CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

DATE: November 18, 2024

ITEM: Motion – Approval of Public Art Donation Agreement – "3 Flags in Space"

FINANCIAL IMPACT: Ten percent of the artwork's value will be allocated to the public art maintenance fund.

SYNOPSIS: Jaey and Brenda Sedlacek have generously proposed donating a piece from their private collection to enhance the City's permanent public art collection. (Brenda served as a Commissioner on the West Des Moines Public Arts Advisory Board from 2011 to 2023. The Sedlacek family previously contributed the artwork titled "Confluence," which is displayed in front of City Hall, in 2022.) The artwork being offered, named "3 Flags in Space," was created by artist Jane Ingram Allen in 1992 and is appraised at $1,700.

The Public Arts Advisory Commission endorsed the acceptance of this donation into the City's permanent public art collection on October 24, 2024. City Manager Tom Hadden has also approved its installation on the wall of the central staircase at West Des Moines City Hall.

BACKGROUND: Detailed information about the artwork, including installation renderings, can be found in the attached document for consideration.

OUTSTANDING ISSUES (if any):

RECOMMENDATION: That the Council approve the donation agreement for "3 Flags in Space".

Lead Staff Member: Allison Ullestad, Arts, Culture, and Enrichment Supervisor

STAFF REVIEWS

Department Director	Ryan Penning, Director of Parks & Recreation RP
Appropriations/Finance	
Legal	
Agenda Acceptance	

PUBLICATION(S) (if applicable)

Published In	
Dates(s) Published	

SUBCOMMITTEE REVIEW (if applicable)

Committee	PAAC		
Date Reviewed	October 24, 2024		
Recommendation	**Yes**	No	Split

CITY OF WEST DES MOINES, PUBLIC ARTS ADVISORY COMMISSION
PUBLIC ART PROGRAM

PUBLIC ARTWORK DONATION AGREEMENT

THIS AGREEMENT is made and entered into on date last signed below between the City of West Des Moines, an Iowa municipal corporation, acting on behalf of the City of West Des Moines, Public Arts Advisory Commission ("OWNER") and Jaey/Brenda Sedlacek, ("DONOR"). The OWNER'S REPRESENTATIVE shall be the Director of Parks and Recreation or their designee.

1. **Purpose of Agreement**

DONOR, as the sole owner of the artwork entitled "3 Flags in Space" ("ARTWORK") hereby donates the ARTWORK to the OWNER ("Agreement"). Exhibit A to this Agreement describes the ARTWORK and includes photographs of the ARTWORK.

In consideration of the DONOR's donation of the ARTWORK to the OWNER, the OWNER agrees to publicly display the ARTWORK in/at West Des Moines City Hall for a period of at least five years and to credit the DONOR on a sign or plaque posted with the ARTWORK.

2. **DONOR's Representations and Warranties**

a. The DONOR represents and warrants that the DONOR is the sole owner of the ARTWORK. The DONOR further represents and warrants that the ARTWORK is free and clear of any liensand that there are no outstanding disputes in connection with property rights, intellectual property rights, or any other rights in the ARTWORK or parts of the ARTWORK.

b. The DONOR represents and warrants that the ARTWORK will not pose a danger to public property, health or safety even with the possibility of misuse, if such misuse isin a manner that was reasonably foreseeable at any time during the term of this Agreement.

c. The DONOR represents and warrants that general routine maintenance and repair of this ARTWORK will maintain the ARTWORK within an acceptable standard of public display.

d. The DONOR represents and warrants that the installation and removal of the ARTWORK will not damage or cause the ARTWORK to fall below an acceptable standard of public display as determined by the OWNER.

e. If the location specified in section 1 above is outside, the DONOR represents and warrants that foreseeable exposure to the elements and general wear and tear will cause the ARTWORK to experience only minor, repairable damage and will notcause the ARTWORK to fall below an acceptable standard of public display as determined by the OWNER.

3. **Intellectual Property and Public OWNER Rights**

a. OWNER's Intellectual Property License. The DONOR grants to the OWNER, and to the OWNER'S REPRESENTATIVE, authorized contractors and assigns, an unlimited, non-exclusive and irrevocable license to do the following with respect to the ARTWORK:

(1) Use and Display. OWNER may use and display the ARTWORK.

