



AGENDA REPORT

Meeting Date: June 21, 2016
Item Number: E-26
To: Honorable Mayor & City Council
From: Brad Meyerowitz, Recreation Services Manager
Subject: AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND WILLIAM KENTRIDGE FOR THE SALE AND ASSIGNMENT OF THE ARTISTIC WORK ENTITLED *WORLD ON ITS HIND LEGS (WOHL)*; AND

APPROVAL OF A PURCHASE ORDER AND APPROPRIATION OF \$500,000 FROM THE FINE ART FUND FOR THIS PURPOSE

Attachments: 1. Agreement

RECOMMENDATION

Based on recommendations by the City Council and Fine Art Commission, staff requests approval of an Agreement with William Kentridge for the purchase of the artist's painted galvanized steel sculpture, entitled *World On Its Hind Legs (WOHL)*, in the amount of \$500,000 to be paid from the Fine Art Fund. The fund is exclusively used in support of the City's public art program.

INTRODUCTION

This report asks the City Council to approve the Agreement and a purchase order with William Kentridge for the sale and assignment for the sculpture *World On Its Hind Legs (WOHL)* to be located on the Burton Way median, between Rexford Drive and Foothill Road. The cost of the piece is \$500,000. Crating, shipping, installation, and lighting will be handled through City contracts apart from this one and will not exceed \$35,000.

DISCUSSION

William Kentridge (b. 1955) is a world renowned South African artist who works in various media, including drawings, animated films, tapestries and sculpture. His works

Museum of Contemporary Art in Chicago, the Metropolitan Museum of Art, and the San Francisco Museum of Modern Art. In addition, his work has been shown in many exhibits throughout the world, including the Louvre.

World On Its Hind Legs measures 13.5' x 10' x 16'. It is made of painted galvanized steel and weighs 9,000 pounds. The piece is currently installed in Johannesburg, South Africa.

City Council, at their July 21, 2015 Study Session, unanimously approved the proposed acquisition of *World On Its Hind Legs* and the Burton Way median location for installation. The delay in bringing this item back to City Council was due to the lengthy negotiations between the Marian Goodman Gallery, acting as the agent for the artist, and the City, on the final language of the Agreement.

FISCAL IMPACT

The cost to acquire *World On Its Hind Legs* is \$500,000. The balance of the Fine Art Fund as of April 30, 2016 was \$2,973,911. As a result, there are sufficient funds to purchase and install the piece. City Council is asked to appropriate the funds necessary to acquire and transport the William Kentridge piece. Staff recommends that City Council approve a purchase order with the Marian Goodman Gallery and appropriate the Fine Art Funds as follows:

\$500,000

From: 1806708-41091

To: 1806708-85060



Don Rhoads

Finance Approval



Nancy Hunt-Coffey

Approved By

Attachment 1

AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS
AND WILLIAM KENTRIDGE FOR THE SALE AND
ASSIGNMENT OF THE ARTISTIC WORK ENTITLED *WORLD
ON ITS HIND LEGS (WOHL)*

THIS AGREEMENT FOR THE SALE AND ASSIGNMENT OF AN ARTISTIC WORK (the "Agreement") is made and entered into as of this ____ of June, 2016, by and between the City of Beverly Hills, a municipal corporation ("City") and William Kentridge, through his agent, Marian Goodman Gallery, Inc. (collectively, "Artist").

Section 1. Description of Work.

William Kentridge is an internationally known artist who has created a sculpture entitled *World On Its Hind Legs (WOHL)*, made out of painted, galvanized steel and measures approximately 13.5 feet tall by 10 feet wide by 16 feet deep ("Work"). The Work shall stand on a concrete base.

Section 2. Sale of Work and Purchase Price; Inspection.

(a) Artist agrees to sell, and City agrees to purchase the Work under the terms and conditions set forth in this Agreement including Exhibit A.

