



AGENDA MEMORANDUM

City Council Meeting
March 15, 2021

Subject: Historic Preservation Commission – Contract agreement with Rebecca Hackemann.

Prepared By: Isaac Pezley, Zoning Administrator

Summary Statement: The Historic Preservation Commission is asking for approval of a contract with Rebecca Hackemann to install a stereoscopic public looking glass in South Riverside Park.

Recommended City Council Action:

Approve contract with Rebecca Hackemann to install a stereoscopic public looking glass in South Riverside Park.

Policy Issue(S):

Should the City create a stereoscopic public looking glass to memorialize the Third Street SE Green Bridge?

Alternatives(S):

Deny the contract.

Expenditure Required:

\$7,455.00. \$2,000 down payment in March.

Source of Funds: Bond Proceeds.

Background Information: The Historic Preservation Commission voted at their February 22, 2021 meeting to recommend approving a contract with Rebecca Hackemann to install a stereoscopic public looking glass in South Riverside Park. The stereoscopic public looking glass would contain four historical photos of the Third Street SE Green Bridge provided to Hackemann by the Historic Preservation Commission. The stereoscopic public looking glass can be installed for a total of \$7,455 but requires a \$2,000 down payment payable to Rebecca Hackemann in March. The remaining amount would be due upon completion of the project which is estimated for early August. The remaining amount will be paid by the Commission from money raised by their public fundraising campaign.

ATTACHMENTS:

1. Contract
2. Artist Biography and Stereoscopic Public Looking Glasses Description
3. Artist's submitted timeline
4. Artist's submitted estimate/proposal

Resolution 21-42

A Resolution approving a contract agreement with Rebecca Hackemann to install a stereoscopic public looking glass in South Riverside Park.

WHEREAS, at the February 22, 2021 meeting, the Historic Preservation Commission voted and recommended approval of a contract with Rebecca Hackemann to install a stereoscopic public looking glass in South Riverside Park; and

WHEREAS, the stereoscopic public looking glass would contain four historical photos of the 3rd Street SE Bridge that would be provided by the Historic Preservation Commission; and

WHEREAS, the stereoscopic public looking glass would cost \$7,455.00 with a \$2,000.00 down payment due in March to Rebecca Hackemann with the remaining amount due upon project completion which is estimated for early August; and

WHEREAS, installation will require City staff assistance, a concrete pad and concrete tools; and

WHEREAS, the Historic Preservation Commission will be having public fundraising campaigns to raise money for this artwork.

NOW THEREFORE BE IT RESOLVED that the City Council of Waverly, Iowa does hereby approve a contract agreement with Rebecca Hackemann of Kansas City, Missouri for \$7,455.00 to install a stereoscopic public looking glass in South Riverside Park.

PASSED AND ADOPTED this 15th Day of March, 2021.

Tim Kangas, Mayor Pro Tem

ATTEST:

Carla Guyer, City Clerk

AGREEMENT FOR COMMISSION OF PUBLIC ART WORK
[Public Entity]

THIS AGREEMENT, is entered into this ____ day of _____, 20 __, by and between the Waverly Historic Preservation Commission/City of Waverly, IA, (hereinafter the “Owner”) with offices at 200 1st Street NE, Waverly, IA 50677 and [artist’s name or artist’s name d.b.a. business name] (hereinafter, “Artist”) with offices at Rebecca Hackemann (dba Rebecca Bahlmann), with offices at 3210 Driftwood Drive, Manhattan, KS 66503.

WHEREAS, the Owner requires the services of an artist to create a work of art (hereinafter the “Artwork” in a public space located at Riverside Park (hereinafter the “Site”); and

WHEREAS, the Artist is a professional artist whose work and qualifications make the Artist uniquely qualified to create the Artwork;

WHEREAS, the Owner has selected the Artist based upon the Artist’s work and qualifications; and

WHEREAS, the Artist and the Owner wish to perform under the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the above-stated premises and subject to the conditions hereinafter set forth, the parties agree as follows:

- a. “Agency” shall mean (whichever department or city agency is mandating the requirement such as Los Angeles Redevelopment Agency, San Francisco Department of City Planning, etc.)
- b. “Artist” shall mean: REBECCA HACKEMANN. Where there is more than one Artist, all Artists shall be referred to collectively as “Artist.” If Artist is comprised of two or more individual persons or entities, each individual person or entity shall be jointly and severally responsible for satisfying Artist’s obligations under this Agreement, and each individual person or entity shall be liable for the acts and omissions of every other individual person or entity comprising Artist.
- c. “Artwork” shall mean the work of art designed by Artist for the Site under the terms of this Agreement, as described and defined in Artist Proposal, to be attached as Appendix A upon completion of Phase I, Conceptual Design, of the Services to be Provided by Artist.

Article 1 Scope of Services

1.1 Artist’s Obligations

- a. The Artist shall perform all services and furnish [all supplies, material and/or work equipment (specify if not all)] as necessary for the design, fabrication, transportation and installation of the Artwork. Services shall be performed in a professional manner and in strict compliance with all terms and conditions in this Agreement.

- b. The Artist shall determine the artistic expression, design, dimensions and materials of the Artwork, subject to review and acceptance by the Owner and any regulatory agencies with project oversight, as set forth in this Agreement. The Artist will do so in a manner that ensures that the Artwork as installed shall not interfere with the intended use of the Site, pedestrian and other traffic flow, parking, safety devices and procedures, and other needs and functions of the site as defined by Owner and/or ordinance prior to the development of a design by the Artist
- c. The Artist shall prepare the design concept described in Section 1.3 of this Agreement.
- d. The Artist shall complete the fabrication, transportation and installation of the Artwork by the scheduled dates as provided in Section 1.4(b)(i) of this Agreement.
- e. The Artist shall secure any and all required licenses, permits and similar legal authorizations at the Artist's expense as may be necessary for the installation of the Artwork at the Site.
- f. The Artist shall arrange for the transportation and installation of the Artwork in coordination with Owner. If the Artist does not install the Artwork himself, Artist shall supervise and approve the installation. Prior to the installation of the Artwork, Artist shall inspect site to ensure that it is ready to accept the artwork and compliant with the specifications provided by the Artist. Artist shall notify Owner of any perceived conflict, defect or non-compliance with specifications. All work shall be performed by qualified professionals and by licensed contractors as required by law.
- g. Artist shall provide a maintenance manual with a description of all materials, processes and products utilized in the Artwork and the required care and upkeep involved, as well as recommended procedures in the event of necessary conservation.
- h. Artist shall provide a list of all subcontractors along with a copy of the agreement between the Artist and each subcontractor.
- i. Artist shall provide photographic documentation of the Artwork in a format acceptable to Artist and Owner.
- j. Artist shall be available with reasonable advance notice for a reasonable number of meetings required to coordinate design and project implementation, ceremonies and the like, as necessary.