(2) Reproduction and Distribution. The OWNER may make and distribute, and authorize the making, display and distribution of, photographs and other two-dimensional reproductions of the ARTWORK. The OWNER may use such reproductions for any OWNER-related purpose, including, but not limited to, advertising, educational and promotional materials, brochures, books, flyers, postcards, print, broadcast, film, electronic and multimedia, and catalogues or similar publications. The OWNER shall ensure that such reproductions are made in a professional and tasteful manner, in the sole and reasonable judgment of the OWNER.

b. Third Party Infringement. The OWNER is not responsible or liable for any third-party infringement of any copyright to the ARTWORK held by the DONOR and is notresponsible for protecting the intellectual property rights of the DONOR. The DONOR understands and agrees that the ARTWORK will be displayed in a public place and may be photographed, filmed, or otherwise recorded for any purpose without any restriction by the OWNER.

c. Credit. All reproductions by the City shall contain a credit to the DONOR and artist.

d. Trademark. In the event that the OWNER's use of the ARTWORK creates trademark, service mark or trade dress rights in connection with the ARTWORK, the OWNER shall have an exclusive and irrevocable right in such trademark, service mark, or trade dress.

e. Alteration. The OWNER agrees that it will not intentionally damage, alter, modify, or change the ARTWORK without the prior written approval of the DONOR.

f. Release. The DONOR hereby releases the OWNER from any claims or demands associated with the ARTWORK including, without limitation, the right of privacy or publicity and DONOR hereby waives any rights arising from the Federal Copyright Act, including, but not limited to the Visual Artists Rights Act, 17 U.S.C §§106A and 113(d)("VARA").

4. **Indemnification**

a. The DONOR agrees to indemnify and hold harmless the OWNER, its subdivisions, officials, employees and agents from any liabilities, willful or non-willful acts of negligence by the DONOR or the DONOR's agents or employees, or any or all elements of loss, theft, mutilation, vandalism or other damage (including those caused by acts of God) that may befall the ARTWORK during any activities related to the planning, creation, or delivery of the ARTWORK.

b. Upon installation of the ARTWORK, the OWNER shall indemnify and hold harmless the DONOR from claims or liabilities relating to the maintenance of the site at which the ARTWORK is installed, which claims or liabilities arise from and after the date of installation of the ARTWORK.

c. The DONOR shall indemnify, protect, defend and hold harmless the OWNER and its subdivisions, officials, employees and agents from and against all liabilities, obligations, losses, damages, judgments, costs or expenses (including legal fees and costs of investigation)

(collectively "Losses") arising from, in connection with or caused by: (a) any personal injury or property damage caused, directly or indirectly, by any act or omission of the DONOR and/or the DONOR's agents, employees, or assigns; (b) any infringement of patent, copyright, trademark, trade secret or other proprietary right; or (c) any infringement of the DONOR's rights under 16 U.S.C. § 106A, 16 U.S.C. § 113, Civil Code §§ 987 *et seq*, or similar state, federal, or international law. Notwithstanding the foregoing, the DONOR shall have no obligation under this Section with respect to any Loss that is caused solely by the active negligence or willful misconduct of the OWNER and is not contributed to by any act or omission (including any failure to perform any duty imposed by law) by the DONOR.

5. **Termination of Agreement**

Prior to the expiration of the display period set forth in Section 1 of this Agreement, the OWNER may decide to remove the ARTWORK from public display and terminate this Agreement. The OWNER shall provide written notice within thirty (30) days of the intent to remove the ARTWORK and terminate the Agreement to the DONOR at the address listed in Section 14 of this Agreement.

6. **Installation and Removal of ARTWORK**

The OWNER will have authority over the installation and removal of the ARTWORK. The OWNER and the DONOR have jointly developed a plan for installation of the ARTWORK in a manner that is cost-effective as well as protective of OWNER'S property and the ARTWORK. That plan is attached to this Agreement as Exhibit B. The OWNER shall take all actions reasonably necessary to facilitate and permit implementation of the plan described in Exhibit B, including making the ARTWORK available on a timely basis. The OWNER shall also be solely responsible for any and all activities identified in Exhibit B. The OWNER shall be solely responsible for removal of the ARTWORK.

If the ARTWORK can be removed from public display without significant damage to the ARTWORK or the site where the ARTWORK is installed, the OWNER shall take reasonable precautions to minimize alteration of the ARTWORK during removal. If the ARTWORK cannot be removed from public display without alteration of the ARTWORK (e.g., it is incorporated into a building), the DONOR waives any and all such claims, and any rights granted under the Visual Artists Rights Act, or similar law, against the OWNER, its agents, officers and employees, for alteration of the ARTWORK.

