

RESOLUTION NO. 396

**A RESOLUTION OF THE CITY OF WOODINVILLE, WASHINGTON
ACCEPTING A SCULPTURE FROM THE WOODINVILLE GARDEN
CLUB.**

WHEREAS, Revised Code of Washington 35.21.100 allows cities to accept donated money or property by Ordinance; and

WHEREAS, Woodinville Ordinance No. 521 allows acceptance of donations of value greater than \$5,000 by City Council Resolution; and

WHEREAS, the Woodinville Garden Club has made a generous offer to donate a bronze sculpture of a baseball glove by artist Georgia Gerber to the City of Woodinville under specified conditions; and

WHEREAS, those conditions are specified in the attached Agreement; and

WHEREAS, the City is willing to fulfill the conditions of the Agreement in exchange for the donated sculpture;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WOODINVILLE, WASHINGTON, DOES RESOLVE AS FOLLOWS:

Section 1. Approval of Agreement to Accept Donation. The Woodinville City Council accepts the donation of the sculpture from the Woodinville Garden Club and approves the Agreement for the donation and acceptance of the sculpture, substantially in the form contained in the attached Agreement.

Section 2. Other Actions Authorized. The Woodinville City Council hereby authorizes the City Manager to take other actions necessary to implement this decision and to fulfill the City's obligations contained in the attached Agreement.

RESOLVED this 1st day of March 2011.



Charles E. Price, MAYOR

ATTEST/AUTHENTICATED:



Jennifer L. Kuhn
City Clerk/CMC



CITY OF WOODINVILLE, WA
REPORT TO THE CITY COUNCIL
17301 133rd Avenue NE, Woodinville, WA 98072
WWW.CI.WOODINVILLE.WA.US

To: Honorable City Council **Date:** 03/01/2011
From: Jennifer Kuhn
Subject: **Additional Staff Report:** Resolution No. 396 Accepting Sculpture Donation from Woodinville Garden Club

FINANCIAL ACTION SUMMARY		
Expenditure Required	Amount Budgeted/Approved	(Over)/Under Approved Amount
\$0	\$0	\$0

Revised Agreement with Woodinville Garden Club

Attached is a revised agreement with Woodinville Garden Club reflecting recommended changes since the report in your packet was prepared.

Attachment 1: Revised 3-01-2011 Proposed Agreement Between City of Woodinville and Woodinville Garden Club for donation and acceptance of a sculpture

**AGREEMENT BETWEEN
CITY OF WOODINVILLE AND WOODINVILLE GARDEN CLUB
FOR DONATION AND ACCEPTANCE OF A SCULPTURE**

RECITALS

THIS AGREEMENT ("Agreement"), is made this ____ day of _____, 2011, by and between the City of Woodinville ("the City"), a Washington Municipal Corporation, and the Woodinville Garden Club ("Donor"), for the purpose of establishing a contractual relationship under which Donor will procure and donate, and the City will accept, a bronze-cast sculpture for display on City property at the Woodinville Sports Fields, located at the southeast corner of NE 175th Street and 131st Avenue NE..

WHEREAS, Donor has commissioned the creation of an original cast bronze sculpture ("the Sculpture") from artist Georgia Gerber ("the Artist") with the intention of donating the same to the City as a gift; and

WHEREAS, the City has agreed to contribute five thousand (\$5,000.00) to the Donor which shall be used towards the cost to commission, acquire, and install the Sculpture, and

WHEREAS, the City and Donor (collectively "the Parties") desire to formalize their contractual relationship regarding the procurement and transfer of the Sculpture, and to define their respective rights, obligations and liabilities therefore;

NOW, THEREFORE, in consideration of the mutual promises set forth herein, it is agreed by and between the parties as follows:

TERMS

1. **Donation of Sculpture.** Donor agrees to procure and donate the Sculpture to the City, and the City agrees to accept the sculpture, according to the terms of this Agreement. All ownership rights to the Sculpture, including the right to graphically reproduce the Sculpture given the Donor by its contract with the Artist are assigned to the City upon acceptance of the Sculpture by the City. Upon acceptance of the sculpture by the City, the Donor is relieved of any further responsibility for care, maintenance, liability, etc. of the sculpture
2. **Specifications of Sculpture.** The Sculpture shall be a bronze-cast creation of artist Georgia Gerber, depicting a baseball glove as shown and represented in the drawings and photos included as Exhibit 1, attached to this agreement and herein incorporated. The Sculpture shall include a bronze explanatory plaque identifying the Artist and recognizing the Donor. The actual size, design, and wording of the explanatory plague shall be subject to the final approval of the City, whose approval shall not be unreasonably withheld.
3. **Donor's Responsibilities.** Donor shall procure and donate the Sculpture to the City no later than six months after the signing of the for hire contract with Georgia Gerber, but in no event later than December 31, 2013. Donor shall be solely and exclusively responsible for contacting, communicating with, and coordinating delivery of the Sculpture from the Artist to the City.

