



Agenda Item #: _____

Staff Report

City of Manhattan Beach

TO: Honorable Mayor Tell and Members of the City Council

THROUGH: David Carmany, City Manager

FROM: Richard Gill, Director of Parks and Recreation
Megumi Sando, Acting Cultural Arts Manager

DATE: December 6, 2011

SUBJECT: Consideration of Approval for *Believe, Green* and *Not A Step* Artworks for the 2011/2012 Sculpture Garden Authorizing the City Manager to Execute the Attached Agreement with Each of the Artists.

RECOMMENDATION:

Staff recommends that City Council approve *Believe, Green* and *Not A Step* for the 2011-2012 Sculpture Garden and authorize the City Manager to execute the attached agreement with the artists of the sculptures.

FISCAL IMPLICATION:

There are no fiscal implications on the general fund associated with the recommended action. The program will be supported through the Public Art Trust Fund. On December 15, 2009, Resolution No. 6237 was approved by City Council, and \$100,000 of the Public Art Trust was committed for the annual Sculpture Garden Program; the current balance is \$79,742.65. The cost for the 2011-2012 Sculpture Garden Exhibition including these two sculptures (five sculptures in total) is \$12,500, which leaves a committed balance of \$65,157.65. The unrestricted balance in the Public Art Trust Fund is \$216,229.66.

BACKGROUND:

The purpose of the Sculpture Garden is to display a variety of public artwork in a community setting that prompt the viewer through thoughtful introspection and contemplation of a broader meaning of public art and to bring enjoyment to our residents and visitors; and to cultivate and sustain a sense of community pride.

On September 20, 2011, the Cultural Arts Commission's six sculpture recommendations for the 2011/2012 Sculpture Garden were presented to the City Council. Councilmember Howorth moved to approve the six artworks with the caveat that staff return to City Council with the appropriate sites for the following pieces:

Believe, Green by Jason Manley (17' H x 15' W x 6' D)
Size can be altered. Solar panels included

Not A Step by Christian Tedeschi (13' H x 27' W)
13 A-Frame Wooden Ladders

The motion was seconded by Councilmember Powell and passed.

Recently, artist Amos Robinson withdrew his submission "Celestial Sailor," one of the approved sculptures by City Council on the September 20, 2011 meeting. The kinetic stainless steel sculpture was sold.

DISCUSSION:

On October 6, 2011, the two artists for *Believe, Green and Not A Step* and Commissioner De Maria, Public Works staff, and the Acting Cultural Arts Manager met on site and identified suitable locations in the Civic Plaza for the two pieces. For *Not A Step*, the green mound area with plants between the Library and Police Department was suggested (Attachments A and B). For *Believe, Green* the third level of the green area by the staircase between the Civic Plaza and 13th Street was recommended (Attachments A and B).

During the Cultural Arts Commission's Special Meeting held on October 11, 2011, the Cultural Arts Commissioners and Ad Hoc Committee members reviewed the possible locations for the two sculptures. For *Believe, Green*, the artist and the Cultural Arts Commission agreed to present the green area by the staircase between the Civic Plaza and 13th Street to the City Council. For *Not a Step*, the green mound between the library and Police Department was approved by the Commission.

All the suggested locations contain 3' – 4' of deep soil, which allows the sculptures to be installed directly on the ground. Additionally, steel cables or wire ropes will be used to secure the structures to the ground. Plants can be rearranged around the artwork to discourage the public from accessing the sculptures. Cross beams of *Believe Green* are positioned at 8' high to deter children from climbing the sculpture.

Upon the approval of *Believe, Green and Not A Step* for the 2011-2012 Sculpture Garden, the de-installation of the current display and the installation of the new group of sculptures will take place December 15 - 16, 2011.

