HA/ FA MEETING DATE: March 17, 2015

ITEM TITLE: APPROVE A TEMPORARY ART DONATION AGREEMENT WITH GOLDENVOICE FOR ARTWORK TO BE PLACED AT THE JEFFERSON STREET ROUNDABOUT

AGENDA CATEGORY:

BUSINESS SESSION:

CONSENT CALENDAR: 16

STUDY SESSION:

PUBLIC HEARING:

RECOMMENDED ACTION:

Approve a temporary art donation agreement with Goldenvoice for artwork to be placed at the Jefferson Street/Avenue 52 roundabout and authorize the City Manager to make adjustments to the agreement as necessary.

EXECUTIVE SUMMARY:

- Goldenvoice desires to locate a large aluminum and steel sculpture of a roadrunner in the Jefferson Street/Avenue 52 roundabout.
- The Temporary Art Donation Agreement allows for the artwork to remain at the roundabout for five years, with a time extension upon mutual agreement.
- Goldenvoice would deliver this sculpture prior to the April 2015 Coachella Arts and Music Festival and Stagecoach events.

FISCAL IMPACT:

The City would fund \$15,000 of improvements, which include anchoring the art piece to the ground, providing electrical power connections for internal lighting and up lighting, and landscape and irrigation modifications. Annual maintenance is estimated at \$1,000. Funds are available in the Art in Public Places Fund.

AGREEMENT FOR TEMPORARY LOAN OF ARTWORK

THIS TEMPORARY LOAN AGREEMENT ("Agreement") is entered into this ____ day of _____, 2015, by and between the City of La Quinta, a California municipal corporation and charter city ("City"), and Goldenvoice, LLC ("Owner").

RECITALS

WHEREAS, the Owner is the owner of the Artwork described in this Agreement; and

WHEREAS, the City desires to increase public awareness and exposure to the arts in a cost effective manner for the general welfare and benefit of the City's residents; and

WHEREAS, the City and the Owner desire that the City temporarily have custody and possession of the Artwork for the purposes of public display and enjoyment; and

WHEREAS, the City wishes to accept and the Owner wishes to loan on a temporary basis the Artwork; and

WHEREAS, the parties desire by this Agreement to provide for the parties' respective interests in the Artwork and for procedures and understandings governing its use, custody, protection and public enjoyment.

TERMS

NOW, THEREFORE, the parties hereto agree as follows:

1. Description of Artwork. This Agreement pertains to the loan an aluminum sculpture of a Roadrunner of art (collectively referred to in this Agreement as "Artwork"). The Artwork is more fully and specifically described in Exhibit "A," attached hereto and incorporated herein by this reference, with reference to their titles, types of work, the approximate size of each, the appraised value of each, and whether they are dated, signed, and framed.

2. Duration of Loan. The City shall accept the temporary loan of Artwork for a period of five years, commencing on installation of the Artwork, which installation shall be completed on or before June 1, 2015, and ending on the loan termination date of five years from the installation date (the "Loan Period"). The Loan Period may be shortened or lengthened in duration by mutual agreement between the Owner and the City.

3. Location of Artwork. The Owner agrees that the City shall have sole and absolute determination as to the location and placement of the Artwork. In the event the Owner does not approve of the proposed location, the Owner may cancel this Agreement.

4. Transport and Installation. All transportation of the Artwork and proper removal from the City's site shall be the responsibility of the Owner, unless otherwise agreed to by the City in writing. City shall bear the reasonable costs for a traffic control plan, proper installation, up lighting, and proper de installation of the Artwork.