1.2 Owner's Obligations

- a. The Owner shall perform all obligations in strict compliance with all terms and conditions in this Agreement.
- b. The Owner shall be responsible for compliance with all applicable laws and regulations, including but not limited to zoning or environmental regulations, and prior to Artist's development of design, shall provide to the artist in writing an explanation of any specific limitations imposed by such laws and/or regulations that may impact the Artwork including the policies, guidelines and approvals required by regulatory or oversight agencies such as a cultural affairs office.

- c. The Owner shall prepare the Site in accordance with the specifications detailed in the approved design concept in Section 1.3 of this Agreement. The Owner shall be responsible for [all expenses, labor and equipment (specify if not all)] to prepare the Site for the timely transportation and installation of the Artwork. The Owner shall complete the Site preparations by the scheduled installation date as provided in Section 1.4(b)(i) of this Agreement or shall contact the Artist in writing informing him or her of any delays.
- d. The Owner shall provide and install a plaque on or near the Artwork containing a credit to the Artist and a copyright notice substantially in the following form: Copyright © [Artist's name, date of publication]. If the plaque is to be placed on the Artwork or Artwork pedestal, it should be done in consultation with the Artist.
- e. The Owner shall not permit any use of the Artist's name or misuse of the Artwork which would reflect discredit on the Artist's reputation as an artist or which would violate the spirit of the Artwork, should such use or misuse be within the Owner's control.

1.3 Budget, Payment and Deliverables Schedule

- a. Budget
 - i. The Artist shall prepare a budget, which shall include all goods, services and materials with such costs itemized. The Budget shall be attached to this Agreement as Exhibit B.
 - ii. Budget shall mean a specific and detailed document identifying the cost of completion of all work under this Agreement, including all modifications. The Budget shall include the costs for all design fees and costs; preliminary and final engineering requirements; materials and labor for fabrication, including Artist and subcontractors' costs; consultants, including engineers and specifications writers; transportation of Artwork; installation of Artwork, including any necessary permits; permits and licenses; required insurance. Calculation of the budget will take into consideration the possible inflation of service and material costs between the date of execution of this Agreement and the anticipated completion date.
 - iii. If the Artist incurs costs in excess of the amount listed in the budget, the Artist shall pay such excess from the Artist's own funds unless the Artist obtains approval in writing for such additional costs from the Owner (or such costs were the result of actions or inaction of the Owner).
 - iv. Payment Schedule
 - v. Artist's completion milestones and payment schedule is as set forth in Exhibit C, Payment Schedule, which is incorporated herein by reference

1.4 Schedule and Progress Reports

- a. The Artist shall notify the Owner of the anticipated schedule for the fabrication, transportation and installation of the Artwork, including a schedule for the submission of progress reports and inspections if any required by Owner or permitting agency. The Schedule may be amended by written agreement. The Schedule of Deliverables must identify a specific date or timeframe for the

completion of the Artwork. This Schedule of Deliverables is included as Appendix C.

- b. The Artist shall inform the client of the progress of each phase of work completed under the Agreement.

1.5 Installation

- a. Upon the Owner's final approval of the fabricated Artwork as being in conformity with the Design, the Artist shall deliver [and install] the completed Artwork to the Site in accordance with the schedule.
- b. The Artist will coordinate closely with the Owner to ascertain that the Site is prepared to receive the Artwork. Artist must notify Owner of any adverse conditions at the Site that would affect or impede the installation of the Artwork.
- c. The Artist is responsible for timely installation of the Artwork and shall coordinate with the Owner. Artist may not install the Artwork until authorized to do so by the Owner.
- d. The Artist shall be present to supervise the installation of the Artwork.
- e. Upon installation, the Artwork shall be deemed to be in the custody of the Owner for purposes of Article 3 and Article 5 of this Agreement; the Owner assumes liability for any damage to the Artwork or injury to persons or property caused by the Artwork or any activity related to the Artwork.
- f. Upon completion of the installation of the Artwork, the Artist shall provide the Owner with written instructions for the future maintenance and preservation of the Artwork. The Owner is responsible for the proper care and maintenance of the Artwork.

Article 2. Terms of Agreement

- a. Duration
 - i. This Agreement shall be effective on the date that this contract has been signed by both parties, and, unless terminated earlier pursuant to such provisions in the Agreement, shall extend until final acceptance by the Owner under Section 1.8(b), or submission of final payment to the Artist by the Owner under Exhibit B, whichever is later. Extension of time of performance hereunder may be granted upon the request of one party and the consent of the other thereto, which consent shall not be unreasonably withheld. Such extension shall be in writing, signed by both parties, and attached to the schedule described in Section 1.4(b)(i).
- b. Force Majeure
 - i. The Owner shall grant to the Artist a reasonable extension of time in the event that conditions beyond the Artist's control render timely performance of the Artist's services impossible or unduly burdensome. All such performance obligations shall be suspended for the duration of the condition. Both parties shall take all reasonable steps during the existence of the condition to assure performance of their contractual obligations when the condition no longer exists. Failure to fulfill contractual obligations due to conditions beyond either Party's reasonable

control will not be considered a breach of contract, provided that such obligations shall be suspended only for the duration of such conditions.