(b) The price for the Work, including crating and shipping shall be Five Hundred Thousand Dollars (\$500,000) ("Purchase Price"). The Purchase Price is more particularly described in Exhibit B. City shall not withhold applicable federal or state payroll or any other required taxes, or other authorized deduction for payment made to Artist. Upon payment, Artist shall sign a written acknowledgement of receipt of said monies and such document shall be incorporated into this Agreement.

(c) City shall pay half of the Purchase Price upon execution of this Agreement, and the balance upon acceptance of the Work. Final payment must be received by Artist within thirty (30) days of acceptance of the Work by City. City reserves the right to inspect the Work before acceptance and acceptance of the Work is hereby expressly conditioned upon City's satisfaction upon said inspection, it being understood that the sole grounds for City to reject the Work is the quality of the craftsmanship of the Work, and not the aesthetic appeal of the Work. City acknowledges having received detailed photographs of the Work and approved those photographs. Inspection of the Work will be conducted within seven (7) days after delivery of the Work at the City's installation contractor's facility (the "Inspection Period"). If the City does not reject the Work within the Inspection Period by giving detailed reasons for the rejection, the Work shall be deemed approved. Artist reserves the right to be present at the time of the inspection, or to designate an agent to be present at the time of the inspection. All costs associated with the Artist or Artist's agent presence at the inspection shall be borne by Artist.

Section 3. Waiver of Certain Moral Rights.

Artist acknowledges and agrees that City, in its sole and exclusive discretion, may abandon, dismantle or destroy the Work. City shall, however, provide notice to the Artist prior to any

destruction of the Work and shall offer in writing to return the Work to Artist the transportation of which is at Artist's sole expense. Artist shall have sixty (60) days from the dates of such offer to notify the City in writing of his desire to accept return of the Work, or if Artist does not so notify City, then City may destroy the Work. If Artist requests return of the Work within the required time period, City will re-convey to Artist all right, title, and interest in the Work. City may not permanently modify, alter, or change the Work except for conservation of the Work for structural or aesthetic purposes. Artist hereby waives his/her rights arising under the federal Visual Artist Rights Act, 17 U.S.C. sections 106A and 113 (d) ("VARA") and the California Art Preservation Act (Cal. Civil Code section 987 et seq.) "CAPA" and any other state, federal or international law to the extent, and only to the extent that such laws conflict with the provision of this section. Artist waives no other rights arising under VARA, CAPA and any other state, federal or international law relating to an artist's moral rights.

Section 4. Right to Display.

Artist hereby grants to City the right to publicly display the Work at a location selected by City.

Section 5. City's Sole and Exclusive Ownership Rights.

(a) Artist shall not retain ownership of or title to the Work. The parties agree that the title to the Work belongs to and is being sold and assigned to City for whatever use it desires consistent with the terms of the Agreement, and that City does and shall at all times own, solely and exclusively, complete and unencumbered, all title in and to the Work.

Notwithstanding anything to the contrary herein, Artist retains the copyright of the Work.

(b) Artist hereby grants the City the right to reproduce the Work. Artist and City may make and use reproductions of the image of the Work as set forth in this paragraph (b).

(i) City may, without the prior consent of Artist, make photographs and two dimensional reproductions of the Work for such uses as advertising, brochures, and media publications for the benefit of the City. Any other use of the image of the Work shall be subject to the prior written consent of the Artist and such consent shall not be unreasonably withheld or delayed. Artist agrees to execute, and authorizes his legal representatives to execute, any documents or instruments requested by City to effectuate this grant of rights. In each use of the image of the Work by City, City shall include the following copyright notice: "**Copyright © 2015. William Kentrige, Collaboration with Gerhard Marx, Courtesy of Marian Goodman Gallery.**"

(ii) Artist may use images of the Work for any reason, provided that; (i) in each use, he shall include the following credit line unless requested by City not to do so in writing: "**Commissioned by the City of Beverly Hills**"; (ii) Artist agrees not to use images of the Work for any poster or other similar product that is intended for retail sale. Notwithstanding the above, Artist may include images of the Work in a catalogue raisonne or similar publication whether or not for sale.