5. Condition, Use, and Care of Artwork. The Owner certifies that the Artwork is in good condition unless and except as specifically noted in writing. During the Loan Period, the City shall not loan the Artwork for exhibition or other usage away from the City site without the prior written consent of the Owner. Upon expiration or termination of this Agreement, the City shall return the Artwork to the Owner in as good condition as when the City took possession thereof, ordinary wear, tear, degradation and inherent vice excepted. More specifically, the Owner agrees and understands that the Artwork will be subject to ordinary wear and tear, including but not limited to natural fading due to sunlight exposure, while on display and that the City will not be held liable for such changes in condition. While the Artwork is in the possession and care of the City, the Owner shall provide the City with written instructions for appropriate maintenance of the Artwork. During the Loan Period, the City shall be responsible for the maintenance of the Artwork. Each Artwork will be presumed to have been received by the City and, in turn, by the Owner in the same condition, unless written notice of a change in condition or damage is given to the other party and the carrier, if applicable, immediately upon receipt. Should the Artwork appear to be damaged in packing and transport, all packing materials must be saved until the City, the Owner, and the carrier, if applicable, have had the opportunity to inspect them. The City and the Owner will provide condition photographs and the opportunity to inspect any damaged object if necessary.

6. Insurance for Artwork. The City shall insure the Artwork against damage or loss in the amount of \$40,000, which the parties agree is the fair market value of the Artwork and the extent of the City's liability in the event of damage or loss. The City's obligation to provide insurance is solely for the duration of the Loan Period and only while the Artwork is located on the City's property, excluding installation and de-installation.

7. Termination. In the event that the City determines, at its sole discretion, that it no longer desires to display the Artwork, then the City may terminate this Agreement upon a sixty (60) days' notice to the Owner, and the Artwork shall be removed by the Owner in accordance with the terms stated in Section 4 within a reasonable period of time after Owner's receipt of the Notice of Termination by the City, not to exceed thirty (30) days from the date of the Notice of Termination or a longer period specified by the City in the Notice of Termination. The City shall have the right but not the obligation to dispose of the Artwork if Owner has not removed the Artwork within the period set forth in this Section (or longer period specified in the Notice of Termination), or within thirty (30) days after the expiration of the Loan Period where no early termination notice is provided. A failure to remove the Artwork by Owner shall be deemed to convert the temporary loan into a permanent donation to the City, and the City shall thereafter be deemed to have obtained full title to the Artwork.

8. Title to Artwork. Except as otherwise provided in this Agreement, the Artwork shall remain the property of the Owner. However, by virtue of this Agreement,

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the City is entitled to custody and possession, and the Owner agrees to relinquish custody and possession of the Artwork for the Loan Period. The Owner shall retain all rights under the Copyright Act of 1976, 17 U.S.C. Sections 101 *et seq.*, and all other rights in and to the Artwork except custody and possession, except as such rights are limited by this Agreement.

9. Sale of Artwork. The Owner may sell the Artwork during the term of this Agreement and, if sold, may assign his/her rights under this Agreement. However, under no circumstances shall sale of this Artwork terminate this Agreement or adversely affect the City's rights hereunder including, but not limited to, the City's right to custody and possession. The Owner shall notify the City immediately upon sale of the Artwork.

10. Warranty of Title and Rights of City. The Owner warrants that it is the owner of the Artwork, that to the best of its knowledge the Artwork is not presently subject to claims of ownership, lien, or encumbrance or to common law or statutory copyright claims of any other person, institution, or domestic or foreign government, and that the Owner has complied with all applicable domestic and foreign customs and export/import regulations. The Owner hereby grants to the City, in perpetuity, the right to photograph, film, videotape, or otherwise depict the Artwork at any time during the Loan Period and to use such photographs, film videotapes or depictions at any time thereafter for purposes of promotion relating to the exhibition or the City, provided the City gives credit to the Owner concurrently with such uses.

11. Credit Line and Identification of Owner. During the Loan Period, upon the City's request, Owner shall install and maintain a plaque, in a form acceptable to the City and Owner, near the Artwork identifying the Owner. If the City has requested the installation of a plaque, then Owner shall de-install and remove the plaque upon the expiration or termination of this Agreement. The City shall bear the reasonable costs for the installation and removal of the plaque in accordance with Section 4 of this Agreement. In addition, in any public announcements or promotion of the Artwork or the City that utilize images of the Artwork, the City shall use the following credit line for the Artwork: "Roadrunner" on loan to City from Goldenvoice".

