



City of Grand Island

Tuesday, October 10, 2017

Council Session

Item I-1

#2017-288 - Consideration of a Bill of Sale and Assignment of Rights for the Transfer of the Kaneko Sculptures to the City of Grand Island

Staff Contact: Jerry Janulewicz

Council Agenda Memo

From: Jerry Janulewicz, City Attorney

Meeting: October 10, 2017

Subject: Acceptance of Kaneko Sculptures

Presenter(s): Jerry Janulewicz, City Attorney

Background

Grow Grand Island, Inc., a Nebraska nonprofit corporation, Grow Grand Island Arts & Humanities Committee, and the Grand Island Community Foundation, hereinafter jointly referred to as the “Donors”, collaborated to provide funding for and purchase of two ceramic sculptures created by artist Jun Kaneko to be donated to the City of Grand Island. The sculptures are installed at Railside Plaza in downtown Grand Island. In addition to the gift and assignment of license rights, the Grand Island Community Foundation holds \$10,000 in an encumbered account to be utilized to pay the City’s property insurance deductible if the sculptures are damaged.

Discussion

In addition to the donation of the physical sculptures donors obtained assignment of certain of the artist’s rights and waiver of rights under the Visual Artists Rights Act of 1990 (VARA), 17 U.S.C. § 106A, a United States law granting certain rights to artists. The donation of the sculptures is accompanied by an assignment of license rights under VARA.

Alternatives

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve
2. Move to deny

Recommendation

City Administration recommends that the Council adopt the resolution accepting the gift of the sculptures and the assignment of license.

Sample Motion

Move to approve ratify and approve the resolution accepting the gift of the Kaneko sculptures and assignment of license.

DECLARATION OF GIFT AND ASSIGNMENT

GRAND ISLAND COMMUNITY FOUNDATION, INC., a Nebraska nonprofit corporation, and GROW GRAND ISLAND ARTS & HUMANITIES COMMITTEE, hereinafter jointly referred to as the "DONORS", do hereby give, grant, and transfer to the CITY OF GRAND ISLAND, NEBRASKA, hereinafter referred to as "CITY," all DONORS' right, title, and interest in and to two ceramic sculptures created by artist Jun Kaneko as set forth and depicted in the License Agreement dated August 24, 2017, by and among Jun Kaneko Studio, L.L.C., Jun Kaneko, and GROW GRAND ISLAND ARTS & HUMANITIES COMMITTEE, attached hereto and marked "Exhibit A".

Further, DONORS do hereby assign and transfer to CITY all DONORS' right, title, and interest in and to the License Agreement dated August 24, 2017, by and among Jun Kaneko Studio, L.L.C., Jun Kaneko, and GROW GRAND ISLAND ARTS & HUMANITIES COMMITTEE.

Date: _____, 2017

GROW GRAND ISLAND ARTS & HUMANITIES COMMITTEE

By: _____

Tammy Morris, Chair

GRAND ISLAND COMMUNITY FOUNDATION

By: _____

Melissa DeLaet, CEO

Accepted by the CITY OF GRAND ISLAND, NEBRASKA

Date: _____, 2017

By: _____ Jeremy L. Jensen

[attest]

_____ RaNae Edwards, City Clerk

LICENSE AGREEMENT

This License Agreement dated as of August 24, 2017 (this "Agreement") is made between Jun Kaneko Studio, L.L.C. "ARTIST" and the Grow Grand Island Arts & Humanities Committee "PURCHASER".

Whereas, ARTIST was previously the sole and exclusive owner of, all rights, title and interest, including but not limited to all copyright, in and to two ceramic sculptures (hereinafter referred to as the "Work") and shown in the photograph attached hereto as Exhibit A.

Whereas, Mr. Jun Kaneko, an individual ("Jun Kaneko"), as the creator of the design embodied in the Work, holds certain rights relating to the Works pursuant to the Visual Artists Rights Act of 1990, 17 U.S.C. §106A, as the same may be amended from time to time ("VARA").

Whereas, PURCHASER previously acquired all of ARTIST's legal and equitable interest in and to the Work, other than the copyright which was not transferred by ARTIST, for the purpose of donating the work to the City of Grand Island ("City") pursuant to a separate agreement.

Whereas the PURCHASER and the City have requested (a) that ARTIST grant a license to the City, as donee and immediate transferee of the PURCHASER, to reproduce images of the Works and (b) a waiver from Jun Kaneko of certain rights under VARA.

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and with the intention of being legally bound hereby:

1. Original Work.

Each of ARTIST and Jun Kaneko hereby represents and warrants that the Work is original to Jun Kaneko and that the Work is unique, and will not infringe any copyright, trademark, trade dress rights, patent, right of privacy or right of publicity, contain any libelous or scandalous material, or infringe or violate any other right of any third party, including, but not limited to, other intellectual property or claims by third parties that the Work is proprietary to them. ARTIST further represents and warrants that, as of the date the Work was sold to PURCHASER, the ARTIST was the sole and exclusive owner of all right, title and interest, including but not limited to all copyright, in and to the Work, and no other person or entity, other than Jun Kaneko as the creator of the design embodied in the Work, has any rights (as an owner, licensee or otherwise) in or to the Work and that, other than copyright, the ARTIST has transferred all right, title and interest in and to the Work to the PURCHASER. ARTIST hereby further represents and warrants that, as of the date the Work was sold to PURCHASER, ARTIST had clear, unencumbered title to the Work including the material and medium constituting the Work. The terms and provisions of this Section shall survive the expiration or termination of this Agreement.

