



City of Grand Island

Tuesday, July 27, 2021

Council Session

Item I-4

#2021-188 - Consideration of Accepting Gift of Crane Sculptures and Assignment of License Rights from the Grand Island Public Library Foundation

Staff Contact: Jerry Janulewicz

Council Agenda Memo

From: Jerry Janulewicz, City Administrator

Meeting: July 27, 2021

Subject: Acceptance Gift of Sculptures from the Grand Island Public Library Foundation, Inc.

Presenter(s): Celine Swan, Library Director

Background

The Grand Island Public Library Foundation, hereinafter referred to as the “Donor”, provided funding for and purchased Five, custom built, life-size Sandhill Crane bronze sculptures to be installed in the Public Library Entrance Plaza by the creator Gary Staab and Staab Studios Inc. to be donated and gifted jointly to the City of Grand Island and the Grand Island Public Library Board.

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. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

Recommendation

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

Sample Motion

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

LICENSE AGREEMENT

This License Agreement dated as of May 27 2021 (this "Agreement") is made between Gary Staab and Staab Studios Inc. "ARTIST" and the Grand Island Public Library Foundation "PURCHASER".

Whereas, ARTIST and PURCHASER entered into their agreement dated October 13, 2019 (the "Agreement") for the production of five, custom built, life-size Sandhill Crane Bronze sculptures to be installed in the Entrance Plaza of the Grand Island City Library (hereinafter referred to as the "Work"). A copy of the Agreement is attached hereto as Exhibit A and incorporated herein by this reference.

Whereas, Mr. Gary Staab, an individual ("Gary Staab"), as the creator of the design embodied in the Work, and Staab Studios Inc., hereinafter jointly and individually referred to as ARTIST, hold 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, pursuant to the Agreement, PURCHASER previously acquired all of ARTIST's legal and equitable interest in and to the Work, subject to ARTIST'S retained right to make reproductions of the Work, for the purpose of donating the Work to the City of Grand Island ("CITY").

Whereas PURCHASER and CITY have requested (a) that ARTIST grant a license to CITY, as donee and immediate transferee of PURCHASER, to reproduce images of the Work as set forth herein and (b) a waiver of certain rights of ARTIST 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.

ARTIST hereby represents and warrants that the Work is original to ARTIST 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, 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 ARTIST 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, ARTIST has transferred all right, title and interest in and to the Work to 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, ARTIST 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 Work, including without limitation, the architecture, landscaping, fixtures or furniture, is a distortion, mutilation, modification, relocation, or destruction of the Work 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 ARTIST 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 PURCHASER or CITY.

- b. ARTIST hereby irrevocably grants, transfers, conveys, assigns and sets over to PURCHASER and CITY, as the immediate transferee thereof, a worldwide, perpetual, irrevocable, royalty-free, 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 ARTIST (which shall not be unreasonably withheld), shall be solely on a non-commercial basis, for educational purposes or for the purpose of promoting CITY and its Public Library. Notwithstanding the foregoing, the license does not restrict 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 CITY) in ARTIST'S printed and electronic media promotional materials.
- c. ARTIST further agrees to execute and deliver at the request of PURCHASER any and all other papers, instruments and assignments and to perform any other reasonable acts PURCHASER may require in order to vest all of ARTIST'S rights, title and interest in and to the Work in PURCHASER (i) as are deemed necessary by PURCHASER or by CITY 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 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 an assignment of the license granted hereby to CITY and by execution hereof consents to such transfer to CITY. 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 and consent of CITY. 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.

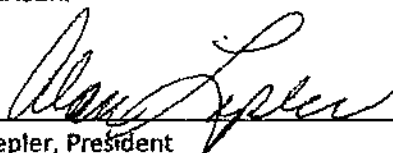
ARTIST, and PURCHASER have caused this License Agreement to be executed all as of the day and year first written above.

ARTIST:



Gary Staab/Staab Studios Inc.

PURCHASER:



Alan Lepler, President
Grand Island Public Library Foundation

10/31/19

Scope of Services Agreement between Staab Studios Inc. and the Grand Island Public Library Foundation / for the production of five, custom-built, life-size Sandhill Crane bronze sculptures to be installed in the Library Entrance Plaza.