Article 3. Risk of Loss

The Artist shall bear the risk of loss or damage to the Artwork until the installation of the Artwork. The Artist shall take such measures as are reasonably necessary to protect the Artwork from loss or damage. The Owner shall bear the risk of loss or damage to the Artwork prior to final acceptance only if, during such time, the partially or wholly completed Artwork is in the custody, control or supervision of the Owner or its agent(s) for the purposes of transporting, storing, installing or performing other services to the Artwork.

Article 4 Artist's Representations and Warranties

4.1 Warranties of Title

The Artist represents and warrants that:

- a. the Artwork is solely the result of the artistic effort of the Artist;
- b. except as otherwise disclosed in writing to the Owner, the Artwork is unique and original and does not infringe upon any copyright or the rights of any person;
- c. the Artist has not sold, assigned, transferred, licensed, granted, encumbered or utilized the Artwork or any element thereof or any copyright related thereto which may affect or impair the rights granted pursuant to this Agreement;
- d. the Artwork is free and clear of any liens from any source whatsoever;
- e. all Artwork created by the Artist under this Agreement, whether created by the Artist alone or in collaboration with others shall be wholly original with the Artist and shall not infringe upon or violate the rights of any third party;
- f. the Artist has the full power to enter into and perform this Agreement and to make the grant of rights contained in this Agreement;
- g. all services performed hereunder shall be performed in accordance with all applicable laws, regulations, ordinances, etc. and with all necessary care, skill, and diligence;
- h. these representations and warranties shall survive the termination or other extinction of this Agreement.

4.1 Warranties of Quality and Condition

- a. The Artist represents and warrants that all work will be performed in accordance with professional "workmanlike" standards and free from defective or inferior materials and workmanship (including any defects consisting of "inherent vice," or qualities that cause or accelerate deterioration of the Artwork) for year after the date of final acceptance by the Owner under Section 1.8(b).
- b. The Artist represents and warrants that the Artwork and the materials used are not currently known to be harmful to public health and safety.
- c. The Artist represents and warrants that reasonable maintenance of the Artwork will not require procedures substantially in excess of those described in the maintenance and preservation recommendations submitted by the Artist pursuant to Section 1.7(f).
- d. If within [one] year the Owner observes any breach of warranty described in this Section 4.2, the Artist shall cure the breach promptly, satisfactorily and consistent

with professional conservation standards, at no expense to the Owner. The Owner shall give notice to the Artist of such breach with reasonable promptness. However, if Artist did not disclose this risk of breach in the Proposal and Maintenance and Conservation manual, and if breach is not curable by Artist, the Artist is responsible for reimbursing the Owner for damages, expense and loss incurred by the Owner as a result of the breach of warranty. However, if the Artist disclosed the risk of this breach in the Proposal and maintenance and conservation manual and the Owner accepted that it may occur, as indicated by the written final acceptance of the artwork, it shall not be deemed a breach for purposes of this Section 4.2 of this Agreement.

- e. If after [(one)] year the Owner observes any breach of warranty described in this Section 4.2 that is curable by the Artist, the Owner shall contact the Artist to make or supervise repairs or restorations at a reasonable fee during the Artist's lifetime. The Artist shall have the right of first refusal to make or supervise repairs or restorations. Should the Artist be unavailable or unwilling to accept reasonable compensation under the industry standard, the Owner may seek the services of a qualified restorative conservator and maintenance expert.
- f. The foregoing warranties are conditional, and shall be voided by the failure of the Owner to maintain the Artwork in accordance with the Artist's specifications and the applicable conservation standards. If the Owner fails to maintain the Artwork in good condition, the Artist, in addition to other rights or remedies the Artist may have in equity or at law, shall have the right to disown the Artwork as the Artist's creation and request that all credits be removed from the Artwork and reproductions thereof until the Artwork's condition is satisfactorily repaired.

Article 5 Insurance

5.1 General

- a. The Artist acknowledges that until installation of the Artwork under Section 1.7(e), any injury to property or persons caused by the Artist's Artwork or any damage to, theft of, vandalism to, or acts of God affecting the Artist's Artwork are the sole responsibility of the Artist, including, but not limited to, any loss occurring during the creation, storage, transportation or delivery of the Artist's Artwork, regardless of where such loss occurs.
- b. Terms for the procurement and duration of insurance are provided in Exhibit C.
- c. Required insurance policies are described in Exhibit C.

5.2 Indemnity

- a. The Artist shall indemnify the Owner, its respective officers, agents, and employees, from any claims brought arising out of the breach of this Agreement or any negligent occurrence which occurs pursuant to the performance of this Agreement by the Artist, its subcontractors, agents or employees.
- b. The Owner shall indemnify the Artist, Artist's subcontractors, agents or employees from any claims brought arising out of the breach of this Agreement or any negligent occurrence which occurs pursuant to the performance of this Agreement by the Owner, its respective officers, agents, and employees.

- c. Each Party shall immediately notify the other of any written claim regarding any matter resulting from or relating to the Party's obligations under this Agreement. Each Party shall cooperate, assist, and consult with the other in the defense or investigation of any such claim arising out of or relating to the performance of this Agreement.
- d. [The indemnification shall include reasonable attorneys' fees and costs.]
- e. This indemnification shall survive the termination or expiration of this Agreement.
- f. Notwithstanding any provision of this Agreement to the contrary, no Party shall recover from a Party to this Agreement in an action, of whatever nature, in contract or tort, any consequential or incidental damages, lost profits, or any type of expectancy damages.

Article 6 Ownership and Intellectual Property Rights

6.1 Title

Title to the Artwork shall pass to the Owner upon the Owner's written final acceptance and payment for the Artwork pursuant to Section 1.8(b) and Exhibit B.

6.2 Ownership of Documents

One set of presentation materials prepared by Artist and submitted to Owner under this Agreement shall be retained by Owner.

6.3 Copyright Ownership

The Artist retains all rights under the Copyright Act of 1976, 17 U.S.C. §101 et seq., as the sole author of the Artwork for the duration of the copyright.

