

RESOLUTION NO. 80-95
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER J.V. STONE ON THE
18th DAY OF DECEMBER, 1995.

A RESOLUTION AUTHORIZING AND DIRECTING THE CITY MANAGER TO ENTER INTO AN AGREEMENT ON BEHALF OF THE CITY OF CENTERVILLE WITH THE SPRING STREET STUDIO FOR THE DESIGN, FABRICATION AND INSTALLATION OF A SCULPTURE TO COMMEMORATE THE COMMUNITY'S BICENTENNIAL IN 1996.


WHEREAS, in 1994 the Centerville Arts Commission organized and coordinated a City of Centerville/Washington Township Bicentennial Sculpture Competition, and

WHEREAS, in February, 1995, a panel of judges designated by the Centerville Arts Commission selected a sculpture designed by Michael A. Frasca of the Spring Street Studio as the winning entry.

NOW, THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY RESOLVES:

SECTION 1. That the City Manager is hereby authorized and directed to entered into a Contract with the Spring Street Studio for the design, fabrication and installation of a sculpture in front of the Centerville Library to commemorate the City of Centerville/Washington Township Bicentennial in 1996, a copy of which is attached hereto, marked Exhibit "A" and incorporated herein.

PASSED this 18th day of DECEMBER, 1995.


Mayor of the City of
Centerville, Ohio

ATTEST:


Clerk of the Council of the
City of Centerville, Ohio

CERTIFICATE

The undersigned, Clerk of the Council of the City of Centerville, Ohio, hereby certifies that the foregoing is a true and correct copy of Resolution Number 80-95, passed by the Council of the City of Centerville, Ohio, on the 18th day of DECEMBER, 1995.

Maile J. ...
Clerk of Council

Approved as to form, consistency
with the Charter and Constitutional Provisions.
Department of Law
Robert N. Farquhar
Municipal Attorney

AGREEMENT

THIS AGREEMENT, entered into as of this ____ day of December, 1995, by and between the **CITY OF CENTERVILLE**, hereinafter referred to as the "City", and **SPRING STREET STUDIO** hereinafter referred to as the "Artist".

WHEREAS, City will serve as the lead agency for the project, and will coordinate with Washington Township, Centerville Library and the Artist; and

WHEREAS, City desires to contract with the Artist for the design, fabrication and installation of a sculpture, hereinafter referred to as the "Sculpture", at the Centerville Library, 111 W. Spring Valley Road, hereinafter referred to as the "Site"; and

WHEREAS, as the Artist is willing to design, fabricate and install said Sculpture;

NOW THEREFORE, City and Artist, for the consideration and under conditions hereinafter set forth, agree as follows:

I. Artist's Services:

A. Scope:

The Artist shall perform all services and furnish all supplies and materials as necessary for the fabrication and installation of the Sculpture. Except as modified hereafter by agreement of the Artist and City, the Sculpture, when completed, shall be substantially in accordance with the drawings and specifications marked "Exhibit A", attached hereto and made a part hereof.

B. Procedure:

1. Upon execution of this Agreement, the Artist shall commence the fabrication of the Sculpture. City shall have the right at reasonable times to review the Sculpture during the fabrication thereof, and to receive progress reports from the Artist.
2. The Sculpture shall be installed at the Site by the Artist and the Artist's sub-contractors.
3. It is understood that the construction and installation of the Sculpture is the full responsibility of the Artist, both as to the actual execution and cost incurred.

C. Educational Program:

The Artist will:

- a) provide a formal presentation and dedication speech, other presentations as mutually agreed upon by City and Artist,
- b) permit video taping during the creation/installation period of the project
- c) provide limited tours of studio during creation process
- d) present informal talks at the site during the installation process

II Preliminary Design:

A. The Artist has created a preliminary design and model for the Sculpture which the City has approved.

B. **Sculpture Description:**

A ceramic sculpture in a stacked book design approximately twenty feet high, and comprised of fourteen books. Each book will measure approximately four feet by five feet by one and one-half feet. Each book will be prepared for installation in accordance with Exhibit B. The sculpture will be installed on a masonry base in accordance with Exhibit B.

C. **Sculpture Sign:**

The Artist will also consult with the Library Architect in the design of a sign which will be in accord with the main sculpture and approved by designated representatives of the City and Centerville Library.