7. **Donation**

In accordance with the OWNER's donation policy, the parties agree that:

a. The OWNER will provide the DONOR with a donation receipt indicating the estimated value of the ARTWORK within thirty (30) days upon execution of this Agreement.

b. The DONOR's contribution to the OWNER will be recognized publicly as described above.

c. Except as provided in this Agreement, the OWNER may use the ARTWORK in any manner at its sole discretion and the DONOR has no right or obligation to control the OWNER's use of the donation.

d. The DONOR has not and will not receive any goods or services in exchange for the donation

and the OWNER will not grant any extra consideration to the DONOR in relation to OWNER procurement, regulatory matters, or any other business, services, or operations of the OWNER.

e. The DONOR confirms that this donation is not made at the behest of a City Council Member or of any member of the Public Arts Advisory Commission or staff of the Parks and Recreation Department.

f. Title to the ARTWORK shall pass to the OWNER upon execution of this Agreement.

8. **Choice of Law & Venue**

This Agreement shall be governed by the laws of Iowa. The venue for all litigation or other disputes relative to this Agreement shall be the District Court for the County of Polk, Iowa.

9. **Captions**

Section headings are for reference only and shall not be used to interpret this Agreement.

10. **Severability**

If any provision hereof is found to be invalid or unenforceable, such finding shall not affect the validity of any other provision hereof; and such provision shall be enforced to the maximum extent possible so as to affect the intent of the parties.

11. **No Waiver**

Any failure to enforce any right or to require performance of any provision of this Agreement shall not be considered a waiver of such right or performance.

12. **Entire Agreement**

This Agreement, including the attached and incorporated exhibits, contains the entire agreement between the parties, and supersedes all other oral or written provisions.

13. **Modifications and Amendments**

No amendment or modification to this Agreement shall be effective unless it is in writing and signed by authorized representatives of each of the parties hereto.

14. **Notices**

Unless otherwise indicated in this Agreement, all written communications sent by the parties may be made by U.S. Mail, e-mail, or phone, and shall be addressed as follows:

a. if the OWNER, to:

Allison Ullestad, Arts, Culture, and Enrichment Supervisor
City of West Des Moines, Public Arts Advisory Commission

P.O. Box 65320
4200 Mills Civic Parkway
West Des Moines, Iowa 50265

Phone: 515-222-3455
E-mail: allison.ullestad@wdm.iowa.gov

b. if the DONOR, to:

Jaey/Brenda Sedlacek
1512 S 42nd Street
West Des Moines, IA 50265

Phone: 515-240-9234
E-mail: brendasedlacek@icloud.com

Each party shall provide the other with written notice of any change in address within thirty (30) days of such change.

15. **Binding Effect**

a. The provisions, covenants, and conditions in this Agreement shall inure to and bind the parties, their legal heirs, representatives, successors, future owners and assignees.

b. If the OWNER transfers ownership of the ARTWORK, all rights and obligations of the OWNER under this Agreement shall be transferred to the successor owner of the ARTWORK and said successor owner shall be bound by this Agreement.

16. **Approval of City**

This Agreement shall not be binding until it has received the final approval and acceptance by the City of West Des Moines, Iowa, which approval and acceptance shall be noted on this Agreement by the City Clerk.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by having their signatures affixed below.

DONOR,

Brenda Sedlacek

Jaey or Brenda Sedlacek

11/6/2024
Date

RECOMMENDED BY:

Ryan Penning
Parks and Recreation Department Director
City of West Des Moines

Date

Mahesh Mathrubutham
Chair
City of West Des Moines, Public Arts Advisory Commission

Date

CITY OF WEST DES MOINES, IOWA,
an Iowa municipal corporation

Russ Trimble
Mayor

Date

Attest:

Ryan T. Jacobson
City Clerk

Date

EXHIBIT A:

3 Flags in Space
Jane Ingram Allen
1992
Handmade Paper, String, Acrylic Paint
Purchase Value: $1,700

Jaey and Brenda Sedlacek acquired this artwork from Percival Galleries in March 2001. Since then, it has been showcased in their home at 1512 S 42nd Street, West Des Moines, IA, 50265. In November 2024, the Sedlaceks plan to donate the piece to the City of West Des Moines Public Arts Advisory Commission to become part of the permanent art collection. Following the donation, the artwork will be showcased on a wall of the central staircase in West Des Moines City Hall.