Article 7 Artist's Rights

7.1 General

- a. The Artist retains all rights under state and federal laws including §106A of the Copyright Act of 1976.
- b. The Owner agrees that it will not intentionally alter, modify, change, destroy or damage the Artwork without first obtaining permission from the Artist. The Owner further agrees to take reasonable measures to avoid these from occurring from the gross negligence of the Owner, its representatives, or employees pursuant to the federal Visual Artists' Rights Act.
- c. If any alteration or damage to the Artwork occurs, the Artist shall have the right to disclaim authorship of the Artwork in addition to any remedies he/she may have in law or equity under this contract. Upon written request, the Owner shall remove the identification plaque and all attributive references to the Artist at its own expense within [60] days of receipt of the notice. No provision of this Agreement shall obligate the Owner to alter or remove any such attributive reference printed or published prior to the Owner's receipt of such notice. The Artist may take such other action as the Artist may choose in order to disavow the Artwork

7.2 Alteration of Site or Removal of Artwork

- a. The Owner shall notify the Artist of any proposed significant alteration of the Site that would affect the intended character and appearance of the Artwork. The Owner shall consult with the Artist in the planning and execution of any such alteration. The Owner shall make a reasonable effort to maintain the integrity of the Artwork.
- b. The Owner agrees not to arbitrarily remove or relocate the Artwork without first obtaining the Artist's express permission to do so. The Artist shall not unreasonably withhold approval of removal or relocation of the Artwork. Should the Artist agree to such removal or relocation of the Artwork, the Artist shall provide the Owner with written handling instructions. In the event that the Artist is deceased or unable to otherwise give his consent, the then current owner of the copyright of the Artwork shall not unreasonably withhold permission, keeping in mind the intentions of the Artist at the time of commission and fabrication.

Article 8 Artist as an Independent Contractor

The Artist agrees to perform all work under this Agreement as an independent contractor and not as an employee of the Owner. The Artist acknowledges and agrees that the Artist shall not hold himself out as an authorized agent of the Owner with the power to bind in any manner.

The Artist shall provide the Owner with the Artist's Tax Identification number and any proof of such number as requested by the Owner.

Article 9 Assignment of Artwork

The work and services required of the Artist are personal and shall not be assigned, sublet or transferred. Any attempt by the Artist to assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect unless prior written consent is given by the Owner. The Owner shall have the right to assign or transfer any and all of the Owner's rights and obligations under this Agreement, subject to the Artist's consent, if ownership of the Site is transferred; if the Artist refuses to give consent, this Agreement shall terminate.

Article 10 Termination

- a. Either Party may terminate this Agreement without recourse by the other where performance is rendered impossible or impracticable for reasons beyond such Party's reasonable control such as, but not limited to, acts of nature; war or warlike operation; superior governmental regulation or control; public emergence; or strike or other labor disturbances. Notice of termination of this Agreement shall be given to the non-terminating party in writing not less than 60 days prior to the effective date of termination.
- b. The Owner may terminate this Agreement without cause upon [60] days written notice to the Artist. The Owner shall pay the Artist for services performed and commitments made prior to the date of the termination, consistent with the schedule of payments set forth in Exhibit B of this Agreement. The Artist shall have the right to an equitable adjustment in the fee for services performed and expenses incurred beyond those for which the Artist has been compensated to date under Exhibit B with allowance for documented lost opportunities, unless the parties come to a settlement otherwise. The Artist shall retain possession and title

to the [studies, drawing, designs, maquettes, and models] already prepared and submitted or prepared for submission to the Owner by the Artist under this Agreement prior to the date of termination.

- c. If either party to this agreement shall willfully or negligently fail to fulfill in a timely and proper manner, or otherwise violate any of the covenants, agreements or stipulations material to this Agreement, the other party shall thereupon have the right to terminate this Agreement by giving written notice to the defaulting party of its intent to terminate specifying the grounds for termination. The defaulting party shall have 60 days after the effective date of the notice to cure the default. If it is not cured by that time, this Agreement shall terminate.
- d. If the Artist defaults [for cause other than death or incapacitation], the Artist shall return to the Owner all funds provided by the Owner in excess of the expenses already incurred. The Artist shall provide an accounting of these expenses. All finished and unfinished drawings, sketches, photographs and other work products prepared and submitted or prepared for submission by the Artist under this Agreement shall be retained by the Artist. [The Owner [shall] retain the right to have the Artwork fabricated or executed.] However, the Artist shall retain the copyright in the Artwork and all rights under Article 7 and Article 8.
- e. Upon notice of termination, the Artist and his subcontractors shall cease all services affected.

Article 11 Death or Incapacity

- a. If the Artist becomes unable to complete this Agreement due to death or incapacity, such death or incapacity will not be deemed a breach of this Agreement or a default on the part of the Artist for purposes of Article 10.
- b. In the event of incapacity, the Artist shall assign his obligations and services under this contract to another artist provided that the Owner approves of the new artist and so agrees in writing. If the Owner does not agree, the Owner may elect to terminate this Agreement. The Artist shall retain all rights under Article 6 and Article 7. The Artwork and any reproductions thereof shall contain a credit to the Artist and a copyright notice in substantially the following form: © [Artist's name, date of publication].
- c. In the event of death, this Agreement shall terminate effective the date of death. The Artist's heirs shall retain rights under Article 6 and Article 7. [The Artist's executor shall deliver to the Owner the Artwork in whatever form or degree of completion it may be in at the time. Title to the Artwork shall then transfer to the Owner. However, the Artwork shall not be represented to be the completed work of the Artist unless the Owner is otherwise directed by the Artist's heirs.]

Article 12 Notices and Documents

Notices under this Agreement shall be delivered personally or through the [registered or certified mail, return receipt requested] mail, postage prepaid, to the addresses stated below, or to any other address as may be noticed by a Party:

For the Owner:
200 1st St. NE
PO Box 616
Waverly, IA 50677

For the Artist:

Notice shall be deemed effective on the date personally delivered or, if mailed, [three (3) days] after the postmarked date.

