

## Greater Milwaukee Foundation

101 W. Pleasant St., Suite 210

414.272.5805

[www.greatermilwaukeeefoundation.org](http://www.greatermilwaukeeefoundation.org)

Common Council City of Milwaukee

200 E. Wells Street #205

Milwaukee, WI 53202

Re: Donation of Tony Cragg Public Sculpture for Milwaukee City Hall

Dear \_\_\_\_\_:

The Greater Milwaukee Foundation (the "Foundation") is pleased to provide the City of Milwaukee (the "City") with the gift described in this letter (the "Gift") for the purchase, installation and maintenance of the sculpture, "Mixed Feelings, 2010", by Tony Cragg as chosen by an anonymous donor (the "Sculpture"). The Gift shall consist of funds transferred to Milwaukee Downtown, Inc. ("MDI") for the purpose of purchasing the Sculpture for the City and providing for the cost of transportation, delivery and installation of the Sculpture, including the cost of insuring the Sculpture during transportation, delivery and installation. MDI will coordinate the purchase and the transfer of ownership of the Sculpture directly to the City, and coordinate the transportation, delivery and installation of the Sculpture.

We believe it is important to clarify certain details relating to the installation and maintenance of the Sculpture. This letter agreement ("Agreement") sets forth the conditions under which the Foundation, on behalf of its anonymous donor, will provide the Gift to the City (through MDI) and with which the City agrees to abide.

The Foundation, the City and MDI agree as follows:

a. The Gift will consist of the funds transferred to MDI to cover the following costs associated with the Gift :

- 1) The Purchase of the Sculpture by Milwaukee Downtown, Inc.
- 2) The cost of the transportation to the site of installation, and installation in the planter located at the northeast corner of East Wells Street and North Water Street in front of Milwaukee City Hall. Installation will include all reasonable expenses for transportation and professional fees to oversee the installation, including the cost commercial general liability insurance covering liability associated with transportation and installation of the Sculpture in the following amounts:

Commercial General Liability: \$2,000,000 each occurrence

General Aggregate: \$2,000,000 aggregate

Personal & Advertising Injury Limit: \$2,000,000 each occurrence

Medical Expense: \$5,000 each person

MDI will cause such contractors to add the City of Milwaukee as an additional insured to their commercial general liability policy for work in connection with the Sculpture and shall provide certificates of insurance to the City of Milwaukee evidencing the same. MDI understands additional or different insurance requirements may be imposed on contractors pursuant to the City's permitting process.

- b. The City and MDI will coordinate with Russell Bowman, an advisor to the project.
- c. The Sculpture will be placed at Milwaukee City Hall on or before June 1, 2018.
- d. Upon permanent installation at Milwaukee City Hall, the Sculpture will not be moved to another permanent location without the agreement of the Foundation. The Foundation must approve any such permanent relocation in writing before it is made. The City may temporarily remove the Sculpture for purposes of public safety, to maintain the Sculpture, or for public works projects. The City understands that for a period of 50 years it may not permanently remove the Sculpture from public display or sell or transfer the Sculpture to third parties. Should the City desire to remove the Sculpture from public display before 50 years have passed from the date of installation other than for those reasons set forth herein, the City may transfer it to another major public downtown location of the Foundation's choosing at a time and place within the City of Milwaukee to be mutually determined by the City and the Foundation. If the Foundation and the City cannot mutually agree on such a location, or if the City fails to comply with the Agreement, then the Sculpture may be offered to the Milwaukee Art Museum or another charitable organization chosen by the Foundation.
- e. The City will insure the Sculpture under its property insurance policy for an amount equal to the purchase price of the Sculpture from April 18<sup>th</sup>, 2018, the date of purchase, however, arrangements will be made by MDI to provide insurance for any loss occurring during the transportation and delivery to the City of Milwaukee and initial installation of the Sculpture at the location specified above and the Gift shall cover the expense of such insurance. The City shall not bear the risk of liability for, or the risk of loss or damage to, the Sculpture during the described transportation, delivery or installation at the location specified above. Upon completion of the initial installation, ownership of the Sculpture shall be transferred to the City and MDI shall have no further responsibilities under this Agreement.
- f. The City will have the Sculpture inspected annually by a knowledgeable person as to its condition and stability, and provide written and visual documentation which will be maintained as a permanent archival record in the City.