Section 6. Originality of Works.

Artist represents and warrants that (i) the Work is and will be original; (ii) at the time of transfer hereunder, Artist is the sole owner of the Work and of all rights therein including copyright, trademark and other proprietary rights therein; (iii) Artist and his co-collaborator Gerhard Marx are and will be the sole creators of the Work; (iv) Artist has and will have full and sufficient right to grant all rights granted herein and to waive all rights relinquished herein;(v) Artist is not under any obligation to transfer or sell any of the Work to any third party; (vi) the Work has not been and will not be published under circumstances which have or will cause a loss of any copyright, trademark or other proprietary rights therein; and (vii) to Artist's knowledge the Work does not and will not infringe any patent, copyright, trademark or other proprietary rights, privacy rights or other rights of any third party, nor has any claim (whether or not embodied in a legal action, past or present) of such infringement been threatened or asserted, nor is such a claim pending, against Artist (or, insofar as Artist is aware, against any entity from which Artist has obtained any rights). Notwithstanding the above, City acknowledges that there exist at least three (3) other versions of the Work that are similar to the Work and the Work is an artist proof.

Section 7. Transferability.

All rights granted by Artist to City pursuant to this Agreement are fully transferable to others for the purposes of exploiting City's rights hereunder, by license or otherwise without further payment or approval of Artist.

Section 8. Artist's Commitment.

Artist agrees that Artist will not make reference to the Work in a way that reflects discredit on the City or the Work.

Section 9. Replication of Work.

Subject to section 6 of the Agreement, Artist acknowledges that the Work is unique and Artist shall not reproduce the Work in identical form for commercial or non-commercial purposes

Section 10. Insurance.

(a) Artist shall require its subcontractors who perform services in connection with the Agreement to carry, maintain and keep in full force and effect during the term of the provision of such services, the following insurance coverage which meets all of the requirements of this Agreement:

(1) A policy or policies of Comprehensive General Liability Insurance, with minimum limits of Two Million Dollars (\$2,000,000) for each occurrence, combined single limit, against any personal injury, death, loss or damage resulting from the wrongful or negligent acts by Artist's subcontractors.

(2) A policy or policies of Comprehensive Vehicle Liability Insurance covering personal injury and property damage, with minimum limits of One Million Dollars

(\$1,000,000) per occurrence combined single limit, covering any vehicle utilized by Artist's subcontractors in performing the services required by this Agreement.

(3) Workers' compensation insurance as required by the State of California.

(b) The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least a B+;VII in the latest edition of Best's Insurance Guide.

(c) At all times during the period when such insurance must be maintained, Artist shall maintain on file with the City Clerk a certificate or certificates of insurance on a form approved by the City Attorney and Risk Manager showing that the aforesaid policies are in effect in the required amounts. Artist shall, prior to commencement of work under this Agreement, file with the City Clerk such certificate or certificates. The general liability insurance shall contain an endorsement naming the City as an additional insured. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty (30) days prior written notice to City, and specifically stating that the coverage contained in the policies affords insurance pursuant to the terms and conditions as set forth in this Agreement.

(d) The insurance provided by Artist's subcontractors shall be primary to any coverage available to City. The policies of insurance required by this Agreement shall include provisions for waiver of subrogation.

(e) Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, Artist's subcontractors shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Artist's subcontractors shall procure a bond guaranteeing payment of losses and expenses.

Section 11. Fabrication, Transportation and Installation of the Work.