12. Integration. This Agreement, consisting of 6 pages and 2 exhibits, embodies the entire agreement and understanding between the parties hereto, and there are no other agreements and understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby, except as set forth in this Agreement.

13. Amendment/Modification. No alteration, change, or modification of the terms of this Agreement shall be valid unless made in writing and signed by each party hereto and approved by appropriate action of the City.

14. Non-Waiver. No waiver of performance by either party shall be construed as or operate as a waiver of any subsequent default of any terms, covenants, and conditions of this Agreement.

15. Governing Law. This Agreement, regardless of where executed or performed, shall be governed by and construed in accordance with the laws of the State of California.

16. Venue. In addition to any other rights or remedies and subject to the restrictions otherwise set forth in this Agreement, either party may institute legal action to seek specific performance of the terms of this Agreement, to recover damages, or to obtain any other remedy, at law or in equity, consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the County of Riverside, in an appropriate Riverside County municipal court, or in the Federal District Court in the district of California which includes Riverside County.

17. No Personal Liability. No elected or appointed official, officer, employee, or agent of the City or Owner shall be charged personally with any liability under any term or provision of this Agreement.

18. Attorneys' Fees. If any party to this Agreement brings a legal action or proceeding against another party to enforce the provisions of this Agreement, or on account of a claim or dispute arising out of this Agreement, then the prevailing party in such arbitration or legal action or proceeding shall be entitled to reimbursement by the other party of the legal fees and costs, including reasonable attorneys' fees, incurred by the prevailing party in connection with the legal action or proceeding; provided, however, that the attorneys' fees awarded pursuant to this Section shall not exceed the hourly rate paid by the City for legal services multiplied by the reasonable number of hours spent by the prevailing party in the conduct of the legal action or proceeding.

19. Binding. This Agreement shall be binding upon and shall inure to the benefit of the City and the Owner and their respective heirs, personal representatives, successors and permitted assigns.

20. Notices. All notices, requests, demands, and other communications which are required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given upon the delivery or receipt thereof, as the case may be, if delivered personally or sent by registered or certified mail, returned receipt requested, postage prepaid, as follows:

To the City: City of La Quinta
Attn: Edie Hylton, Deputy City Manager
78495 Calle Tampico
La Quinta, CA 92253

To the Owner: Goldenvoice
Attn: Skip Paige, Chief Operating Officer
5750 Wilshire Blvd, Suite 501
Los Angeles, CA 90036
skip@goldenvoice.com



21. Severability. If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal, void, or unenforceable, that term shall be severed from and shall not affect the validity and enforceability of the remaining portions of this Agreement.

22. Headings. The paragraph headings herein are used only for ease of reference, and do not limit, modify, construe, or interpret any provision of this Agreement.

23. Assignment. This Agreement may not be assigned, either in whole or in part, by either party without the express written consent of the other, in advance. The assignee under any permitted assignment shall have all the rights and remedies of the original parties insofar as the same are assignable.

24. Execution of Agreement. The persons executing this Agreement on behalf of each of the parties hereto represent and warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) that entering into this Agreement does not violate any provision of any other agreement or contract to which said party is bound.



IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates stated below.

CITY: CITY OF LA QUINTA a California municipal corporation

Frank J. Spevacek, City Manager

Date

ATTEST:

Susan Maysels, City Clerk

APPROVED AS TO FORM:

William Ihrke, City Attorney

Owner: **GOLDENVOICE, LLC**

By:  _____

Name: Skip Paige

Title: Chief Operating Office

Date: 3-12-2015

EXHIBIT "A"

DESCRIPTION OF ARTWORK

The Roadrunner is a eighteen feet (18') long and twelve feet (12') high aluminum structure. The structure is wired internally to light the eyes if desired. The swing will be removed prior to transportation and installation. The cost of the artwork is estimated at \$40,000.