Article 13 Waiver

The Parties agree that a waiver of any breach or violation of any term or condition of this Agreement shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition.

Article 14 Conflict of Interest

The Artist and Owner shall avoid all conflicts of interest or appearance of conflicts of interest in the performance of this Agreement.

Article 15 Arbitration

If, during the creation of the Artwork, its installation and subsequent existence, either Party breaches this Agreement, each Party agrees to submit to arbitration upon the request of the other Party provided that the breach is not cured within a reasonable time under paragraph (c) of Article 11.

If an ambiguity arises regarding this Agreement upon which the Parties cannot agree or a dispute arises as to the completion of a provision, the Parties shall submit to arbitration.

[Notwithstanding any provision of this Agreement to the contrary, any damage award to a party on account of a Party's breach of this Agreement, with the exception of the Artist's duty under Article 6 to procure and maintain insurance, shall not exceed an amount equal to the sum of the payment in Exhibit B.]

Each party agrees to be responsible for its own attorney's fees except as otherwise provided by statute.

Article 16 Amendments

No alteration, change or modification of the terms of this Agreement shall be valid unless made in writing and signed by both Parties hereto.

Article 17 Conflict with the Law

If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall be held by a court of competent jurisdiction or arbitration panel to be in conflict with the laws, rules and/or regulations of the United States or the State of Iowa, invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby to the extent the remainder of the terms, covenants, conditions or provisions of this Agreement are capable of execution.

Article 18 Choice of Law

This contract shall be governed by the laws of the State of Iowa both as to interpretation and performance.

Article 19 Entire Agreement

This Agreement, including the exhibits, comprises all of the covenants, promises, agreements and conditions between the Parties. No verbal agreements or conversation between the Parties prior to the execution of this Agreement shall affect or modify any of the terms or obligation.

For Owner:

City of Waverly, IA

Adam Hoffman, Mayor

Date

For Artist:

Name

Title

Date

Exhibit A

Description of Project

Exhibit B

Budget, Timeline and Payment Schedule

The Owner shall pay the Artist a fixed fee of \$ __7,455.00__, which shall constitute full and complete compensation for all the services performed and material furnished by the Artist under this Agreement. Payment shall be made in accordance with the following scheduled installments, each installment representing full and final payment for all services and material provided prior to payment thereof:

- a. \$ __2,000__ upon the execution of this Agreement, [recognizing that the Artist will invest time and expense in preparing the preparation. Artist pays fabricator \$1000 down payment.
- b. \$ __5455.00__ upon delivery by Artist to the Owner of Maintenance Manual with written instructions for the maintenance and preservation of the Artwork under Section 1.7(e)
- c. \$ __ upon final acceptance of the Artwork by the Owner as set forth under Section 1.8(b) and approval by the regulatory agency.
- d. If payment of an installment has not been made to the Artist within ____ days of the stated date of payment for each respective installment without cause, a separate interest penalty of [.03333] % per day will be due and payable, in addition to the invoice amount, to the Artist. Interest penalties of less than \$1 will not be enforced.

Exhibit C

Insurance

General

- a. The Artist shall procure and maintain for the duration of this Agreement, at the Artist's expense, insurance in the kinds and amounts as provided in this Exhibit with insurance companies authorized to do business in [name of city or state]. Such insurance shall cover the Artist's agents, contractors, subcontractors or employees. The Owner, its officials, employees, agents and contractors shall be named as additional insureds. The coverage shall contain no special limitations on the scope of protection afforded to the Owner, its officials, employees, agents and contractors.
- b. The Artist and the Artist's subcontractors' insurance coverage shall be the primary insurance as respects the Owner, its officials, employees, agents and contractors. Any insurance or self-insurance maintained by the Owner, its officials, employees, agents and contractors shall be in excess of the Artist's or the Artist's subcontractor's insurance and shall not contribute to the Artist's or the Artist's subcontractor's insurance. The coverage shall state that the Artist's or the Artist's subcontractors' insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- c. Prior to undertaking any work under this Agreement, the Artist, at no expense to the Owner, shall furnish to the Owner a certificate of insurance with original

endorsements affecting coverage for each of the insurance policies provided in this Exhibit. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates must be current and the Artist must submit replacement or renewal certificates of insurance for all the policies expiring during the term of this Agreement. Each certificate shall clearly indicate that the Artist has obtained insurance in the type, amount and classification as specified in this Exhibit and that no material changes, cancellation, suspension or reduction in limits of insurance shall be effective except after [30] days prior written notice to the Owner. Each certificate shall indicate that the subcontractors are additionally insured or the Artist shall furnish separate certificates for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated in this Agreement, including, but not limited to, naming the parties as additional insureds.

- d. Any deductibles or self-insured retentions must be declared to, and approved by, the Owner. At the option of the Owner, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Owner, its officials, employees, agents and contractors; or the Artist shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in the amount of \$[N.A.].
- e. Despite any changes to or cancellation of insurance, the Artist remains responsible for maintaining the required insurance coverage for the duration of the Agreement.
- f. Failure of the Artist to comply with any of the terms of this Article 6 shall be considered a material breach of this Agreement and cause for its immediate termination.

Insurance Policies

- a. Commercial General Liability insurance policy, written on an occurrence form, including all the usual coverage known as:
 - 1. premises/operations liability
 - 2. products/completed operations
 - 3. personal/advertising injury
 - 4. contractual liability
 - 5. [broad-form property damage]
 - 6. [independent contractor's liability]

Said policy must provide the following minimum coverage:

- 1. \$[1,000,000] combined single limit per occurrence for bodily injury, personal injury and property damage.
 - 2. \$[1,000,000] annual aggregate
- b. Automobile liability insurance policy, including coverage for owner, non-owner, leased or hired vehicles, providing the following minimum coverage:
 - 1. bodily injury liability of \$[50,000] for each person,
 - 2. \$[300,000] per occurrence,
 - 3. property damage liability of \$[25,000] for each occurrence.