Artist shall be responsible for all costs of fabrication, including but not limited to the preparation of all construction documents, the purchase and transportation of materials, and the cost of the actual fabrication. City shall be responsible for picking up the Work at the Port of Los Angeles, transporting the Work to the site or other location City selects, and installing the Work. Without limiting the foregoing, City shall be responsible for readying the site for installation (including without limitation by fabricating the concrete base for the Work) and installing the Work. City will observe and comply with all applicable laws, rules, regulations, and directions of any governmental authority with jurisdiction over the City's activities, and will require (and be responsible for) such observance and compliance from each agent, employee, contractor or subcontractor engaged by the City in connection with this Agreement. City shall secure any required permits for the installation of the Work and will be responsible for the cost and effort needed to procure any necessary permits, licenses or similar approvals to install and exhibit the Work at the site.

Section 12. Indemnification.

City agrees to indemnify and hold Artist and his employees, representatives and agents harmless from any, and all loss, cost, damage and expense (including, without limitation, reasonable attorney's fees and expenses) arising out of or resulting from any act or omission of City (or any of its officers, employees, representatives or agents) constituting negligence, recklessness or willful misconduct in connection with (i) the installation and maintenance of the Work, (ii) the governance and maintenance of the site at which the Work is installed, and (iii) the de-installation or transportation of the Work if it is ever relocated by City. Notwithstanding the above, City shall not indemnify the fabricator of the Work in connection with its fabrication.

Section 13. Integrity of the Work.

(a) Repairs and Maintenance

(1) Artist shall provide City with detailed written instructions on the proper installation and maintenance of the Work.

(2) City undertakes to exercise reasonable care to protect, repair, and maintain the Work in a manner consistent with such instructions.

(3) During Artist's lifetime, Artist agrees to cooperate with and advise City in connection with City's non-routine maintenance of the Work to the extent that he is able to do so.

(b) Relocation of the Work. To the extent that the Work is capable of being relocated, City shall have the right to relocate the Work. If feasible, City shall undertake to consult with Artist concerning any relocation of the Work.

(c) Credit. City agrees, at its own expense, to prepare and install at or near the Site a public notice giving Artist credit for the creation of the Work.

(d) Address of Artist for Purposes of This Section. Artist shall, for the purposes of this section, be responsible for providing City at all times with either her current address or an alternative means of contacting her.

Section 14. Warranty of the Work

Artist hereby warrants that the Work will be free of defects in workmanship (due to faulty design or fabrication), materials and finish, including inherent vice, and that the Artist shall, at the Artist's own expense, remedy, repair or replace any such defects in workmanship, materials and finish, including inherent vice, and if necessary replace the Work, which appear within a period of ten years of the date the work is installed. "Inherent Vice" shall mean a quality within the material or materials which compromise the Work which, either alone or in combination, results in the tendency of the Work including, without limitation, the finish, to deteriorate.

Section 15. Risk of Loss

Artist bears the sole risk of damage to or loss of the Work to be produced by Artist pursuant to this Agreement until such Work is delivered to City at the Port of Los Angeles. Risk of loss shall shift to the City upon delivery and acceptance by City of the Work at the Port of Los Angeles.

Section 16. Addresses for Notices.

Any notice, bills, invoices, demand or document which any party is required or may desire to give or deliver to the other hereunder, shall be in writing and may be delivered personally or given by facsimile or overnight courier service, postage prepaid, addressed as follows: to Artist: William Kentridge, c/o Marian Goodman Gallery, 24 West 57th Street, New York, NY 10019, Fax: 212-977-7160; to City: City of Beverly Hills, 455 North Rexford Drive, Beverly Hills, California 90210, Attention: City Manager, Fax: (310) 274-3267 with a copy to the City Attorney. Either party shall have the right to designate a different address by written notice similarly given. Any notice, demand or documents shall be deemed received on: (a) the day of delivery if delivered by hand or overnight courier service during the party's regular business hours; or (b) the day of delivery if delivered by facsimile during the parties' regular business hours. City assumes no responsibility to search for Artist if he cannot be reached at the address of record.

Section 17. Attorneys' Fees.

In the event either party shall commence any action against the other party relating to this Agreement or for the breach of any obligation contained herein, the prevailing party shall be entitled to recover from the losing party reasonable attorneys' fees, expenses, and court costs.

