



October 16, 2008

To: Thomas J. Bonfield, City Manager

From: Alan DeLisle, Assistant City Manager for
Economic and Workforce Development
Peter Coyle, Cultural Master Plan Project Manager, OEWD
Joy Mickle, Downtown Development Coordinator, OEWD

Subject: Acceptance of ownership of a work of art for public display on the Durham
Performing Arts Center Plaza

Executive Summary

Capital Broadcasting Company has offered to fund and donate to the City a work of public art, comprised of a vertical light beam rising out of a sculpted disc bearing a quotation from Shakespeare's *Macbeth*. The proposal has been reviewed by the Cultural Master Plan Advisory Board (CMPAB) and the CMPAB's Public Art Task Force. Both recommend that the City accept the piece based on artistic merit and appropriateness to the location. The donor proposal has been reviewed by the appropriate City departments, and by the Durham Performing Arts Center (DPAC) architect, and it has been discussed with the DPAC operator.

Recommendation

The administration recommends that City Council authorize the City Manager to execute an agreement with Capital Broadcasting Company (CBC), allowing the City Manager to accept full title, ownership and control, including operation and maintenance responsibilities of the sculpture by Jaume Plensa to be installed in the DPAC Plaza; and, to authorize the City Manager to make minor modifications to the agreement provided that the modifications do not substantively change the duties and the obligations of the City or CBC under the agreement and are consistent with the general intent of the version of the agreement approved by City Council.

Background

The City does not have an established process for the commissioning, acceptance and management of public art projects. The Cultural Master Plan Advisory Board established a Public Art Task Force to recommend a permanent public art process to the City Council. Until a permanent process has been established, the City Manager appointed the CMPAB to act as an advisory body to the Office of Economic and Workforce Development on matters relating to public art.

The Capital Broadcasting Company (CBC) offered to commission and to donate a sculptural work of public art by Jaume Plensa to be set into the new DPAC Plaza located at the northwest corner of the DPAC site. The cost of commissioning, design and installation of the sculpture will be borne by CBC. Skanska USA Building, Inc. will be contracted by CBC to construct and install the sculpture. Upon acceptance by the City Manager, the City will be responsible for insurance, operations and maintenance of the sculpture.

Jaume Plensa is a Spanish artist of international reputation. He currently resides in Barcelona and Paris. He has created public art installations in cities around the world, including, Chicago, Paris, London, Jerusalem, Calgary, Stockholm, and Toronto and in various locations in Japan, Switzerland, Luxembourg, Spain, the United States and other countries. His sculptures are included in the collections of over 65 museums, corporations and governments, including The Nasher Museum at Duke University, The North Carolina Museum of Art, the San Francisco Museum of Modern Art, and in museums and collections in North America, Europe and Japan.

CBC submitted a proposal for the donation and design of the sculpture to OEWD in July, 2008. The proposal was forwarded to the Cultural Master Plan Public Art Task Force, which met with the donor's team on August 7, 2008 to review the proposal. The proposal also was reviewed by the City Manager's Office and the Offices of Risk Management, Public Affairs, City Attorney, Public Works, General Services and City/County Planning. A meeting with department representatives was held on August 25. Their questions and concerns were relayed to CBC. Based on donor responses to questions raised by the departments and the Public Art Task Force, the departments have agreed to the OEWD recommendation that the City accept the sculpture subject to the terms outlined in the attached donor agreement. Pursuant to that agreement and as a condition of accepting the art work, the City agrees to maintain, operate and insure the work for at least 25 years. The City may not remove the work until after the 25 year term, except by permission of CBC. No modifications or alterations of the artwork will be allowed during such period except to address safety concerns and as may be required by law or with the permission of CBC and the artist. Although the City Manager will have discretion to determine the operating schedule of the light sculpture, by agreement, its operation (i.e., the light being on) must coincide with DPAC performances. As a condition of acceptance, the City also agrees to indemnify CBC, its officers, directors, employees, agents, and independent contractors for claims relating the City's contractual obligations relating to maintenance, use, operation, alteration or modification, including removal, of the artwork. After official acceptance of the artwork by the City Manager, the City will acquire a perpetual royalty-free copyright license to use, display, exhibit, promote, advertise, make and distribute copies of, photograph, video, and otherwise reproduce two-dimensional images of the light sculpture for non-commercial and commercial purposes.

The Task Force met on September 3 and recommended that the City accept possession of the piece, subject to final review of outstanding technical issues by appropriate City departments. That recommendation was reviewed by the Cultural Master Plan Advisory Board on September 4. The Board members voted unanimously to accept the Task Force recommendation.

The Federal Aviation Administration has been consulted and has provided an advisory that the Raleigh-Durham International Airport control tower should be notified when the light beam is turned on, either through a written schedule sent to the tower by email or fax, or through a telephone call to the tower 2 hours prior to the beam being turned on in the case of a variation from the written schedule.

Issues/Analysis

Acceptance of the sculpture represents a long-term commitment by the City to maintain the piece, to assume associated risks and to fund costs of its display. The sculpture will be located on a site where the City has those responsibilities for the surrounding plaza. Given the unique nature of the artwork it is difficult to evaluate the potential liabilities that may be associated with its operation. Efforts have been made to reduce the potential risks associated with unadvised, proximate exposure to the intense beam of light intended to emanate from ground level such as requiring a barrier fence encircling the light source. Nonetheless, actual empirical risks associated with the operation of such an artwork are not known to the City.

CBC submitted to OEWD a schedule for operating and maintenance costs. The schedule considers the replacement rate for the light bulb; the life expectancy and replacement costs for the lamp, sump pump, cooling fans and other components; and general cleaning and care for the sculpture and lens. The donor estimates were reworked by OEWD staff to conform to City budget practices and forwarded to General Services, along with the original CBC documentation. General Services reviewed the estimates and made some modifications, based on its own research of electrical costs, equipment replacement costs and maintenance costs. Attached is a 25 year cost schedule in 2008 dollars.

Alternatives

The Council can choose to not accept the donation.

Financial Impact

The donor will bear all costs for purchase and installation of the sculpture, prior to acceptance by the City. The City will be responsible for ongoing maintenance, insurance, and repair and for periodic replacement of the 7000 watt light bulb that provides the light beam. Annual electrical costs would be paid by the DPAC management as part of the operating expenses for the DPAC. The sculpture will not be metered separately from the DPAC. The electrical estimate, provided by General Services, is based on current Duke Energy electrical usage rates and represents an upper limit on electricity costs. The cost estimate assumes that the light beam will be lit 365 days each year for 6 hours each evening.

	Annual Budget
City Annual Maintenance	\$4,415.00
DPAC Annual Utilities	\$3,350.00

SDBE Summary

An SDBE Summary is inapplicable because no project-specific goals have been set and no SDBE's are involved in this item because it is being constructed privately.

Attachments

- AGREEMENT TO ACCEPT ARTWORK INSTALLATION IN THE PLAZA OF THE DURHAM PERFORMING ARTS CENTER
- Exhibit A. Approximate Location of the DPAC Light Sculpture
- Exhibit B. DPAC Light Sculpture Representation
- Exhibit C. Company Insurance Requirements
- Exhibit D. Annual Operating Costs in 2008 Dollars for the first 25 years
- Exhibit E. Jaume Plensa biography
- Exhibit F. News and Observer article, October 5, 2008
- Exhibit G. Photo of Base and Fence