The Artist agrees to keep in good standing a valid driver's license at all times during the term of this Agreement.

- c. [Transportation/Cartage insurance all risk. Coverage must include loading, transportation and unloading of the Artwork. If the Artwork is to be loaded, transported or unloaded by a person or entity other than the Artist, the insurance coverage must cover that person or entity. The minimum limit shall be the total amount of compensation paid to Artist through the date of loading under Exhibit B.]
- d. [All Risk Installation insurance which covers physical damage to or destruction of the Artwork. If the Artwork is to be installed by a person or entity other than the Artist, the insurance coverage must cover that person or entity. The minimum limit shall be the total amount of compensation paid to the Artist through the date of the beginning of the installation of the Artwork under Exhibit B.]
- e. [Worker's Compensation and Employers' Liability insurance in accordance with the statutory requirements of the State of Iowa, providing coverage for any and all employees of Artist. The Artist shall require all subcontractors to carry this coverage also. The minimum coverage for the Worker's Compensation and Employers' Liability insurance shall be \$[100,000].
- f. If, however, the Artist does not have any employees as defined by state statutes and regulations and does not wish to cover himself for Worker's Compensation, the Artist shall sign the following statement:

["I do not have, nor intend to have for the full term of this Agreement, any employees. Furthermore, I do not wish to obtain or be covered under any Worker's Compensation insurance coverage and, therefore, am signing this statement in lieu of providing the above require Worker's Compensation coverage."]

(Artist's signature)

(Print Artist's name)]

REBECCA HACKEMANN STUDIO

ESTIMATE/ PROPOSAL

1600 Genessee St #510

Kansas City,

MO 64102

rebeccahackemann.com

rebecca212@ksu.edu

917.864.2155

Attention: City of Waverly

Date: 12/5/20

Project Title: Visionary Sightseeing Binoculars. **Project Description:** Metal sculpture, aluminium steel alloy. This price includes an artist talk and travel, shipping of artwork to the site.

Maintenance (not included): The artwork may need cleaning every 2 yrs (wipe down with cloth, soapy water).

Installation (not included): This is typically done by Parks and Rec or the city. It requires only a concrete pavement and concrete screws and a concrete drill (5 inches deep) See photographs.

Description	Quantity	Unit Price	Cost
Machining/CNC cutting	1	\$ 3,500.00	\$ 3,500.00
120mm Color Film and 120 mm stereo Slide Frames	1	\$ 60.00	\$ 60.00
Photographic Services, Scanning, Printing, Film Development (in kind \$300)	1	\$ 45.00	\$ 45.00
Raw Material, Aluminum steel alloy	1	\$ 500.00	\$ 500.00
Labor/Design/Supervision Northpenn Machine Works in hours	25	\$ 40.00	\$ 1,000.00
Labor Artist Rebecca Hackemann - Photoshop work (3-d), Admin, in hrs -	40+	\$ 25.00	\$ 1,000.00
Artist Fee / Honorarium 10%	1	\$ 650.00	\$ 650.00
Artist Travel Gas	1	\$ 100.00	\$ 100.00
Artist Hotel	2	\$ 180.00	\$ 180.00
Artist Food @ 40 /day	3	\$ 120.00	\$ 120.00
Freight Shipping from PA - estimate only	1	\$ 300.00	\$ 300.00
Subtotal			\$ 7,455.00
Tax			\$ 0.00
Total			\$ 7,455.00

REBECCA HACKEMANN STUDIO
917.864.2155

TIMELINE

VISIONARY SIGHTSEEING BINOCULARS

2/15/2020

Feb: work on contract to make relevant for the City if Waverly and or Waverly Historic Preservation Commission WHPC.

Make sure maintenance plan and funds are there, also insurance and installation cost covered by city (not in estimate).

End February: Sign Contracts (see attached example) between Artist and City or WHPC

The contract must be between the legal entity that pays.

Mid March: City of Waverly pays down payment of \$2000 (\$1000 for fabrication house, \$1000 for artist – they are independent contractors and will fill out a W9, City or HS sends 1099 end of 2021)

March – April : Work on Photographs, historical Images, present images, conversion to 3-D and slide film

Feb – April: Fabrication and design managed by The Artist

April – May: Press Publicity Marketing (city and HS and artist) ?

Mid May: Work is shipped from Philadelphia to K-state via Freight (costs for shipping vary and keep changing)

Beginning of August: Installation: Rebecca travels to Waverly for installation

Opening event? Newspaper etc...Event Depends on covid. Could be virtual or thereafter virtual.

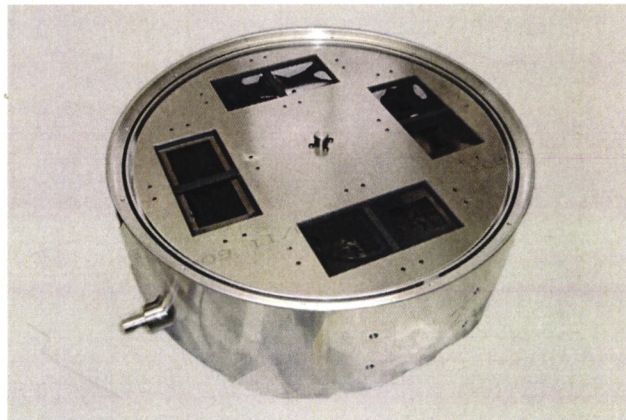
Day of installation: City or WHPC pays remaining cost to artist and fabricator

Artist can pay fabricator.

R E B E C C A H A C K E M A N N S T U D I O

917.864.2155
me@rebeccahackemann.com
rebeccahackemann.com
Kansas City, Manhattan, KS, London

S T E R E O S C O P I C P U B L I C L O O K I N G G L A S S E S



The Urban Field Glass Project, stereoscopic viewer in public space, depicting the past and present of the site, Images are changed with a crank. Philadelphia, 2010, New York, 2013

Exhibition sites:

2008 Philadelphia, 2 binoculars for 4 years, funded by Asian Arts Initiative and Wartburg College scholarship grant, Waverly, IA, Philadelphia, PA

2012 Manhattan, NY, (1), Brooklyn, NY (1), 1 yr. Funded by Lower Manhattan Cultural Council

2014 Berlin, Herrchen and Born, 2 weeks, funded by KSU Research grant and Department of Art, KSU

2021 Springfield, MO, 6 months on Museum grounds, funded by the Museum

This project is featured in the book Thingstaetten, Kerber Verlag, 2020 edited by Katharina Bosse.