Section 18. Prohibition against Assignment

Artist shall not delegate, transfer, subcontract or assign his duties or rights hereunder, either in whole or in part, without City's prior written consent, and any attempt to do so shall be void and of no effect. City shall not be obligated or liable under this Agreement to any party other than Artist.

Section 19. Successors and Assigns.

The terms of this Agreement shall be binding upon and inure to the benefit of the respective heirs, successors in interest and assigns of the parties hereto.

Section 20. Entire Agreement.

This Agreement represents the entire integrated agreement between City and Artist, and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by a written instrument signed by both City and Artist.

Section 21. Severability.

Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be valid under applicable law. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect.

Section 22. Governing Law; Jurisdiction.

This Agreement shall be governed by and construed in accordance with the laws of the State of California. In the event of litigation between the parties, venue in State trial courts shall be exclusively in Los Angeles County. In the event of litigation in a United States District Court, exclusive venue shall lie in the Central District of California.

Section 23. Execution.

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument. Signatures delivered by .pdf electronic transmission shall be given the full force and effect as original signatures.

Section 24. Representation.

Marian Goodman Gallery, Inc. warrants and represents that it has the legal authority to enter into this Agreement on behalf of William Kentridge, including the authority to agree to the waiver of certain rights as set forth herein.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

EXECUTED the _____ day of _____, 2016, at Beverly Hills, California.

CITY OF BEVERLY HILLS,
a municipal corporation

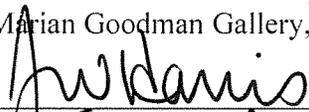
JOHN A. MIRISCH
Mayor of the City of
Beverly Hills, California

ATTEST:

(SEAL)

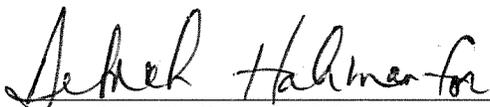
BYRON POPE
City Clerk

WILLIAM KENTRIDGE, by his agent
Marian Goodman Gallery, Inc.



Name: Jesse Washburne-Harris
Title: Senior Director

APPROVED AS TO FORM:



LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

MAHDI ALUZRI
City Manager



NANCY HUNT-COFFEY
Director of Community Services



KARL KIRKMAN
Risk Manager

EXHIBIT A

SCOPE OF SERVICES

Artist has sculpted a painted, galvanized steel sculpture (“Work”) entitled World On Its Hind Legs. Three (3) photographs of the Work are attached to Exhibit A.

Artist’s representative shall oversee and pay for the crating, transportation and shipping of the piece from South Africa to the Port of Los Angeles. Additionally, Artist shall pay, at its expense, the cost for Gerhard Marx to visit the site when the piece is installed in City.

Artist may have input on the general placement of the Work, but City shall have the final authority over its exact placement and what surrounds the Work such as plantings and concrete. Artist shall provide input on the size of the concrete pad where the Work will be installed, the manner by which the Work is attached to the concrete pad, and the lighting for the Work. City shall have final authority over all aspects of the installation of the Work.

City is responsible for pickup of the Work from the Port of Los Angeles, transportation and installation of Work.

