



AGENDA ITEM: J1L

**CITY OF WAUKEE, IOWA
CITY COUNCIL MEETING COMMUNICATION**

MEETING DATE: September 7, 2021

AGENDA ITEM: Consideration of approval of a resolution approving 28E Agreement
Between Waukeee Area Arts Council, Inc., and the City of Waukeee, Iowa

FORMAT: Consent Agenda

SYNOPSIS INCLUDING PRO & CON: The proposed agreement outlines the obligations of
the City and the Waukeee Area Arts Council.

FISCAL IMPACT INCLUDING COST/BENEFIT ANALYSIS: A resolution will be
considered by the council at a future meeting to approve the funding
amount for the current fiscal year.

COMMISSION/BOARD/COMMITTEE COMMENT:

STAFF REVIEW AND COMMENT: The City Attorney drafted the agreement, which has
been signed by representatives of the Waukeee Area Arts Council.

RECOMMENDATION: Approve the resolution.

ATTACHMENTS: I. Proposed Resolution
II. Agreement

PREPARED BY: Becky Schuett

REVIEWED BY:

PUBLIC NOTICE INFORMATION –

NAME OF PUBLICATION:

DATE OF PUBLICATION:

THE CITY OF WAUKEE, IOWA

RESOLUTION 2021-

**APPROVING 28E AGREEMENT BETWEEN WAUKEE AREA ARTS COUNCIL, INC.,
AND THE CITY OF WAUKEE, IOWA**

IN THE NAME AND BY THE AUTHORITY OF THE CITY OF WAUKEE, IOWA

WHEREAS, the City of Waukee, Dallas County, State of Iowa, is a duly organized Municipal Organization; **AND**,

WHEREAS, Waukee Area Arts Council, Inc., (“Agency”) is a private agency as defined in Iowa Code Section 28E.2, and is a nonprofit corporation duly formed and existing pursuant to the laws of the State of Iowa; **AND**,

WHEREAS, the City of Waukee, Iowa (“City”) is a public municipal corporation duly formed and existing pursuant to the laws of the State of Iowa and is a public agency as defined in Iowa Code Chapter 28E; **AND**,

WHEREAS, the Agency and the City desire to enter into an agreement pursuant to Iowa Code Chapter 28E, which authorizes public agencies to enter into agreements for joint or cooperative action with public or private entities; **AND**,

WHEREAS, the Agency is dedicated to enhancing the quality of life through the fine arts in Waukee and the western suburbs of Des Moines and the surrounding area and has undertaken to provide opportunities for Waukee residents and the general public to experience the arts in various forms in Waukee through sponsoring and conducting various activities throughout the city; **AND**,

WHEREAS, the City desires to assure that its recreational programming available for the citizenry to experience, use and enjoy includes programming for culture and the arts; **AND**,

WHEREAS, pursuant to Iowa Code Chapter 28E creating a cooperative contractual relationship to ensure cultural/arts programming is available to residents within the City is and endeavor that serves a very important public purpose.

NOW THEREFORE BE IT RESOLVED by the City of Waukee City Council that the 28E Agreement between Waukee Area Arts Council, Inc., and the City of Waukee, Iowa, should be and the same is hereby approved.

Passed by the City Council of the City of Waukee, Iowa, and approved this the 7th day of September, 2021.

Courtney Clarke, Mayor

Attest:

Rebecca D. Schuett, City Clerk

RESULTS OF VOTE:	AYE	NAY	ABSENT	ABSTAIN
Anna Bergman				
R. Charles Bottenberg				
Chris Crone				
Larry R. Lyon				
Ben Sinclair				

**28E AGREEMENT BETWEEN
WAUKEE AREA ARTS COUNCIL, INC.
AND THE CITY OF WAUKEE, IOWA**

THIS 28E AGREEMENT ("Agreement"), dated the ____ day of _____, 2021, is by and between the Waukee Area Arts Council, Inc ("Agency") and the CITY OF WAUKEE, IOWA ("City").