The images below show the artwork as displayed in the Sedlacek residence.

The images below are renderings of the possible locations (2) where the artwork will be displayed in City Hall.

Exhibit B: Plan for Installation and Removal of ARTWORK

Installation and de-installation (removal) of the ARTWORK will require the participation and cooperation of the DONOR and the OWNER as follows:

	Responsible Party (*check appropriate column*)	
	DONOR	OWNER
1. Transport to new location/storage from current location	( )	(X)
2. Preparation of anchoring or support	( )	(X)
3. Placement of anchoring or support	( )	(X)
4. Removal of anchoring or support	( )	(X)
5. Movement of ARTWORK from transport vehicle to display site	( )	(X)
6. Movement of ARTWORK from display site to transport vehicle	( )	(X)
7. Other related costs for installation (specified below)	( )	(X)
8. Other related costs for de-installation (specified below)	( )	(X)
	( )	(X)

Note: Those items identified as being the responsibility of the OWNER shall be arranged by the OWNER and the costs covered under the provisions of the Agreement. Those items identified as being the responsibility of the DONOR shall be arranged by the DONOR, in cooperation with the OWNER and its schedule, at no cost to the OWNER. In accordance with the Agreement, any costs that result from the DONOR's deviations from the responsibilities and schedules identified in this plan shall be borne by the DONOR.

Schedule for Installation

Installation (check all that apply)

○ The DONOR will make the ARTWORK available for pick up at _____ (address) by the transporter retained by the OWNER beginning at _____(date/time).

○ The DONOR will be at the display site to assist with installation at _____(date/time).

○ The DONOR will arrange in advance with the OWNER for a date and time to install the ARTWORK.

○ The DONOR will ensure that the ARTWORK is ready for display no later than _____(date).

ARTIST INFORMATION		
ARTIST Name: Jane Ingram Allen		
Birth Date:	**Birth Place:**	**Sex:** F
Contact Information: Artist Website - https://janeingramallen.wordpress.com/bio-and-artist-statement-of-jane-ingram-allen/		
ARTIST Biography: Jane Ingram Allen is an installation artist who does art projects around the world using hand papermaking with natural materials and collaborative processes to raise public awareness about environmental issues. Jane has received numerous awards for artist-in-residencies and community public art projects in the USA, the Philippines, Japan, Nepal, Brazil, China, Tanzania, Taiwan, Turkey and Indonesia. She was a Fulbright Scholar artist-in-residence in Taiwan in 2004 and 2005 and a Fulbright Specialist in Turkey in 2015. She received Puffin Foundation Grants in 2003, 2007, 2011 to support her art installations in New York and MA. She has also received grants from the Chenven Foundation, City of Sacramento, City of Santa Rosa, and other organizations around the world to support her work. For her artworks Jane begins by making handmade paper from local plant waste and uses materials and techniques that contribute to sustainable living and improve the environment. Jane is a former college art instructor and currently writes about art for SCULPTURE and other art magazines as well as doing independent curating. Since 2012 she has been based in Santa Rosa, CA, and continues her work in the US and internationally.		
ARTIST Statement: My art aims to foster public awareness of environmental issues, with collaborative and participatory processes in mixed media multi-part installations. I use all natural and biodegradable materials such as handmade paper I make from local plant waste materials and seeds to produce continually evolving artworks that transform with nature as a partner. In my recent "Living Quilts" outdoor installations, the handmade paper dissolves over time becoming compost to nourish the earth, and the seeds sprout and grow to produce food and habitat for wildlife as well as aesthetic experiences for humans. The sculptural structures with my living, growing installations are made of wood and branches and last well for many years, and the artworks continue to change and evolve with time. These works comment on our vain hope for permanency in art and our desire to conquer nature rather than exist in harmony with the earth. With recent projects I am focusing on water and our current climate crisis, bringing attention to our dire circumstances, with too little water and too much water, and projecting hope for a better future.		

Full Name of the Artist: Jane Ingram Allen
Title of ARTWORK: 3 Flags in Space
Date of Execution: 1992
Purchase Value: $1,700
Dimensions: 8'W x 3'D x 6'H
ARTWORK Material(s): Handmade Paper, String, Acrylic Paint
Technique or Construction Method: Fabricator:

Maintenance and Care of ARTWORK:
Placement of ARTWORK:
Handling Instructions: