



City of Grand Island

Tuesday, May 10, 2022

Council Session

Item G-8

#2022-128 - Approving Agreement for Densel's Dream Sculpture

Staff Contact: Jerry Janulewicz

Council Agenda Memo

From: Jerry Janulewicz, City Administrator

Meeting: May 10, 2022

Subject: Densel's Dream – Sculpture at U.S. Highway 281 and South Webb Road

Presenter(s): Jerry Janulewicz, City Administrator
Steve Anderson, DDS

Background

The Grand Island Partnership for the Arts, Inc. (GIPA) obtained public funding for the commission and installation of an artwork to honor Densel Rasmussen, to be located near the intersection of US Highway 281 and South Webb Road on land the City obtained from the Nebraska Department of Transportation (NDOT). The land was acquired at no cost to be used for highway beautification purposes following City Council approval of Resolution #2019-310 granting preliminary approval for acquisition the 0.373 acre parcel and, in December 2020, the City Council granted final approval for acquisition of the property. Attached are a representation of the artwork and an aerial image of the site.

Densel Rasmussen served the community in many ways. According to an article published in the Grand Island Independent, Rasmussen was named the Independent's Man of the Year for 2006. He chaired the 1999 United Way campaign and received the United Way President's Award in 2010. He also co-chaired the Grand Island Little Theatre's Raising the Curtain capital campaign and served on the Grand Island Area Chamber of Commerce Board.

Rasmussen received the Richard H. Good Distinguished Service Award in 2007. He was a member of the Salvation Army Advisory Board and Stuhr Museum Operating Board, and served as chair of the Stuhr Museum Foundation Board, the Grand Island Community Foundation Board and Hall County Leadership Unlimited. He was also one of the volunteers to "Dance with the Stars" for a GRACE Foundation fundraiser and was active in the CAN DO Committee for the Nebraska State Fair.

Discussion

City Administration, GIPA, and Placzek Studios, Inc. negotiated terms of a proposed agreement providing for construction and installation of the artwork to be donated to the

City upon completion and acceptance by the City Council. The artwork would be displayed for at least 30 years provided, however, it may be removed from public display if it becomes unsuitable for display for reasons such as damage or deterioration. The proposed Public Artwork Donation Agreement sets forth the respective rights of the Artist and City regarding reproduction and use of images of the work. GIPA will establish an endowment fund at the Grand Island Community Foundation for periodic cleaning and maintenance expense.

Alternatives

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

Recommendation

City Administration recommends that the Council approve the donation agreement through adoption of the resolution.

Sample Motion

Move to approve resolution # 2022-128.

DENSEL’S DREAM
PUBLIC ARTWORK DONATION AGREEMENT

THIS AGREEMENT is made and entered into on the date last signed below among the City of Grand Island (“City”), a municipal corporation; Grand Island Partnership for the Arts, Inc., a Nebraska non-profit corporation (“Donor”); and Placzek Studios, Inc. (“Artist”).

I. Purpose of Agreement

A. Donor has commissioned the Artist to create a 15 ft wide x 50 ft long Sandhill Crane and Cattail Painted Metal Sculpture entitled “Densel’s Dream” (“Artwork”) and upon completion, installation, and acceptance of the Artwork, the Artwork shall be deemed to be donated to the City. The Artwork is more particularly described in Exhibit A attached hereto incorporated herein by this reference.

B. Artist has accepted Donor’s invitation to construct the Artwork.

C. In consideration of Donor’s donation of the Artwork to City, City agrees to display the Artwork on a tract of land as described in Exhibit B (the “Site”), attached hereto and incorporated herein by this reference, for a period of at least 30 years and to credit Donor on a plaque posted with the Artwork and credit Artist as creator of the Artwork. Upon the expiration of the initial 30-year term, continued display or removal will be at the sole discretion of the City and upon removal disposition will be at the sole discretion of the City.

II. Artwork Installation Plans

A. The plans and specifications for Donor’s site preparation and Artist’s installation of the Artwork (collectively the “Artwork Installation”) must receive the prior written approval of the City Engineer and the written approval of the City Engineer is required for all construction documents and plans prior to installation. The plans shall include electric utility connections. The Artwork shall be completed in adherence to the design as approved by the City. Any deviations from the design drawings shall be permitted only with the prior written approval of the City.