ARTIST STATEMENT

The Urban Field Glass project consists of would be sightseeing binoculars that actually contain 2 past and 2 future stereoscopic 3-D images of the site at which it stands. The past images stem from archives and the future images are created by teenagers in the community who envision what they would like to see in the empty lot or abandoned area at which these binoculars are often installed.

R E B E C C A H A C K E M A N N S T U D I O

The Urban Field Glass Project engages communities to re-envision urban space, that has been destroyed through 1950's urban planning projects, such as highways that go through city centers.

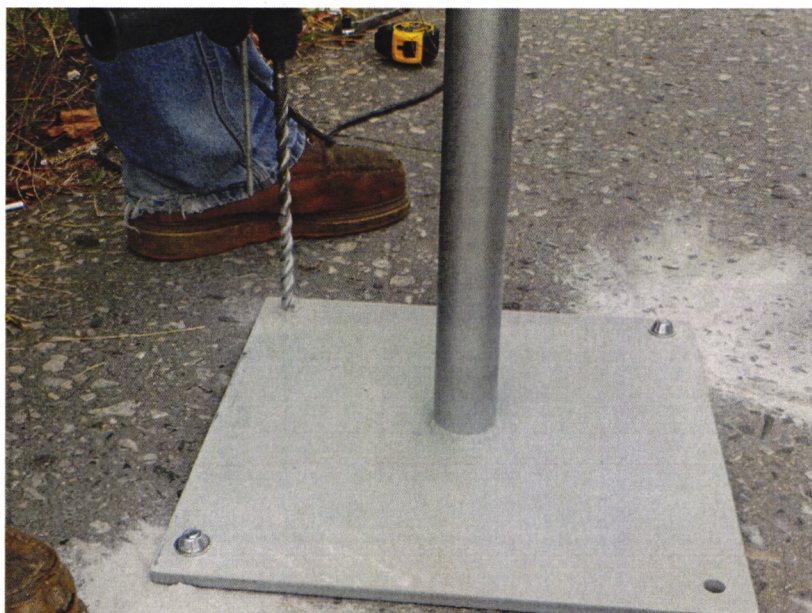
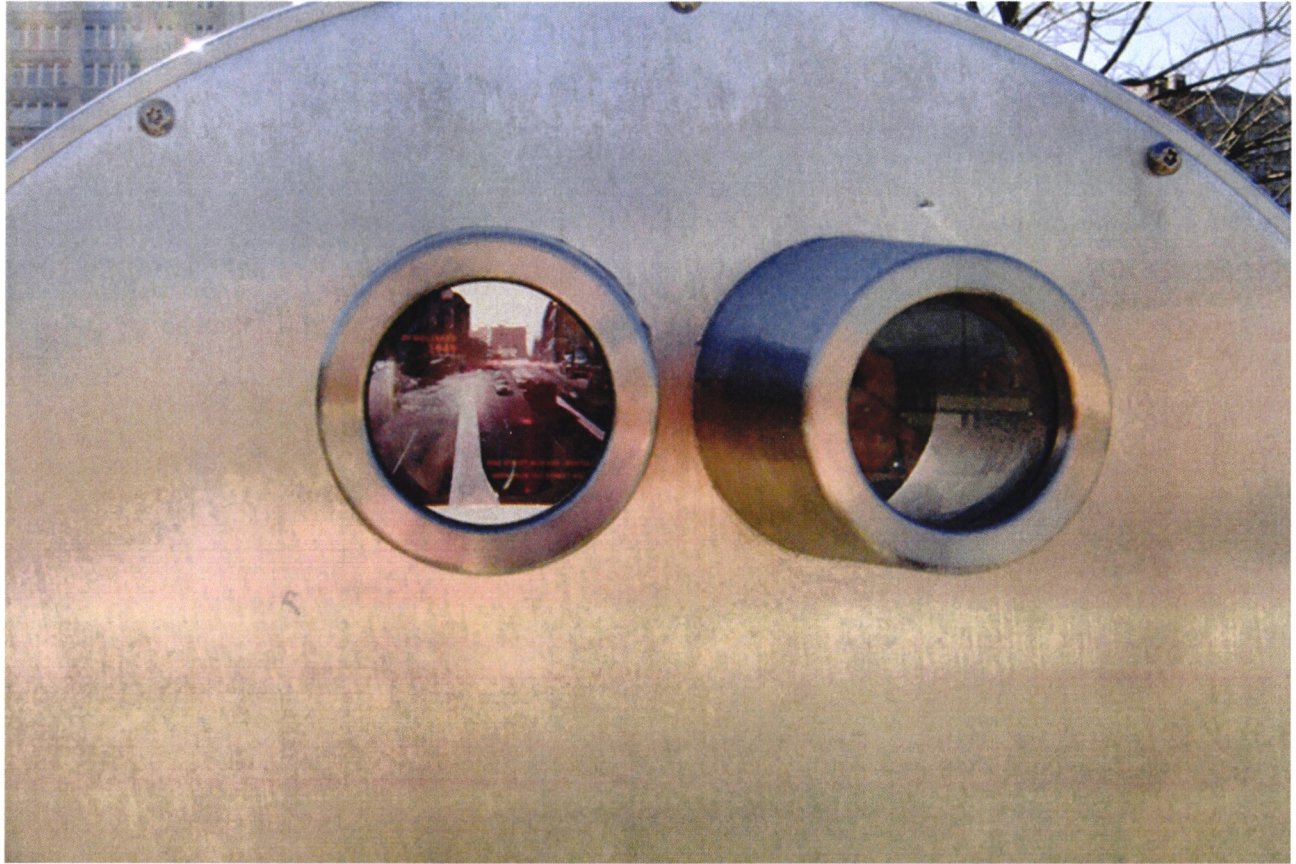
This project can also be done as a purely historical one whereby the images reflect historical views of the area where it is installed. The binocular takes 4 images, does not use electricity and works with daylight and street lights.