4. **City's Responsibilities.** The City shall accept delivery, receipt and ownership of the Sculpture at a mutually acceptable time and place. At its sole cost, City shall prepare a concrete pad in accordance with the sculptor's specifications and professional engineering standards, upon which the sculpture will be installed. Thereupon the City shall coordinate installation of the Sculpture on City property at the Sports Fields Complex. To the extent reasonably feasible, City shall display the sculpture at a site agreed on by both Parties, and shall be responsible for on-going costs to maintain the Sculpture, PROVIDED, the duration of the installation of the sculpture on City property shall be at the sole discretion of the City.

Upon installation of the Sculpture, the City shall promptly make payment of its \$5,000 contribution to Donor within 30 days after installation and acceptance.

5. **Risk of Loss or Damage.** Donor shall be solely responsible and assume all risk of loss or damage to the Sculpture until receipt and acceptance thereof by the City. At the point of acceptance by the City, the Donor will bear no further liability, ownership, or authority regarding the sculpture.
6. **Relationship of Parties.** No agent, employee, representative or subcontractor of Donor shall be deemed to be the employee, agent, representative or subcontractor of the City. None of the benefits provided by the City to its employees, including, but not limited to, compensation, insurance and unemployment insurance, are available from the City to the Donor or its employees, agents, representatives or subcontractors. Donor will be solely and entirely responsible for its acts and for the acts of Donor's agents, employees, representatives and subcontractors during the performance of this Agreement.
7. **Expiration; Termination.** Once the commission contract is signed with the artist, neither the City nor the Donor can terminate this agreement.
8. **Indemnification / Hold Harmless.** Donor shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. It is specifically and expressly understood that the indemnification provided herein constitutes the Donor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.
9. **Entire Agreement.** The written provisions and terms of this Agreement, together with all documents attached hereto, shall supersede all prior verbal statements of any officer or other representative of the City, and such statements shall not be effective or be construed as entering into or forming a part of, or altering in any manner whatsoever, this Agreement.

10. **Modification.** No waiver, alteration or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the City and Donor.
11. **Assignment.** Neither party may assign its rights or obligations granted by this agreement without the written consent of the other party.
12. **Written Notice.** All communications regarding this Agreement shall be sent to the parties at the addresses listed below, unless notified to the contrary. Any written notice hereunder shall become effective as of the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated in this Agreement or such other address as may be hereafter specified in writing.
13. **Non-Waiver of Breach.** The failure of the City to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option herein conferred in one or more instances shall not be construed to be a waiver or relinquishment of said covenants, agreements or options, and the same shall be and remain in full force and effect.
14. **Resolution of Disputes, Governing Law.** Should any dispute, misunderstanding or conflict arise as to the terms and conditions contained in this Agreement, the matter shall be referred to the City Manager, whose decision shall be final. In the event of any litigation arising out of this Agreement, the prevailing party shall be reimbursed for its reasonable attorney fees from the other party. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year above written.

CITY OF WOODINVILLE

WOODINVILLE GARDEN CLUB

By: _____

By: _____

Richard A. Leahy, City Manager

Title: _____

CITY CONTACT

City Manager
 17301 133rd Avenue NE
 Woodinville, WA 98072
 Phone: 425-489-2700

DONOR CONTACT

Donna Wolthuis
 Woodinville Garden Club
 15430 NE 162nd
 Woodinville, WA 98072
 Phone: 425-483-6625
 Informational Contact: Ann Neel
 Woodinville Garden Club
 15925 158th Avenue NE
 Woodinville, WA 98072
 Phone: 425-486-0794

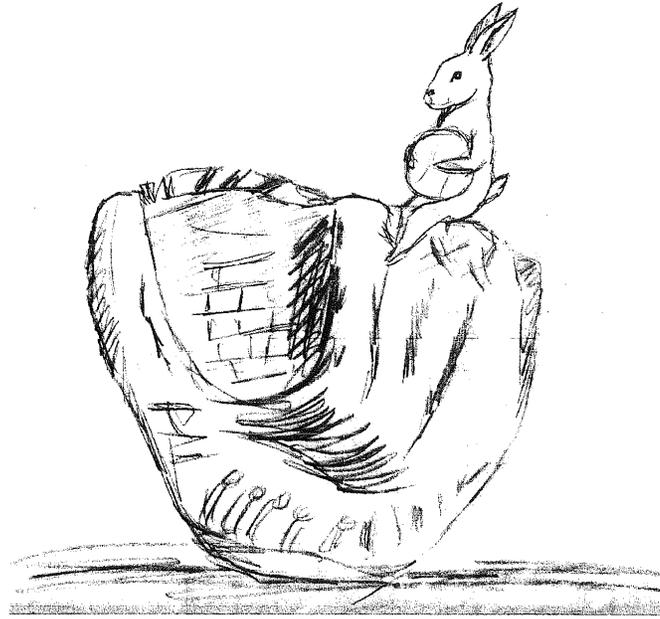
ATTEST/AUTHENTICATED

By: _____
Jennifer L. Kuhn, City Clerk

APPROVED AS TO FORM

By: _____
Office of the City Attorney

Agreement with Woodinville Garden Club for Donation of Sculpture - Exhibit 1



Agreement with Woodinville Garden Club for Donation of Sculpture - Exhibit 1