B. Donor and Artist shall undertake their respective responsibilities in connection with the Artwork Installation. Donor shall provide such insurance and payment bond requirements which may reasonably be required by the City Attorney prior to the start of any Site work. Donor and Artist shall be responsible for undertaking their respective responsibilities in connection with Artwork Installation, which includes but is not limited to:

- a) The contracting for performance of the Artwork Installation.
- b) The hiring of all contractors/subcontractors and/or suppliers and the purchasing of all materials for the installation/construction of the Artwork Installation.
- c) Providing proof of insurance coverage to City in the amounts as specified in City’s Public Works General Specifications, Division I, Sections 7.11 and 7.12.
- d) The scheduling and supervision of all work.
- e) The timely payment of all fees, costs, charges, and expenses associated

with this work, including all required permit fees.

f) Upon acceptance of the Artwork and Artwork Installation by the City, the delivery to the City Engineer all project construction documents, records, as-builts, and manuals that Donor or Artist have relating to the Artwork Installation.

g) The design and construction of the Artwork Installation shall be in compliance with, as applicable, ADA Standards for Accessible Design, as amended, and implementing regulation, and building and electric codes adopted by the City of Grand Island.

C. In the event that during the grading period of the construction process Donor becomes aware of a condition of the Site which Donor could not have reasonably anticipated, such as an environmental hazard or protected historic artifacts, the cost of which to remediate or accommodate would be prohibitive relative to the total cost of the project, Donor shall have the right to terminate this Agreement. Upon such termination, the terminating party shall restore the site grade to correspond as closely as possible with the surrounding grade.

III. Artist's Responsibilities

A. Services. Artist shall be responsible for all expenses, labor and equipment for designing, enlarging, fabricating, shipping, and installing the Artwork (collectively, the "Services"). The Services shall be completed as soon as reasonably practicable after the execution of this Agreement. Artist shall perform the Services in a good and workmanlike manner, in compliance with all applicable laws and in substantial conformity with the design approved by Donor. In connection therewith, Artist warrants that the fabrication of the Artwork will be in accordance with all the building codes of the City, ADA Standards for Accessible Design, as amended, and implementing regulation, and with the industry standards set by the American Institute of Steel Construction (AISC), American Welding Society (AWS) and American Concrete Institute (ACI).

As part of the Services, Artist shall install the Artwork at the Site; however, Donor shall be responsible for all expenses, labor and equipment to prepare the Site for the timely installation of the Artwork, including grading, landscaping, footings, plumbing, security and lighting of the Artwork.

B. Delivery of Artwork. Artist shall notify Donor and City in writing when the Artwork is ready to be delivered and installed at the Site and will coordinate installation with Donor and its contractors.

IV. Donor's Responsibilities

A. Endowment Fund

Donor shall deposit \$Six Thousand and No/ Dollars (\$6,000.00) as an endowment fund at the Grand Island Community Foundation for City's maintenance of the Artwork.

B. Site Preparation. Donor shall be responsible for all expenses, labor and equipment to prepare the Site for the timely installation of the Artwork, including grading, landscaping, footings, plumbing, security and lighting of the Artwork; however, Artist shall install the Artwork at the Site. Said site preparation will be done in accordance with all the building

codes of the City and ADA Standards for Accessible Design, and as amended, and implementing regulation.

C. Contract Sum. Donor shall pay Artist the sum of Four Hundred Thousand and No/100 Dollars (\$400,000.00) (the "Contract Sum") for the performance of the Services. The Contract Sum is all inclusive and includes shipping, and all materials and labor for installation and is allocated as follows:

Engineering, drawing, development, fabrication and painting:	\$382,000.00
Shipping and Installation:	\$ 18,000.00

The Contract Sum shall be payable in the following installment payments:

1. The sum of Eighty Thousand and No/100 Dollars (\$80,000.00) shall be due upon execution of this Agreement, which sum represents twenty percent (20%) of the Contract Sum.
2. The sum of One Hundred Twenty Thousand and No/100 Dollars (\$120,000.00) shall be due upon fifty percent (50%) completion of the fabrication of the Artwork, which sum represents thirty percent (30%) of the Contract Sum.
3. The sum of One Hundred Twenty Thousand and No/100 Dollars (\$120,000.00) shall be due upon one hundred percent (100%) completion of the Artwork, ready for installation, which sum represents thirty percent (30%) of the Contract Sum.
4. The sum of Eighty Thousand and No/100 Dollars (\$80,000.00) shall be payable upon installation of the Artwork at the Site, which sum represents twenty percent (20%) of the Contract Sum.

All of the foregoing installment payments shall be due ten (10) days after Artist's presentation of an invoice to Donor for such installment payment, along with such documentation that Donor may reasonably require to evidence that such installment payment is then payable (e.g., documentation that evidences that fabrication of the Artwork is fifty percent (50%) complete).