CONCLUSION:

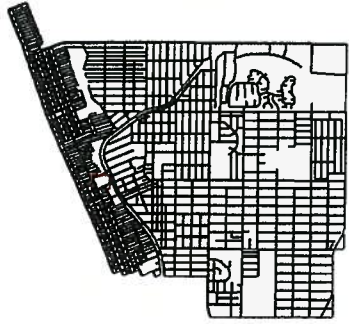
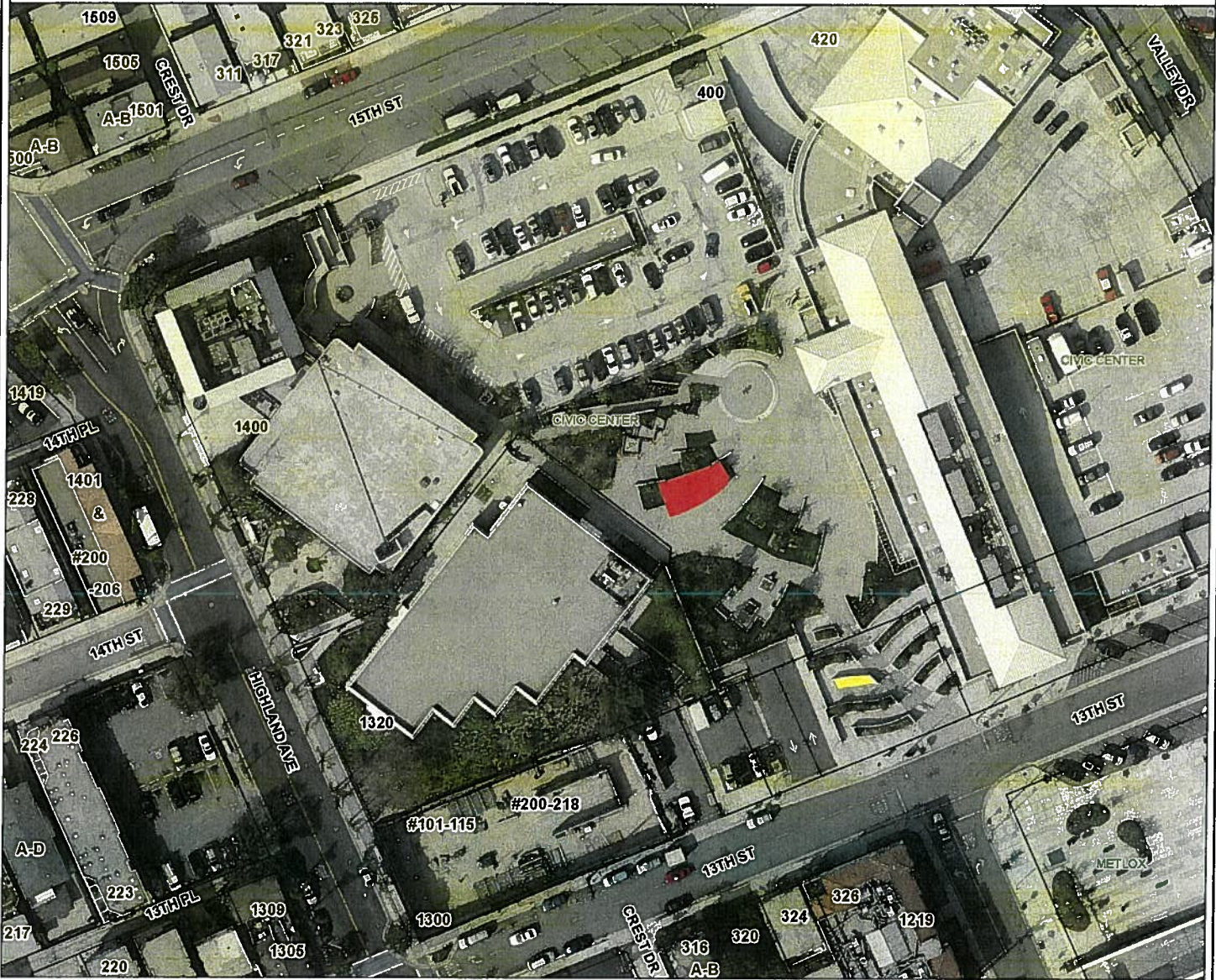
Staff recommends that the City Council approve *Believe, Green and Not A Step* to be part of the 2011-2012 Sculpture Garden Program and authorize the City Manager to enter into the agreement attached (Attachment C) with each of the artists.