BIO

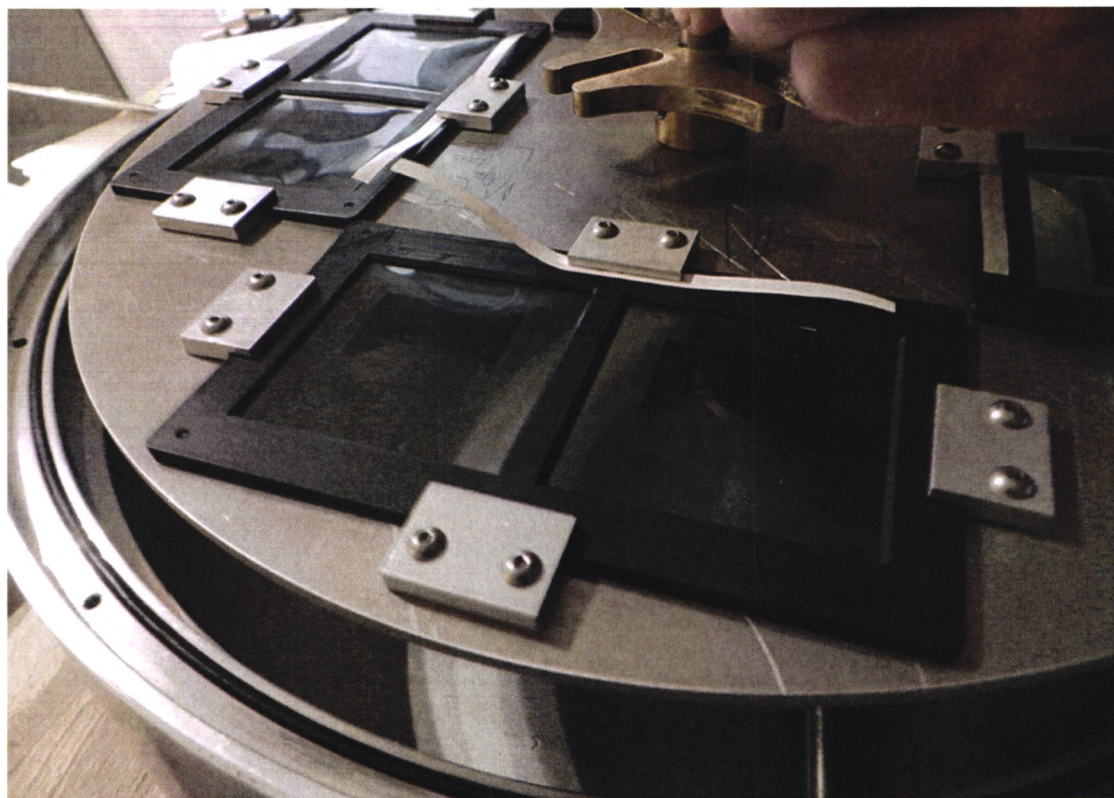
Rebecca Hackemann grew up in Britain and Germany - she is a multidisciplinary artist trained as a conceptual artist, photographer, scholar and public artist. Hackemann holds an MFA from Stanford University, CA (1996) and PhD in Critical Art Practice from UAL, Chelsea College of Art London (2019). She was a Whitney Museum of American Art ISP Program studio fellow in New York and has exhibited nationally and internationally, most recently at Foley Gallery New York. In 2021 her work will be exhibited at the Sirringfield Museum of Art as part of their "Four x Four" biennale. Her work is in the collection of MOMA and Light Work. Hackemann recently completed an artist residency at the Banff Centre for Creativity in Banff, Canada in. Her work can be found at rebeccahackemann.com. Hackemann is Associate Professor of Art at Kansas State University in Manhattan, KS where she also maintains a studio.



Images that were converted to 3-D manually, viewable inside the stereo viewers.







REBECCA HACKEMANN STUDIO
917.864.2155

Title of project:
VISIONARY SIGHTSEEING BINOCULARS

2/15/2020

BIO

Rebecca Hackemann, PhD grew up in London (England) and Lindau, Germany. She is trained as a conceptual artist, photographer and scholar. She is based in Manhattan, KS, where she is Associate Professor of Art at Kansas State University. Hackemann holds a BFA in Film Video and Photographic Arts from University of Westminster, London, an MFA from Stanford University, CA (1996) and a PhD in Critical Practice from Chelsea College of Art, UAL London (2019). Hackemann was a Whitney Museum of American Art ISP Program studio fellow in New York (2001) and has exhibited in more than 60 exhibitions nationally and internationally, most recently at Foley Gallery, New York, the Fotofocus Biennale, Cincinnati and the Spring Break Art Fair, New York 2020 as well as Kronos Art Festival in Spain, 2020. She has been making public art since 2007 and has installed works that address urban design and historical photography in many different cities including Springfield, MO, Philadelphia, PA, New York, NY, Brooklyn, NY. She has written about public art in academic journals such as Leonardo (MIT Press) and e-flux Art&Education Papers. Hackemann recently completed an artist residency at the Banff Centre for Creativity in Banff, Canada. Her work can be found at rebeccahackemann.com. Dr. Hackemann lived in Waverly from 2008 – 2013 and was assistant professor of photography at Wartburg College for two years. In 2018 she became a citizen of the United States after holding an artist visa (for outstanding aliens in the Arts and Sciences - O1) for 10 years and an artist greencard for 14 years. In 2021 her work will be exhibited at the Springfield Art Museum in Springfield, MO as part of the 4x4 exhibition.

TIMELINE

VISIONARY SIGHTSEEING BINOCULARS

2/15/2020

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