Staab Studios will provide:

- Preliminary anatomical research.
- Small scale design maquette to the approval of client.
- Jpg updates of progress.
- Oversight of production of the sculptures from concept to installation.
- Cost of crane rental and rigging for installation.
- Shipping from foundry to Grand Island Public Library.
- Transit insurance.
- Crew of two for installation.

Grand Island Public Library Foundation will provide:

- Review of small scale maquette
- Funding and oversight of the production of the concrete and seating in the Library Entrance Plaza area.
- Costs and oversight of the installation of lighting for the Library Entrance Plaza area.

Schedule -

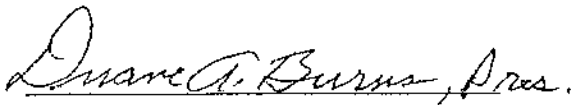
Tentative installation Fall 2020.

Change Orders - Any changes to the approved design of the maquette of the animal after approval of the small scale maquette will be charged a fee agreed upon by both parties.

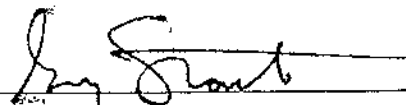
Staab Studios retains the rights of reproduction.

Payment Terms - 50% deposit as a stand act of business we ask for a 50% deposit (\$8,700) to solidify a place in our production schedule upon the signing of the document. Final 50% upon completion

Total Fee: \$117,552



Board of Directors
Grand Island Public library foundation
1124 W 2nd Street, Grand Island, NE 68801
308-385-5333 x101



Gary Staab/ Staab Studios Inc.
20813 Jesse James Farm Rd.
Kearney, Mo 6460

STAABstudios Inc. 20813 Jesse James Farm Rd. Kearney, MO 64060 816-635-3530

Declaration of Gift and Assignment of License Agreement

Grand Island Public Library Foundation, Inc., a Nebraska nonprofit corporation, (“Donor”) is the owner of property described below.

Donor hereby donates, gives, grants, and conveys to the Grand Island Public Library Board and the City of Grand Island the property described as follows: Five, custom built, life-size Sandhill Crane bronze sculptures to be installed in the Public Library Entrance Plaza by the creator Gary Staab and Staab Studios Inc.

Donor assigns to the Grand Island Public Library Board and the City of Grand Island Donor’s right, title, and interest in that certain License Agreement dated May 27, 2021 by and between Gary Staab and Staab Studios Inc. and Donor Grand Island Public Library Foundation, Inc., a copy of which is attached hereto and marked “Exhibit 1”.

Dated: July ___, 2021.

GRAND ISLAND PUBLIC LIBRARY FOUNDATION, INC., DONOR

By: _____
Alan Lepler, President

Pam Andersen, Secretary

Acceptance: Grand Island Public Library Board and City of Grand Island, Nebraska hereby accept the gift of sculpture and assignment of rights described above.

Dated: July ___, 2021.

GRAND ISLAND PUBLIC LIBRARY BOARD

By: _____
Tanya Hansen, President

Dated: July ___, 2021.

CITY OF GRAND ISLAND, NEBRASKA

By: _____
Roger G. Steele, Mayor

RESOLUTION 2021-188

WHEREAS, Grand Island Public Library Foundation, Inc. provided funding for and purchased five, custom built, life-size Sandhill Crane bronze sculptures to be installed in the Grand Island Public Library Entrance Plaza by the creator Gary Staab and Staab Studios Inc.; and

WHEREAS, the sculptures are being donated and gifted by the Grand Island Public Library Foundation, Inc. to the City of Grand Island and the Grand Island Public Library Board; and

WHEREAS, the gift and an assignment of license rights was accepted by the Grand Island Public Library Board.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the gift from Grand Island Public Library Foundation, Inc. of five, custom built, life-size Sandhill Crane bronze sculptures to be installed in the Public Library Entrance Plaza and the assignment of license to the City of Grand Island and the Grand Island Public Library Board should be and is hereby accepted on behalf of the City of Grand Island..

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, July 27, 2021.

Roger G. Steele, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	☒ _____
July 23, 2021	☒ City Attorney