Attachments:

- A. Map of the Installation Sites
- B. Sculpture Images on Proposed Installation Sites
- C. Art Loan Agreement for Sculpture Garden (Template)

Attachment A

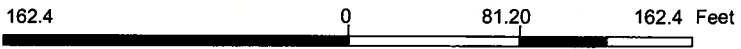
Manhattan Beach



Legend

- Addresses
- City Boundary
- Streets
- Parcels
- Basemap Labels
- "Not A Step"
- "Believe"

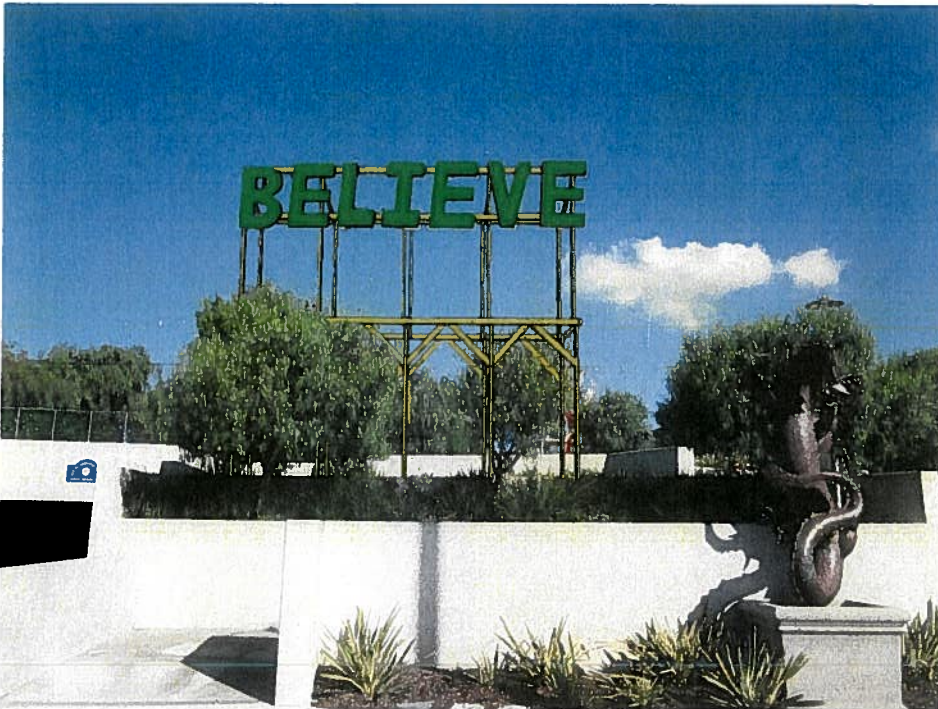
Scale: 1:974



This map is a user generated static output from the "MB GIS Info" Intranet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.

Notes

Believe, Green



Not A Step



CITY OF MANHATTAN BEACH ART LOAN AGREEMENT

This Agreement is made by and between the City of Manhattan Beach ("City") and _____, with reference to the following facts:

RECITALS

A. The City maintains a Sculpture Garden Exhibition ("Exhibition") on the Civic Center Plaza and Veteran's Parkway ("Site");

B. Artist desires to loan the City a sculpture entitled _____, as is more particularly described in Exhibit A ("Art Work") for public display as part of the Sculpture Garden Exhibition;

C. The City's Cultural Arts Committee has approved a temporary exhibition of sculptures, including the Art Work of the Artist;

Now therefore, for good and valuable consideration, including the mutual promises, conditions and covenants contained herein, the parties hereto agree as follows:

1. **Loan.** Artist agrees to lend the Art Work to City, and City agrees to borrow the Art Work from Artist, for the purpose of exhibiting the Art Work at the Site for the Exhibition. City at all times has the sole discretion to determine the exact location at the Site or any other location in which to exhibit the Art Work. The Art Work shall remain in the possession of the City for the time specified herein, but Artist agrees that the City Manager or City Manager's designee may withdraw the Art Work from the Exhibition at any time in City's sole discretion and that this Agreement may be terminated at any time with or without cause. If so withdrawn or terminated, the City shall provide notice of said action to the Artist.
2. **Term.** The term of the loan of the Art Work shall commence on _____ and end _____. The term of the loan may be extended for an additional period of time upon mutual agreement of the parties. The City Manager or his designee may extend the term of this Agreement on behalf of the City.
3. **Transportation, Delivery, Installation and Removal.**
 - (a) Artist certifies that the Art Work is in such condition as to withstand ordinary strains of transportation, delivery, and handling and that Artist shall coordinate the transportation, delivery, installation and removal of the Art Work with the City. City shall have no liability to Artist for damage to the Art Work which results from the transportation, delivery, installation and removal of the Art Work to and from the Site.
 - (b) Artist is responsible for the costs of transporting the Art Work to and from the Site, including any transportation costs. Installation and de-installation of the Art Work at the Site shall be coordinated and provided by the City. The Artist, however, shall oversee the installation and de-installation by City. Artist hereby releases and holds the City, City Council and each member thereof, and every officer, employee and agent harmless from any liability for damage

Attachment C

to or loss of the Art Work, regardless of who causes such damage, during the installation and de-installation of the Art Work.