V. City's Rights and Responsibilities

- A. Review. The City shall provide a timely review of all exhibits, plans and other documents requiring feedback to allow the project to move forward efficiently.
- B. Access. The City agrees to provide access to the Site.
- C. Acceptance of Artwork and Artwork Installation.
 1. Upon completion of all of the Artwork Installation, the Artwork and Artwork Installation shall be reviewed by the City Engineer and, if approved, it shall be recommended to the City Council for acceptance in conformance with this Agreement. Acceptance of ownership of the Artwork and Artwork Installation shall be subject to the verification by the City that the project has been completed in compliance with this Agreement and subject to receipt by the City Engineer of as built plans and other required documents. Such acceptance shall occur by resolution of the City Council.

2. Upon acceptance by resolution of the City Council, the Artwork and Artwork Installation shall immediately become the property of the City and, except as otherwise provided in this Agreement, the Donor and Artist forfeit all rights to the Artwork and Artwork Installation.

D. Donor shall have the right to install a donor recognition plaque, which, among other things, identifies the Artist, the title of the Artwork, and the year of completion, on the site with the location, wording, size, and design subject to approval of the City Administrator, which approval will not be unreasonably withheld, and the costs of such plaque will be paid by Donor.

VI. Maintenance of Artwork

The City shall maintain the Artwork and Artwork Installation after acceptance by the City Council consistent with how it maintains other similar works of art in the City. Donor and Artist understand that maintenance, repairs, and replacement of the Artwork Installation are at the City's sole discretion and are subject to funding approved by the City Council.

VII. Encumbrances and Liens

Neither the Donor or Artist nor anyone claiming by, through, or under Donor or Artist shall have the right to file or place any mechanic's lien or any other lien of any kind or character whatsoever upon the Artwork Installation, the underlying real property, or any City property. Notice is hereby given that no contractor, subcontractor, or anyone else who may furnish any materials, service, or labor for any improvements, alterations, repairs, or any part thereof shall at any time be or become entitled to any lien thereon. For the further security of City, if the total project cost exceeds \$10,000.00, Donor covenant and agree to provide or require its' General Contractor to provide a payment bond or bonds in a sum not less than the contract price with a corporate surety company and agent selected by such person, conditioned for the payment of all laborers and mechanics for labor that is performed and for the payment for material and equipment rental which is actually used or rented in the erecting, furnishing, or repairing of the improvement or in performing the contract.

VIII. Term

This Agreement will terminate in the event that construction of the Artwork Installation are not completed by September 30, 2023. Donor shall have the right to terminate this Agreement at any time before the start of construction.

IX. Representations and Warranties

A. Artist represents and warrants that Artist is the original and only creator of the Artwork.

B. Artist represents and warrants that upon completion and installation of the Artwork that Donor shall be the sole owner of the Artwork. Artist further represents and warrants that the Artwork is and shall remain free and clear of any liens and 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. Notwithstanding the foregoing, (i) Artist is the creator of the Artwork; and (ii) the parties hereto understand and agree that the exclusive right of reproducing the Artwork shall remain in and be preserved to Artist notwithstanding payment to Artist from Donor and Artist expressly reserves every right available to it at common law,

federal law and/or state law as well as the copyright in and to the work under the Copyright Act of 1976; 17 USC §101 et seq., to control the making and dissemination of copies or reproductions of the Artwork; provided, however Donor and City may use representations and photographs of the Artwork in its literature, advertising and brochures.

C. Artist shall provide City written instructions for the appropriate maintenance and preservation of the Artwork and Artist represents that, except as otherwise provided in the aforesaid instructions, general routine maintenance and repair of this Artwork will maintain the Artwork within an acceptable standard of public display.

D. In addition to any other warranties given under this Agreement, Artist gives a limited one-year warranty on the Artwork against defects in, or failures of, materials and workmanship. This warranty specifically excludes ordinary wear to the Artwork. Artist agrees at its own expense to remedy any defective work, replace any defective materials, and pay for any damage to other work resulting therefrom, which shall appear within a period of one (1) year from the date of delivery and installation of the Artwork at the Site. Nothing contained in this paragraph shall be construed to establish a period of limitation with respect to, or otherwise diminish, the other obligations which Artist might have under this Agreement. Establishment of a one-year warranty period for correction of the work as described in this paragraph relates only to the specific obligation of Artist to correct the work, and has no relationship to the time within which the obligation to comply with this Agreement may be sought to be enforced, nor to the time within which proceedings may be commenced to establish Artist's liability with respect to Artist's obligations other than specifically to correct the Artwork.