- g. The City will clean, wash and repair the Sculpture as needed, using appropriate care.
- h. The City will share information about the Sculpture and its creator by whatever means the City feels appropriate.
- i. The City will create a stainless steel plaque and install it on the site with the Sculpture. The plaque will incorporate the following and may include additional information:

Tony Cragg  
Mixed Feelings, 2010  
Gift of the Greater Milwaukee Foundation  
to the City of Milwaukee, 2018

- j. The City will not intentionally damage, alter, modify or change the Sculpture without the prior written approval of Tony Cragg.
- k. The City will not use the Sculpture in any manner that would discredit the name or reputation of the Foundation or the spirit of the Sculpture.

This letter serves as the agreement under which the Foundation, MDI and the City will support the installation and maintenance of the Sculpture. Its execution is the condition precedent to the Foundation making the Gift. Upon execution, the Foundation will make the Gift.

The Foundation and MDI agree not to discriminate against any qualified employee or qualified applicant for employment because of sex, race, religion, color, national origin or ancestry, age, disability, lawful source of income, marital status, sexual orientation, gender identity or expression, victimhood of domestic abuse of sexual assault, past or present membership in the military service, HIV status, domestic partnership, genetic identity, homelessness, familial status, or an individual's affiliation or perceived affiliation with any of these categories. The City, MDI and Foundation will comply with all requirements imposed by or pursuant to the regulations of the appropriate federal agency effectuating Title VI of the Civil Rights Act of 1964. MDI and Foundation agree to comply with all applicable requirements of the Americans with Disabilities Act of 1990, 42 U.S.C. 12101, et seq. MDI and Foundation will cause the foregoing provisions to be inserted in all subcontracts, if any, for any work covered by this Agreement so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

No officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the carrying out of any services or requirements to which this Agreement pertains, shall have any personal interest, direct or indirect, in this Agreement. No member of the governing body of the City and no other public official the City who exercises any functions or responsibilities in the review or approval of the carrying out of this Agreement shall have any personal interest, direct or indirect, in this Agreement.

The Foundation and MDI covenant that it presently has no interest, and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its obligations hereunder. The Foundation and MDI further covenant that in the performance of this Agreement no person having any conflicting interest shall be employed. An interest on the part of the Foundation, MDI or their employee must be disclosed to the City.

All Parties understand that the City is bound by the Wisconsin Public Records Law, and as such, all of the terms of this Agreement are subject to and conditioned on the provisions of Wis. Stat. sec. 19.21 et. sec. The Foundation and MDI acknowledge that they are obligated to assist the City in retaining and producing records that are subject to the Wisconsin Public Records Law, including but not limited to those records produced or collected by the Foundation or MDI under this Agreement pursuant to Wis. Stat. sec. 19.36(3) and that the failure to do so shall constitute a material breach of this Agreement, and that the Foundation and MDI must defend and hold the City harmless from liability due to the Foundation's or MDI's fault under that law. Except as otherwise authorized, those records shall be maintained by the Foundation and MDI for a period of seven years.

CITY OF MILWAUKEE, WI

ATTEST

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Countersigned:

\_\_\_\_\_  
Martin Matson, City Comptroller      Date

Approved as to form and execution:

\_\_\_\_\_  
Office of the City Attorney      Date

MILWAUKEE DOWNTOWN INC.

By: \_\_\_\_\_  
Name: Elizabeth A. Weirick  
Its: CEO

STATE OF WISCONSIN            )  
   ) ss.  
COUNTY OF MILWAUKEE    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2018, before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_ personally known, who being by me duly sworn, did say that he/she is the \_\_\_\_\_ of Milwaukee Downtown, Inc.; that said instrument was signed on behalf of Milwaukee Downtown, Inc. ; and that said \_\_\_\_\_, as such officer acknowledged the execution of said instrument to be the voluntary act and deed of Milwaukee Downtown, Inc., by it and by them voluntarily executed.

\_\_\_\_\_  
Notary Public, State of Wisconsin  
My commission: \_\_\_\_\_

GREATER MILWAUKEE FOUNDATION

ATTEST

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: President

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

STATE OF WISCONSIN            )  
  ) ss.  
COUNTY OF MILWAUKEE        )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2018, before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_ personally known, who being by me duly sworn, did say that he/she is the President of said Foundation; that said instrument was signed on behalf of said Foundation by authority of its Board of Directors; and that said President, as such officer acknowledged the execution of said instrument to be the voluntary act and deed of said Foundation, by it and by them voluntarily executed.