WHEREAS, the Agency is a private agency as defined in Iowa Code Section 28E.2, and is a nonprofit corporation duly formed and existing pursuant to the laws of the State of Iowa; and

WHEREAS, the City is a public municipal corporation duly formed and existing pursuant to the laws of the State of Iowa and is a public agency as defined in Iowa Code Chapter 28E; and

WHEREAS, Iowa Code Chapter 28E authorizes public agencies to enter into agreements for joint or cooperative action with public or private entities; and

WHEREAS, the Agency is a not-for-profit organization dedicated to enhancing the quality of life through the fine arts in Waukee and the western suburbs of Des Moines and the surrounding area; and

WHEREAS, the Agency has undertaken to provide opportunities for Waukee residents and the general public to experience the arts in various forms in Waukee through sponsoring and conducting various activities throughout the city including but not limited to the Waukee Arts Festival, Tuesdays on the Triangle, Sundays in Centennial, Imagine... Create... Experience, among others; and

WHEREAS, the City desires to assure that its recreational programing available for the citizenry to experience, use and enjoy includes programming for culture and the arts; and

WHEREAS, the Agency and the City desire to enter into an agreement pursuant to Iowa Code Chapter 28E creating a cooperative contractual relationship to ensure cultural/arts programming is available to residents within the City and assure the endeavor serves this very important public purpose.

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement the Agency and the City agree as follows:

1. Purpose. The purpose of this Agreement is to provide for the terms and conditions on which the City will make resources available to the Agency, and the Agency will utilize allocated resources to hold, organize, sponsor and promote the Waukee Arts Festival to be held in the summer of 2021, and subsequent years, for the enjoyment of Waukee Residents and the general public. This Agreement is being made in furtherance of the respective obligations of the City and the Agency to use public funds for public purposes and is intended to maximize efficiencies in that regard.

2. Duration. The term of this Agreement will commence upon the date the Agreement is filed with the Secretary of State following approval and execution by both parties. This Agreement will thereafter remain in effect until it is terminated pursuant to the termination provisions set forth herein.
3. Administration. No separate legal or administrative entity or joint board will be established by this Agreement. The City Administrator of the City and the Director of the Agency will be designated as the administrators of the Agreement for the purpose of Iowa Code Section 28E.6. No joint budget will be established or maintained for the purpose of carrying out the terms of this Agreement.
4. City Participation. The City may participate by Providing funds to the Agency to be held in a separate account to be used for costs and expenses incurred by the Agency for the Waukee Arts Festival.
5. Agency Services. The Agency will make available its employees and volunteers involved with the Agency's Arts programming to organize, sponsor and promote a Waukee Arts Festival for 2 consecutive days in Waukee, at no cost to the City.
 - A. The Agency shall also provide, at no cost to the City, the buildings/office facilities it utilizes in its day-to-day operations for the purpose of holding, organizing, sponsoring and promoting the Waukee Arts Festival under this program.
 - B. The Agency will provide the City annual reports reflecting at the minimum the following:
 - Number of exhibitors and vendors
 - Number of high school exhibits
 - Number of public attendees
 - Number of event hours
 - Income statement with total revenues and expenses
 - C. All funds received from the City should be maintained in a segregated account by the agency and should be fully utilized for costs and expenses incurred in connection with the Waukee Arts Festival.
 - D. Upon request by the City, the Agency shall make available an accounting of funds received and expended in connection with this Agreement and pursuant to the program.
 - E. The Agency will carry workers compensation insurance covering its employees and if necessary, volunteers, in amounts established by law.

- F. The Agency's employees, volunteers and staff members shall be the Agency's responsibility and shall be in no way considered employees, staff members or volunteers of the City.
- G. The Agency will carry liability insurance for the protection of the Agency arising out of any acts or other occurrences on its property in any way arising from the performance, or non-performance, of their obligations under this Agreement. The Agency's liability policies will have limits of not less than \$300 K per occurrence and \$ 2 mil aggregate.