H. Except as otherwise provided in this Agreement, it is expressly understood that there are no other warranties, expressed or implied, either of merchantability or fitness, made by Artist.

X. Insurance

In addition to any other insurance required by this Agreement, contemporaneous with the execution of this Agreement, Artist shall provide Donor and City with certificates and policies of insurance, including, without limitation, (i) comprehensive general liability insurance in the amount of \$1,000,000 aggregate for bodily injury and (ii) \$2,000,000 aggregate for property damage. Said insurance shall name Donor and City as additional insureds. Artist shall, at all times through the installation of the Artwork, maintain and keep in force, at Artist's expense, the insurance coverages.

XI. Risk of Loss

Artist shall assume the risk of loss to the Artwork until delivery and installation of the Artwork at the Site and shall insure the work in progress against loss by fire, theft of other casualty until such time as the Artwork is delivered and installed at the Site. City shall assume the risk of loss and damage to the Artwork from casualty of any kind from and after delivery and installation of the Artwork, provided, however, that Artist shall remain responsible for loss and damage to the Artwork and surrounding structures resulting from failure to perform the Services in a good and workmanlike manner, in compliance with all applicable laws and in substantial conformity with the design as provided of this Agreement and for Artist's obligations pursuant to the one-year warranty provided for in this Agreement.

XII. Intellectual Property and City Rights

A. City's Intellectual Property License. Donor and Artist assign and grant to City, and to City's agents, authorized contractors and assigns, an unlimited, non-exclusive and irrevocable license to do the following with respect to the Artwork:

1. Use and Display. City may publicly display the Artwork.
2. Reproduction and Distribution. City may make and distribute, and authorize making, displaying and distributing of, photographs and other two-dimensional reproductions of the Artwork. City may use such reproductions for any City-related purpose, including advertising, educational, and promotional materials, brochures, books, flyers, postcards, print, broadcast, film, electronic and multimedia publicity, and catalogues or similar publications. City shall ensure that such reproductions are made in a professional and tasteful manner, in the sole and reasonable judgment of the City.

B. Third Party Infringement. The City is not responsible for any third party infringement of any copyright to the Artwork held by Artist and is not responsible for protecting the intellectual property rights of Artist. Donor and Artist understand and agree 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 City.

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

D. Alteration. If City alters the Artwork without Artist's consent in a manner that is prejudicial to Artist's reputation, Artist retains the right to disclaim authorship of the Artwork.

E. Release. Artist hereby releases City from any claims or demands associated with the Artwork including, without limitation, the right of privacy or publicity and 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").

XIII. Indemnification

Artist shall indemnify, protect, defend and hold harmless the Donor (and its board of directors, employees, representatives, and agents) and City (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 negligent act or omission of Artist and/or Artist's agents, employees, or assigns during the course of the installation of the Artwork through the acceptance of the Artwork by City; (b) any infringement of patent, copyright, trademark, trade secret or other proprietary right; or (c) any infringement of Artist's rights under 16 U.S.C. § 106A, 16 U.S.C. § 113, or similar state, federal, or international law. Donor shall indemnify, protect, defend and hold harmless the Artist (and its board of directors, employees, representatives, and agents) and City (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 any personal injury or property damage caused, directly or indirectly, by any

negligent act or omission of Donor's and/or Donor's agents, employees, or assigns during the course of the Site work through the acceptance of the Artwork by City. Notwithstanding the foregoing, Donor and Artist 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 City and is not contributed to by any act or omission (including any failure to perform any duty imposed by law) by Donor or Artist. Donor and Artist acknowledge and agree that its obligation to defend in this Section: (i) is an immediate obligation, independent of its other obligations hereunder; (ii) applies to any Loss which actually or potentially falls within the scope of this Section, regardless of whether the applicable allegations are or may be groundless, false or fraudulent; and (iii) arises at and continues after the time the Loss is tendered to Donor or Artist, as the case may be.

XIV. Removal From Public Display

Prior to expiration of the display period set forth in Section I of this Agreement, in the event the Artwork becomes unsuitable for public display as a result of damage to or deterioration of the Artwork, then City may remove the Artwork from public display and dispose of the Artwork. If the Artwork cannot be removed from public display without alteration of the Artwork, Donor and Artist waive any and all such claims, and any rights granted under the Visual Artists Rights Act or similar law, against the City, its agents, officers, and employees, for alteration of the Artwork.

