



*City Council Memorandum*

**To: Mayor Fasbender & City Councilmembers**  
**From: Chris Jenkins, Parks & Recreation Director**  
**Date: August 21, 2023**  
**Item: Art Lease Agreement with Dale Lewis**

**Council Action Requested:** Approve the attached lease agreement with Dale Lewis.

**Background Information:** Hastings Environmental Protectors (HEP) submitted for and was awarded \$3,000.00 in Community Investment Fund funding to support leasing one piece of art from Dale Lewis for a duration of 3 years. The art piece will be switched out each year, and will be located along Hastings' trail system, within Vermillion Linear Park. Members of HEP have worked with members of the Arts Commission and Mr. Lewis to select the first years' art piece. Final placement will be coordinated with Parks & Recreation Staff and HEP, and installation assistance will be provided by the City.

**Financial Impact:** Budgeted and allocated funds being used, no additional impact.

**Advisory Commission Discussion:** N/A

**Council Committee Discussion:** N/A

**Attachments:**

- Lease Agreement

**ARTWORK LEASING AGREEMENT**

This Artwork Leasing Agreement (“Agreement”) is made and entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, (“Effective Date”), by and between Dale Lewis (“Lessor”) and the City of Hastings, MN (“Lessee”).

WHEREAS, the Lessor would like to display and the Lessee would like to accept the display of certain sculpture artwork on property owned by the Lessee subject to the terms of this Agreement.

Now therefore, the parties hereby agree as follows:

**AGREEMENT**

**1. Lease of Artwork and Term:** Subject to the terms and conditions set forth below, the Lessor rents to the Lessee the following Sculpture:

No-Iron Dragonfly (purchase price \$12,000)

(“Sculptures” or “Artwork”) for the term of one year commencing from the Effective Date of this Agreement.

**2. Rental Rate:** The Lessee shall pay a lump sum of \$1,000 per sculpture for the term of the Agreement, due and payable within 30 days following installation.

**3. Location, Installation and De-installation:** The location of the Sculptures shall be on Lessee’s property (“City Property”), at a mutually agreed upon location. Installation will be arranged between the Lessor and the Lessee depending upon the weather, availability of Hastings equipment, park access and personal, and dates the Sculptures are available. At least 14 days’ notice is required. No fixtures or other materials needed for the installation and ongoing display of the Sculptures may be affixed to City Property without prior consent of the Lessee. Should any Artwork be required to be moved after installation Lessee will notify the Lessor of the intent to relocate the sculpture and the Lessor must give permission before Artwork is relocated.

**4. Ownership and Use:** The Artwork shall at all times be the sole and exclusive property of the Lessor. The Lessee shall have no rights or property interest in the Artwork, except for the right to display the Artwork in its intended manner and to market the Artwork to encourage visitors to enjoy Hastings’ trail system . The Lessee recognizes the copyright interests of the Lessor in the Artwork and shall not infringe or allow an infringement of the Lessor’s rights.

**5. Repairs, Maintenance.** Should a sculpture require a repair the Lessee will immediately notify the Lessor. No repairs shall be done without expressed approval of the Lessor. The Lessor shall have the right to perform any maintenance to the Sculptures, but may not intentionally alter, modify, or make changes to any City Property without the prior approval of the Lessee. Maintenance of the site around the Artwork will be subject to the Lessee's or 3<sup>rd</sup> party agreements created at the time of installation.

**6. Insurance.** The Lessee shall carry insurance to cover the replacement cost of the Artwork in regard to theft, natural disasters, and liability and will pay over the proceeds of such insurance to the Lessor upon receipt of proceeds.

**7. Default.** Neither Lessee nor Lessor shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the nonperforming party. A default in payment of more than seven (7) days by the Lessee or violation of any other term of this agreement shall allow the Lessor to retake possession of the Artwork. The Lessor shall retain all its rights in law and equity and is entitled to reasonable attorney's fees and cost upon the default of the Lessee.

**8. Indemnity.** Lessor and Lessee each agree to indemnify, and hold harmless each other, its agents and employees, from and against legal liability for all claims, losses, damages, and expenses to the extent such claims, losses, damages, or expenses are caused by its negligent acts, errors, or omissions.

**9. Continuation or Purchase.** With the Lessee's consent, the Lessor may offer to leave the Artwork in place after the term of this lease for no additional fee with the understanding that the Artwork may remain in the location throughout the winter and most likely not be removed or replaced until spring. The Lessee acknowledges that the Artwork is for sale and may exercise the right to purchase the Artwork at any time. Also, should the Artwork be sold to a third party during the lease term the Lessee is entitled to a commission fee equivalent to 20% of the purchase price.

**10. Recall or Exchange of Leased Artwork:** Occasionally, Leased Artwork may be recalled by Lessor because of a sale or exhibit. A fourteen (14) day notice will be provided to exchange the Artwork. Following the installation de-installation provisions, the Lessor will, coordinate with the City of Hastings to retrieve leased Artwork from City of Hastings and replace leased Artwork with other artwork that is mutually acceptable to Lessee for the remaining term of the lease.

**11. Amendments.** This agreement is the only agreement of the parties and may only be amended in writing or by a separate written agreement of the parties.

**12. Application of Laws:** This agreement shall be construed under Minnesota law and shall be binding on the heirs, successors and assigns of the parties.

**13. Notices:** Notices shall be communicated to the following addresses:

If to City:                   City of Hastings  
                                  101 4<sup>th</sup> Street East  
                                  Hastings, MN 55033  
                                  Attn: City Administrator

Or e-mailed: [dwietecha@hastingsmn.gov](mailto:dwietecha@hastingsmn.gov)

If to Artist:                 Dale Lewis  
                                  802 Reuter Drive  
                                  Hastings, MN 55033

Or e-mailed: ArtistDaleLewis@gmail.com

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