



Legislation Text

File #: 23-0479, Version: 1

CITY COUNCIL AGENDA ITEM

ACTION REQUESTED:

Adopt the resolution authorizing the City Manager to enter into an agreement between the City and the Century Walk Corporation (Item 1 of 2)

DEPARTMENT: Legal Department

SUBMITTED BY: Michael DiSanto, City Attorney

BOARD/COMMISSION REVIEW:

N/A

BACKGROUND:

Century Walk was established in 1996 to create culturally significant and diverse public art throughout Naperville in the 21st Century. Since 1996, the Century Walk has led a public art initiative in Naperville featuring murals, mosaics, reliefs, mobiles, and sculptures throughout the City. To date, Century Walk has more than 50 locations of public art located throughout Naperville.

Century Walk funds its art installations through a combination of private and public fund raising, including approximately 50% of contributions from the City. The City and the Century Walk have determined it to be in the best interest of the Parties, to memorialize their respective rights and responsibilities concerning the public art installed by the Century Walk.

DISCUSSION:

The proposed agreement formally memorializes the relationship between the City and Century Walk. Highlights of the agreement are summarized below.

1. Ownership.

- a. All art installed by the Century Walk is be categorized into one of three lists:
 - i. Located on City-owned property (see attached Agreement Exhibit A)
 - ii. Located on non-City-owned public property (see attached Agreement Exhibit B)
 - iii. Located on private property (see attached Agreement Exhibit C)
- b. The City has ownership and responsibility (including maintenance & insurance) for the art located on City-owned property (Exhibit A). The Century Walk will have ownership and responsibility (including maintenance & insurance) for the art not located on City-owned property (Exhibit B & C). The Century Walk may transfer its ownership and responsibilities for that art to third parties as it sees fit), however, Century Walk agrees to actively assist the on an ongoing basis in the future to enter into agreements with owners of art that is or was listed in Exhibits B or C to transfer ownership of said art to

the City.

2. **Annual Grant.** Every year the City will consider providing a Grant to the Century Walk for new public art (expected to be from SECA funds through the “City Obligations” process). Re: grants, the agreement provides:
 - a. The City has sole discretion to determine the amount of the annual Grant, if any.
 - b. Each Grant must be used for specific public art projects as authorized by Council.
 - c. Once the Grant is awarded, Century Walk must submit a written request for reimbursement through disbursement of Grant fund. Requests must be supported by invoices or receipts.

The agreement notes that on August 17, 2021, the Naperville City Council directed that the City shall designate to the Century Walk a Grant of \$100,000 in calendar years 2022, 2023, and 2024 to assist the Century Walk with financing the establishment of specific public art projects as represented by the Century Walk to the Naperville City Council on the condition that said Grants be: (1) used for capital only; (2) restricted to art on public property; (3) the funds would be prepaid; (4) a Council liaison will be added to the Century Walk board for financial oversight; and (5) Century Walk provide its financial statements to the City.

3. **Maintenance.** Every year the City will consider providing a Maintenance Grant to the Century Walk (expected to be from SECA funds through the “City Obligations” process). The Agreement provides that Century Walk is expected to prioritize the maintenance of the art located on City property with the Maintenance Grant, however, it is not restricted from using it to maintain other public art not on City property.

The Agreement notes that on August 17, 2021, the Naperville City Council directed that the City shall designate to the Century Walk a Maintenance Grant of fifty thousand dollars (\$50,000.00) in calendar years 2022, 2023 and 2024 to assist the Century Walk with maintaining the public art listed in Exhibit A, B, and C.

Further, the Agreement clarifies that the City is responsible for the maintenance of the art located on City property (listed in Exhibit A) and may take any action, in its discretion, using City employees, volunteers, or third-party services, to maintain the art listed in Exhibit A. The City shall have no responsibility for the maintenance of any art listed in Exhibits B or C. The maintenance of the art listed in Exhibits B and C shall be the responsibility of the Century Walk. Nothing contained in the Agreement prohibits the Century Walk, in its discretion, from transferring maintenance responsibilities of the public art listed in Exhibits B and C to a third party.

4. **Financial Records.** Century Walk must maintain records pertaining to art supported by a Grant or Maintenance Grant from the City and the records must be made available for inspection by the City upon its request.
5. **Reporting.** Upon the City’s request Century Walk must prepare a report detailing the use of any funds from a Grant or Maintenance Grant from the City.
6. **Insurance.** The City shall be responsible for appropriately insuring its art and the Century

Walk is responsible for insuring its art.

7. **Intellectual Property.** Along with the physical art, the City gets joint ownership with Century Walk of all intellectual property related to the art that the City owns.
8. **Shared Recognition.** For all the Century Walk's public art that was supported through City funding, the Century Walk shall acknowledge the City's participation in all releases or announcements and for any new public art projects, the Century Walk shall plan and coordinate with the City a ceremony to announce and celebrate said public art project upon its completion.
9. **Term.** If approved, the Agreement is effective as of May 1, 2023 and lasts until December 31, 2024. Thereafter, the Agreement renews automatically for an additional two years unless one of the Parties has provided notice to the other 90 days prior thereto that it does not wish for such a continuance. The Parties may terminate for cause upon 90 days notice in the event of substantial failure to perform in accordance with the terms of the Agreement.

FISCAL IMPACT:

Fiscal impact shall be in accordance with SECA Grant funding awarded to Century Walk as a City Obligation (Year 2 of 3) for capital and maintenance.