EXHIBIT A
ATTACHMENT 1



EXHIBIT A
ATTACHMENT 2



EXHIBIT A
ATTACHMENT 3

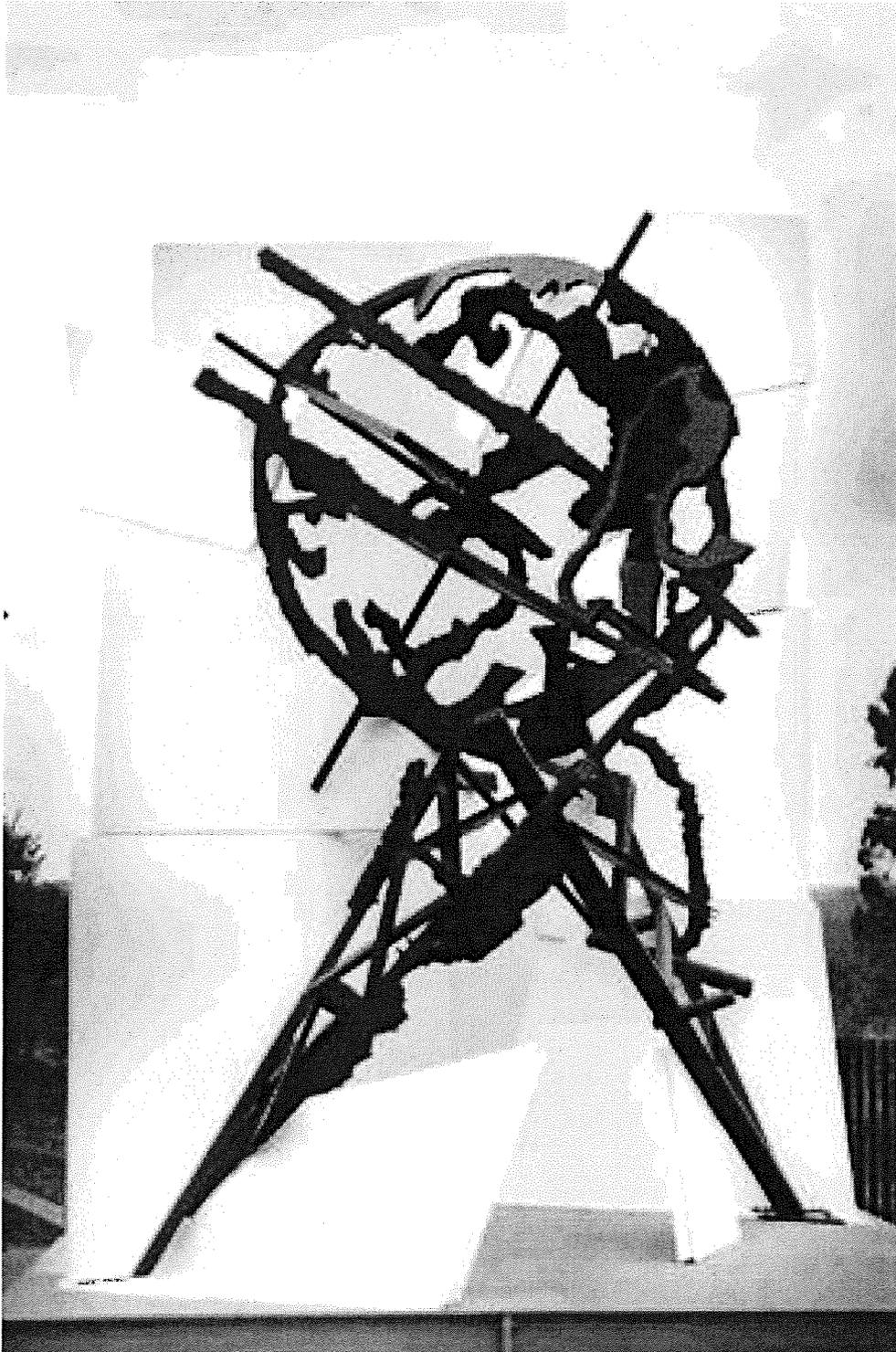


EXHIBIT B

PAYMENT AND PAYMENT SCHEDULE

City shall pay Artist \$500,000 for the Work pursuant to the terms and conditions of this Agreement plus any sales or use taxes which are the responsibility of City. \$500,000 shall be compensation for Artist's Work. No additional compensation shall be provided for the purchase of the piece or any related expenses.

Upon execution of this Agreement, City shall pay Artist one half of the purchase price (\$250,000). Within thirty (30) days of delivery to the Port of Los Angeles and acceptance of the Work by City as provided for in the Agreement, City shall pay Artist the remainder of the purchase price which is (\$250,000).