4. Care and Preservation.

(a) The City will exercise the same care with respect to the Art Work as it does in the safekeeping of comparable property of its own. It is understood, however, that the Art Work shall be displayed out of doors and shall be exposed to extremes of rain, wind, heat, sun, humidity and other features of weather, as well as dirt, pollution, insects, birds and other animals, and the possibility of theft, vandalism and malicious mischief.

(b) In the event of any damage to the Art Work which require immediate repair or removal of the Art Work in order to prevent injury to persons or property, Artist shall at its own cost either immediately repair or remove the Art Work following receipt of notification from City of the need for such repair. In the event Artist fails to perform the repairs or removal within a reasonable time, or if the damage to the Art Work is such that immediate action is required in order to prevent injury to persons or property, City may take action to remove, repair and/or secure the Art Work and Artist shall reimburse City for all costs and expenses incurred in connection therewith promptly following receipt of a written statement. Notwithstanding, City reserves the right to require removal of the Art Work if the City determines, in its sole discretion, that the Art Work may be a safety hazard. In such case, Artist shall be notified to transport its Art Work from the Site upon its removal by the City.

(c) Artist hereby releases and holds the City, City Council and each member thereof, and every officer, employee and agent harmless from any liability for damage to or loss of the Art Work, regardless of whom or what causes such damage, and City shall not be responsible for the preservation and/or safekeeping of the Art Work, nor shall City have any liability for theft, loss or damage to the Art Work.

5. Insurance. City shall insure the Art Work for its stated value set forth in Exhibit A up to a maximum of Fifty Thousand Dollars (\$50,000) under a standard policy of insurance for art objects against all risks of physical loss or damage which may contain standard exclusions, including exclusions for wear and tear, gradual deterioration, insects, vermin; damage from repair, restoration or retouching processes; hostile or warlike action, insurrection, and rebellion; and nuclear reaction or radioactive contamination. Such insurance shall only be provided during the duration of the term of this Agreement and only while on such Sculpture display. In the event such insurance is not adequate to cover losses which arise in connection with this Agreement, Artist shall be responsible for all such losses not covered by insurance and hereby releases the City, City Council and each member thereof, and every officer, employee and agent of City from any liability for any and all claims arising out of such loss or damage.

6. Indemnification. Artist hereby warrants that, to its knowledge, the Art Work is durable, structurally sound, properly constructed and securely fastened. Artist hereby agrees to indemnify and hold harmless City, and its officers, agents and employees, from and against any and all losses, liability, costs or expenses (including attorneys' fees and costs) arising from or in connection with, or caused by the intentional, reckless negligent or otherwise wrongful act or

Attachment C

omission of Artist, its agents, employees, subcontractors or other personnel or from and against any and all losses, liability, including property damage or death, and costs or expenses (including attorneys fees and costs) arising out of or related to defects of the Art Work, faulty workmanship of Artist and Art Work or otherwise caused by the Art Work.

7. Removal of Art Work.

(a) Upon the expiration of the term of this Agreement or if sooner terminated as set forth herein, Artist shall remove the Sculpture from the Site. In order to minimize disruption of pedestrian and/or vehicular traffic, Artist shall schedule the removal with the City, at least ten days in advance of the date of termination. Artist is responsible for the costs of transporting the removed Art Work from the Site. If Artist fails to retrieve the Art Work within thirty (30) days after the term of this Agreement, City shall have the right to remove and store the Art Work at Artist's cost and expense. Artist shall reimburse the City promptly following receipt of a written statement. If, after one year, the Art Work has not been reclaimed, then, and in consideration for its storage, insurance and safeguarding during such period, the Art Work shall be deemed an unrestricted gift to the city.