XV. Choice of Law & Venue

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

XVI. Captions

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

XVII. 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 effect the intent of the parties.

XVIII. 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.

XIX. 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.

XX. 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.

XXI. Notices

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

<p>To City:</p> <p>City Clerk City of Grand Island 100 East First Street Grand Island, NE 68801</p> <p>with a copy to (which copy shall not constitute notice):</p> <p>City Administrator City of Grand Island 100 East First Street Grand Island, NE 68801</p>	<p>To Donor:</p> <p>Grand Island Partnership for the Arts, Inc. 908 N. Howard, Suite 106 Grand Island, NE 68801 Attn: Steve Anderson</p> <p>To Artist:</p> <p>Placzek Studio, Inc. 3716 Leavenworth Street Omaha, NE 68105 Attn: Matthew J. Placzek</p>
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Each party shall provide the other with written notice of any change in address within thirty (30) days of such change.

XXII. Binding Effect

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

If City transfers ownership of the Artwork, all rights and obligations of City under this Agreement shall be transferred to the successor owner of the Artwork, and said successor owner shall be bound by this Agreement. Donor and Artist shall not assign their rights and obligations under this Agreement.

XXIII. Power to Execute Agreement

Each individual executing this agreement, on behalf of one of the parties, represents that he or she is duly authorized to sign and deliver the Agreement on behalf of such party and that this Agreement is binding on such party in accordance with its terms.

[The remainder of this page is intentionally left blank]

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

Donor

City of Grand Island

Steve Anderson, President of
Grand Island Partnership for the Arts, Inc.,
a Nebraska non-profit corporation

Roger G. Steele, Mayor

Date: _____

Date: _____

Artist

ATTEST:

Matthew J. Placzek, President of Placzek
Studios, Inc.

RaNae Edwards, City Clerk

APPROVED AS TO FORM:

Date: _____

Stacy Nonhof, Interim City Attorney

EXHIBIT A-Description and Picture of Artwork

See Attached



EXHIBIT A

Materials: High performance paint on Stainless steel. Acrylic inserts in birds.
Total sculpture area: approximately 50 ft long x 15 ft wide x 14 ft high.
Photo is an artistic rendering, there may be some slight differences in actual sculpture.

Exhibit “A”

EXHIBIT B- Location

A tract of land being part of the Southeast Quarter of the Northeast Quarter SE1/4 NE1/4) of Section Twenty-five (25), Township Eleven (11) North, Range Ten (10) West of the 6th P. M., Hall County, Nebraska and more particularly described as follows:

Commencing at the Northeast Corner of Section 25-11-10, thence on an assumed bearing of S01°34'22"E along the East line of the Northeast Quarter (NE1/4), a distance of 1319.09 feet to a point being the East 1/16 corner of the Northeast Quarter (NE1/4) of Section 25-11-10, said point being the point of beginning; thence continuing S01°34'22"E along said East line of the Northeast Quarter (NE1/4) a distance of 549.0 feet to a point of curvature, said point also being the easterly right-of-way line of U.S. Highway 281; thence around a curve in a clockwise direction, along said easterly right- of-way line, with a delta angle of 05°14'47", having a radius of 3019.79 feet, an arc length of 276.51 feet and a chord bearing N19° 51' 28" W with a chord distance of 276.42 feet; thence N22° 22' 06" W along said easterly right- of-way line, a distance of 306.10 feet; thence N88°18' 55" E a distance of 195. 40 feet to the point of beginning. Said tract contains a calculated area of 51,201.23 square feet or 1.175 acres more or less of which 0.373 acres are road right of way.

RESOLUTION 2022-128

WHEREAS, Grand Island Partnership for the Arts, Inc. (“donor”) provided funding for the commission, construction, and installation of an artwork to be known as Densel’s Dream created by Placzek Studios Inc. to be installed on City property located near the intersection of U.S. Highway 281 and Webb Road; and

WHEREAS, Donors desire to donate the artwork to the City of Grand Island following its installation and acceptance by the City Council; and

WHEREAS, Grand Island Partnership for the Arts and Placzek Studios Inc. approved and executed a Public Artwork Donation Agreement that is submitted for City Council consideration and action.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Public Artwork Donation Agreement by and among Grand Island Partnership for the Arts, Inc., Placzek Studios Inc., and the City of Grand Island should be and is hereby approved. The City’s Mayor is hereby authorized to execute the Agreement in the name of and on behalf of the City of Grand Island with attestation by the City Clerk.

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Adopted by the City Council of the City of Grand Island, Nebraska, May 10, 2022.

Roger G. Steele, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	▣ _____
May 6, 2022	▣ City Attorney