

# REPORT / RECOMMENDATION



**To:** MAYOR AND COUNCIL

**Agenda Item #:** IV. K

**From:** Brian E. Olson, P.E. Director of Public Works *TFB*

**Action**

**Discussion**

**Date:** April 21, 2015

**Information**

**Subject:** Authorize Agreement with Minneapolis Institute of Art

**Action Requested:**

Authorize Agreement with Minneapolis Institute of Art – Southdale Water Tower

**Information / Background:**

The Minneapolis Institute of Arts is celebrating its 100<sup>th</sup> year anniversary and have requested to place artwork on our Southdale Water tower. It should be noted that this water tower was scheduled for painting this summer in the Capital Improvement Plan. That maintenance work will be delayed until the summer of 2016. The attached agreement memorializes obligations of the City and the Minneapolis Institute of Arts to coordinate the development of this project.

**Attachments:**

Minneapolis Institute of Arts Agreement

## **AGREEMENT**

**THIS AGREEMENT** is entered into this \_\_\_\_ day of \_\_\_\_\_, 2015, between the **CITY OF EDINA**, a Minnesota municipal corporation, with offices at 4801 West 50<sup>th</sup> Street, Edina, Minnesota 55424 ("City"), and **MINNEAPOLIS INSTITUTE OF ARTS**, with offices at 2400 Third Avenue South, Minneapolis Minnesota 55404 ("MIA").

### **RECITALS**

A. MIA is celebrating their 100th year anniversary in 2015. MIA wants to wrap the City's water tower located on France Avenue at the Southdale Mall with a large scale art from the museum's collection. MIA will apply a large format graphic of the artwork on the water tower for the summer months.

B. City is willing to allow MIA to display the large format graphic of the artwork subject to the terms of this Agreement.

### **NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

1. Subject to the following terms and conditions, City authorizes MIA to apply the large format graphic of the artwork ("Graphic") on the City's water storage tank on France Avenue at the Southdale Mall (the "Premises") as described in and accordance with the attached Exhibit "A." The primary purposes of the City's ownership of the Property are to: (a) operate and maintain a municipal water storage tank so as to provide water service to residents of the City of Edina; and (b) to provide communication systems to the City of Edina.

2. The Premises shall be used by MIA solely for the purpose of installing and maintaining the Graphic provided such use is not inconsistent with the City's use of the Property.

3. The term of this Agreement shall commence on May 25, 2015 and end on September 25, 2015. The Graphic will be installed by MIA between May 25, 2015 and May 29,

2015. The Graphic will be removed by MIA between September 21, 2015 and September 25, 2015. If MIA does not timely remove the Graphic, City has the right to remove the Graphic at MIA's expense.

4. MIA's installation and maintenance of the Graphic shall not damage or interfere with City's water tank operations and shall not interfere with City's municipal communication system located on the Property or other communication facilities located on the Premises.

5. If the Premises or a portion of the Premises is damaged during the term of this Agreement such Premises would not have been damaged but for the installation or maintenance of the Graphic, MIA shall repair or rebuild the Premises to substantially the condition in which the Premises was immediately prior to such damage.

6. Maintenance, Improvement and Replacement Expenses. All modifications and improvements to the Premises for MIA's benefit shall be at MIA's expense.

7. Access. MIA shall have access to the tower at all times during the term of this Agreement in order to maintain the Graphic. MIA shall have access only with the approval of the City. MIA shall request access to the tower 24 hours in advance, except in an emergency, and the City's approval shall not be unreasonably delayed.

8. Costs Associated with Use of the Premises. MIA shall be responsible for any incremental increase in City's expenses resulting from MIA's exercise of any rights under this Agreement. MIA shall be solely responsible for any costs incurred in securing the Graphic from theft, vandalism or any other damage.

9. Defense and Indemnification. MIA agrees to defend, indemnify and hold harmless the City and its elected officials, officers, employees, agents, and representative, from and against any and all claims, costs, losses expenses, demands, liabilities, actions, or causes of action, including reasonable attorneys' fees and other costs and expenses of litigation, which

may be asserted or incurred by the City or for which the City may be liable in the performance of this Agreement, except for those which arise solely from the negligence, or willful misconduct, or other fault of the City.

10. During the term of this Agreement, MIA shall maintain workers' compensation insurance. MIA shall also acquire public liability and property damage insurance covering personal injury, including death, and claims for property damage which may arise out of the MIA's work or the work of its contractors and subcontractors or by one directly or indirectly employed by any of them. Limits for bodily injury and death shall be not less than \$500,000 for one person and \$2,000,000 for each occurrence; limits for property damage shall be not less than \$200,000 for each occurrence; or a combination single limit policy of \$1,000,000 or more. The City shall be named as an additional insured on the policy on a primary and noncontributory basis, and the MIA shall file with the City a certificate evidencing coverage.

11. Material and Material Production.

A. Material: Large format laminate donated from 3M. (Material will be 480 Non-PVC material). Because this material is Non-PVC, it is a sustainable material. 480 is the newest material designed to hold up on many surfaces. This material is not permanent and considered removable.

B. Printer: TBD – printing will be large format printing will be printed in several sheets in order to be installed per unit.

12. Surface Testing. Work in partnership with the City to verify surface of each water tower.

A. Surface Testing: Installation Company to conduct a site visit. Site visits will include: surface test (adhesion and paint testing). Installation Company to use a sample of the 480 material to test adhesion and potential surface preparation

(removal of old paint?). City to provide information on the brand/type of paint used, most recent paint date, assumed date of painting water tower again.

13. Installation

A. Installation: One week. Installation can be slow and will depend on weather. If wind exceeds 10 mph workers will not be able to be on swing stage.

B. Materials/Equipment: MIA will use the following for installation (including but not limited to) boom truck, crane, rigging equipment, and swing stage.

C. MIA Contractors: 4-6 contractors.

14. Relationship of the Parties. The parties acknowledge and agree that the services performed by MIA, its employees, agents or sub-contractors shall be as an independent contractor and that nothing in this Agreement shall be deemed to constitute a partnership, joint venture or otherwise between the parties.

Date: \_\_\_\_\_, 2015.

**CITY OF EDINA**

By: \_\_\_\_\_  
James Hovland, Mayor

By: \_\_\_\_\_  
Scott Neal, City Manager

Date: \_\_\_\_\_, 2015.

**MINNEAPOLIS INSTITUTE OF ARTS**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT "A"**