2. Reservation, Waiver and Transfer of Rights in the Work.

- a. ARTIST reserves all copyright and reproductive rights in the Work, including the right to claim statutory copyright (the Copyright Act of 1976 and subsequent amendments) in the Work, except as such rights are limited by this Agreement. By execution hereto, Jun Kaneko

unconditionally waives all rights, claims and causes of action under VARA which could be asserted to (i) prevent the installation or subsequent removal of the Work or (ii) form the basis of a claim that (A) the installation or removal or relocation of the Work or (B) the alteration of the surroundings of the Artwork, including without limitation, the architecture, landscaping, fixtures or furniture, is a distortion, mutilation, modification, relocation, or destruction of the Artwork in whole or in part, whether intentional or unintentional or prejudicial to the honor or reputation of Artist. For the avoidance of doubt, the foregoing waiver does not modify or otherwise impair the right of Jun Kaneko to require attribution of the Work or, alternatively, require the removal of attribution following any of the actions identified in the immediately preceding sentence being taken by the City.

- b. The ARTIST hereby irrevocably grants, transfers, conveys, assigns and sets over to the PURCHASER and the City, as the immediate transferee thereof, a worldwide, perpetual, irrevocable, royalty-free, non-transferable, non-sublicensable, exclusive license to use, display, exhibit, prepare derivative works of, distribute copies of, photograph, video, and otherwise reproduce two-dimensional images of the Work which, absent the prior approval of the Artist (which shall not be unreasonably withheld), shall be solely on a non-commercial basis, for educational purposes or for the purpose of promoting the City of Grand Island only. Notwithstanding the foregoing, the license does not restrict the Artist from producing, marketing, selling or otherwise transferring works substantially similar to the Work for installation and display elsewhere, granting rights similar to those granted herein to such other works or using images of the Work (including the Work as installed by the City) in ARTIST'S printed and electronic media promotional materials.
- c. ARTIST further agrees to execute and deliver at the request of the PURCHASER any and all other papers, instruments and assignments and to perform any other reasonable acts the PURCHASER may require in order to vest all of ARTIST's rights, title and interest in and to the Work in the PURCHASER (i) as are deemed necessary by PURCHASER or by the governmental agencies having jurisdiction over said Work to effect the transfer to PURCHASER, its successors and assigns of all of ARTIST's right, title and interest in and to the Work, (ii) for maintaining and perfecting the PURCHASER's rights to the Work, and (iii) as may be or become necessary for obtaining, maintaining or protecting said Work.

3. Assignment.

ARTIST acknowledges that PURCHASER intends to donate and transfer ownership of the Work and the license granted herein, on an exclusive basis, to the City and by execution hereof consents to such transfer to the City. The City shall be a third-party beneficiary of this Agreement.

4. Effect; Counterparts.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns. This Agreement expresses the entire final understanding of the parties hereto with reference to the subject matter hereof and may neither be altered nor modified except by a writing duly signed by the parties hereto. This Agreement may be executed in counterparts and by facsimile or pdf or similar electronic signature with the same force and effect as if all original signatures were set forth in a single document.

The ARTIST, PURCHASER and JUN KANEKO have caused this License Agreement to be executed all as of the day and year first written above.

ARTIST:

Jun Kaneko Studio, L.L.C.

PURCHASER:

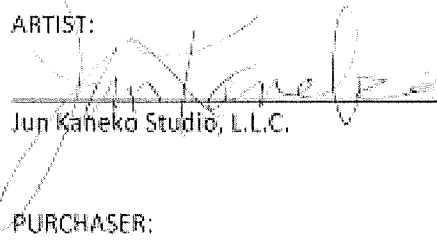
Tammy Morris, Chair
Grow Grand Island Arts & Humanities Committee

For Purposes and to the Extent in Sections 1 and 2

JUN KANEKO:

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ARTIST:



Jun Kaneko Studio, L.L.C.

PURCHASER:

Tammy Morris, Chair
Grow Grand Island Arts & Humanities Committee

For Purposes and to the Extent in Sections 1 and 2

JUN KANEKO:

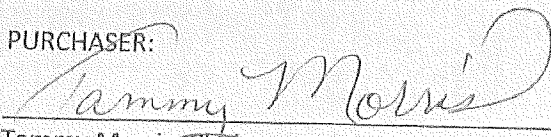


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Jun Kaneko Studio, L.L.C.

PURCHASER:



Tammy Morris, Chair
Grow Grand Island Arts & Humanities Committee

For Purposes and to the Extent in Sections 1 and 2
JUN KANEKO:

EXHIBIT A



R E S O L U T I O N 2017-288

WHEREAS, Grow Grand Island, Inc., a Nebraska nonprofit corporation, Grow Grand Island Arts & Humanities Committee, and the Grand Island Community Foundation, hereinafter jointly referred to as the “Donors”, collaborated to provide funding for and purchase of two ceramic sculptures created by artist Jun Kaneko to be donated to the City of Grand Island; and

WHEREAS, said sculptures are installed at Railside Plaza in the City of Grand Island; and

WHEREAS, Donors desire to give, grant, and convey said sculptures to the City of Grand Island and to assign to the City of Grand Island the Donors’ license rights in and to said sculptures; and

WHEREAS, The City of Grand Island desires to accept the donation of the sculptures and assignment of license rights; and

WHEREAS, by adoption of this Resolution, the City of Grand Island hereby expresses its appreciation for Donors’ gift and donation to the City.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that Donors’ gift of two ceramic sculptures created by artist Jun Kaneko to the City of Grand Island and the assignment of license rights pertaining thereto should be and the same hereby are accepted in the name of and on behalf of the City of Grand Island.

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Adopted by the City Council of the City of Grand Island, Nebraska, October 10, 2017.

Jeremy L. Jensen, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	▣ _____
December 14, 2017	▣ City Attorney