(b) If the legal ownership of the Art Work shall change during the pendency of this loan, whether by reason of death, sale, insolvency, and gift or otherwise, the new owner may, prior to the Art Work' return, be required to establish his or her legal right to receive the Art Work upon proof satisfactory to the City.

8. City Obligations. City shall place a credit near the Art Work which contains the name of the artist and the title(s) of the Art Work as set forth in Exhibit A.

9. Artist's Warranty. Artist represents and warrants to City that it has the proper legal authority to loan the Art Work to City on the terms and conditions set forth in this Agreement. Artist shall hold harmless City, and its officers, agents and employees from any and all losses, liability, costs or expenses (including attorneys' fees and costs) arising from any breach by Artist of such representation and warranty.

10. Photography and Reproduction. Artist authorizes City to photograph, videotape, reproduce and publish the Art Work in any medium for any purpose including but not limited to archival, educational and publicity purposes related to the exhibition and/or the City. In the event City reproduces the Art Work as described in this paragraph, the following credit shall appear as follows: _____ . This provision shall survive termination of this Agreement.

11. Sale of Sculpture. Artist may sell Sculpture during the term of this Agreement, however, Artist shall as part of the sale ensure that this Agreement, and the obligations and rights hereunder, are assigned to the new owner by requiring that Artist and Buyer execute an assignment and assumption agreement in the form approved by the City Attorney. Under no circumstances shall the sale of the Sculpture adversely affect the City's rights under this Agreement, including but not limited to the City's right to possess the Art Work during the term hereunder. Upon its sale, Artist shall deliver to the City a duly executed assignment and

Attachment C

assumption agreement and shall provide to City written notice as to whom the Sculpture should be released to upon expiration or termination of this Agreement.

12. **Addresses for Notices.** Any notices, demand or documents required by this Agreement shall be deemed received on (a) the day of delivery if delivered by hand during the receiving party's regular business hours or by facsimile before or during the receiving party's regular business hours; or (b) on the second business day following deposit in the United States mail, postage prepaid to the addresses set forth as follows: To City: City of Manhattan Beach, Director of Parks and Recreation, 1400 Highland Avenue, Manhattan Beach, California 90266; To Artist: See, Exhibit A. Either party shall have the right to designate a different address by written notice similarly given. Artist shall notify City promptly in writing if there is any change in ownership of the Art Work (whether through inter vivos transfer or death) or if there is a change in the identity or address of Artist. City assumes no responsibility to search for Artist or subsequent owner if it cannot be reached at the address of record provided herein.

13. **Exhibition Honoraria.** City shall pay Artist an honorarium of \$2,500 upon the completion of the installation of the Sculpture at the Site. Artist, however, shall not be entitled to any payment in the event this Agreement is cancelled or otherwise terminated for any reasons, prior to the completion of installation.

14. **General.** This Agreement represents the entire integrated agreement between City and Artist and supersedes all prior negotiations, representations or agreements, either written or oral. Except as otherwise provided herein, this Agreement may be amended only by a written instrument signed by both the City, through its City Manager and Artist. The interpretation and implementation of this Agreement shall be governed by the domestic law of the State of California. Whenever 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. 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.

15. **Successors, Assigns and Subcontractors.** 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 thereto. Artist shall not assign or subcontract or attempt to assign or subcontract any portion of this Agreement without the prior written approval of City, except as otherwise provided herein.

16. **Contract Administration.** The City Manager or his designee shall administer the terms and conditions of this Agreement for the City.

EXECUTED the ____ day of _____ 2011, at Manhattan Beach, California.

Attachment C

CITY OF MANHATTAN BEACH,
A Municipal Corporation

DAVID CARMANY
City Manager

ARTIST:

Approved as to Form

Roxanne M. Diaz, City Attorney

EXHIBIT A

SCULPTURE DESCRIPTION

Artist _____ Telephone (Business) () _____

(Home) () _____

Address _____

(Unless otherwise instructed below, work will be shipped from and returned to this address)

Credit _____

(Exact form of Artist's name for exhibition credit and publicity)

Title of Work _____

Medium or Materials and Support _____

Size: Sculpture (excl. pedestal) or relief: H _____ W _____ D _____ Approx. Wt. _____

Pedestal: H _____ W _____ D _____ Approx. Wt. _____ Detachable? _____

Date of Work _____ If date appears on work, where? _____

Insurance Value (U.S. Currency) \$ _____