6. Termination.

- A. Termination with or without cause. Either party may terminate this Agreement at any time with or without cause by giving written notice to the other party, provided that written notice of the termination is given by the terminated party to the non-terminating party at least 30 days prior to the effect of the termination.
- B. Agreement to terminate. This Agreement may also be terminated at any time by written agreement of the parties.
- C. Disposition of property upon termination. Upon termination of this Agreement, any monetary proceeds received by the Agency and being held by the Agency shall be returned to the City. No real or personal property will be acquired or held for the purposes of this Agreement, except to the extent provided herein as it pertains to the return of monetary proceeds remaining as of the date of the termination. The Agency and the City will retain sole possession and use of its respective property.

- 7. Compliance. Each party agrees that it will comply with all Federal, State and Local laws and regulations applicable to its performance under this Agreement.
- 8. Status of the parties. It is expressly understood and agreed by the parties that nothing contained in this Agreement will be construed to create a partnership, association or other affiliation or like relationship between the parties, being specifically agreed that their relation is and will remain that of independent parties to a cooperative contractual relationship. In no event with neither party be liable for the debts or obligations of the other party.
- 9. Notices. All notices and other communications to be given under this Agreement will be deemed given when either personally delivered or mailed by first class mail, postage prepaid, with proper address to the following addresses until otherwise notified:

To the Agency:

Waukee Area Arts Council
Attn: Executive Director

To the City:

City of Waukee
Attn: City Administrator

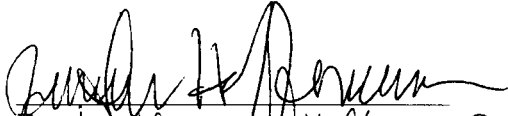
Waukee, IA 50263

230 W. Hickman Road
Waukee, IA 50263


10. Form/Law. The parties consent to the jurisdiction of the Iowa District Court in and for Dallas County for all matters relating to this Agreement and agree that this Agreement will be governed by the laws of the State of Iowa.
11. Severability. If any provision of this Agreement is held illegal or invalid, the illegality or invalidity of such provision will not affect any of the remaining provisions and this Agreement will be construed and enforced as if such illegal or invalid provision had not been contained herein.
12. Waiver. The failure of either of the parties to enforce any right or provision under this Agreement will not constitute a waiver of such right or provision unless acknowledged and agreed to by such party in writing. In addition, no waiver of a party's right or remedy will affect the other provisions of this Agreement.
13. Force Majeure. Notwithstanding anything contained in this Agreement to the contrary, neither party will be liable to the other for failure to comply with any obligation under this Agreement if such party is prevented from doing so by reason of events beyond the reasonable control of the party.
14. Assignment. Neither party may assign any right or obligation under this Agreement, in whole or in part, without the other party's prior written consent. This Agreement will be binding upon and will inure to the benefit of the parties and their respective successors and permitted assignees.
15. No Third Party Beneficiaries. This Agreement is entered into by and between the parties hereto for their benefit. There is no intent by any party to create, imply, or establish a third party beneficiary or status or rights in any person except as expressly set forth in this Agreement, and no such third party will have any right to enforce any benefit created or established under this Agreement.
16. Entire Agreement. This Agreement supersedes all previous agreements, amendments, arrangements, and understandings between the parties with respect to the subject matter hereof and constitutes the entire agreement between the parties.
17. Amendments. This Agreement may be amended by a written instrument approved and executed by the District and the City and filed with the Iowa Secretary of State in accordance with Iowa Code Section 28E.8.

IN WITNESS WHEREOF, this Agreement has been approved by appropriate action and duly executed by the parties on the dates written below.

WAUKEE AREA ARTS COUNCIL, INC.


By: Jennifer Hoffmann
Its: Executive Director
Date: 4/4/21

ATTEST


By: Charlie Nothels
Its: Board
Date: 4/6/21

CITY OF WAUKEE

By: Courtney Clarke
Its: Mayor
Date: _____

ATTEST

By: Becky Schuett
Its: City Clerk
Date: _____