III. Specifications:

A. The Artist shall provide assistance and information, coordinate and guarantee the execution of the following items to the satisfaction and approval of the City for the installation of the aforesaid Sculpture:

1. Submission of plans and specifications to the City as may be required pertaining to the proposed permanent installation of the sculpture prior to installation and containing the following:
 - (a) Orientation and specific location of the sculpture on the site (base plan of the site provided by the Centerville Library.)
 - (b) Suggested location, intensity, direction and character, if feasible, for installation of future lighting of the sculpture (lighting to be provided by the Centerville Library.)
 - (c) Suggested site preparation and landscaping including location, number, and species of plant material, if feasible, to compliment the Site Plan and sculpture (site preparation and landscaping at no cost to the artist.)
 - (d) Detailed installation plans and specifications for the construction of the permanent base for the sculpture. Such information shall specify: concrete, reinforcing steel, anchor bolts, other miscellaneous materials and the layout/dimensions required for the construction for the base.

- (e) Method, time frame and arrangements made and required transportation and handling of the sculpture from the fabrication site to the proposed installation site (transportation and handling costs shall be absorbed by the artist.)
- (f) Sculpture and base shall conform with the Preliminary Design and Sculpture Description per Article II herein, and any further City requirements as a result of the Building Permit or Planning process.

IV. Structural Design Review:

- A. The City may require the Artist to make such revisions to the Sculpture as are necessary for the Sculpture to comply with the applicable city, state and federal statutes, ordinances, or regulations, especially pertaining to building permits and city planning and zoning regulations.

V. Purchase Price, Schedule of Payments, Project Time Line:

- A. City will pay the Artist a total of Thirty Nine Thousand Five Hundred Dollars (\$39,500) for the Sculpture, plus Ten Thousand Dollars (\$10,000) prize money in accordance with the following schedule:
 - 1. Ten Thousand Dollars (\$10,000) prize money upon execution of this Agreement.
 - 2. Eight Thousand Dollars (\$8,000) upon starting work on the sculpture. The phrase "starting work" shall include production of the master model from which molds will be made. Two weeks notice will be given prior to starting work.
 - 3. Seven payments of Four Thousand Dollars (\$4,000) each spaced evenly throughout the project, or upon proof of need by the Artist, ie. expense receipts, etc.
 - 4. Three Thousand Five Hundred Dollars (\$3,500) upon completion and final acceptance of the Sculpture.
- B. It is understood that the price shall be increased by the amount of any additional costs incurred by the Artist for labor or materials as a result of delays in the completion of those items which are the responsibility of the City. Prior approval must be received before additional costs are incurred. All other increases shall be the responsibility of the Artist.
- C. It is expected that the project will be installed at the site by October 1, 1996.

VI. Time Extension:

- A. The City shall grant a reasonable extension of time to the Artist in the event there is a delay on the part of the City in performing its obligations under this Agreement, or if conditions beyond the Artist's control or Acts of God render timely performance of the Artist's services impossible or unexpectedly burdensome. Failure to fulfill contract obligations due to conditions beyond either

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

- B. The City shall have final approval on any revisions of the Sculpture.

VII. Completion of Sculpture:

The Sculpture shall be completed as set forth in Article I, Paragraph B1 above. Artist has carefully reviewed the drawings, and is of the opinion that Artist can create the Sculpture as depicted thereon using Artist's best professional ability. Artist agrees to incorporate all the materials and only those materials, as are designated in the Sculpture Description. Any variances from the drawings and/or specifications that Artist deems desirable or necessary may only be taken by Artist after receiving the advance written approval of the City.

VIII. Naming the Sculpture:

The parties agree that the Sculpture will be named "The Record".

IX. Installation and Insurance:

- A. The Artist agrees to supervise the installation of the Sculpture, and agrees to perform the installation with Artist's sub-contractors.
- B. Artist shall be required to provide liability insurance, the City and Centerville Library shall be named as Additional Insured. Artist shall provide City with a certificate of insurance evidencing such coverage. The Artist agrees to be responsible and provide proper insurance coverage for damage to or loss of the fabricated materials and other materials required to complete the Sculpture until completion of the installation. In the event of a loss, the parties agree to apply any available insurance proceeds towards the repair and completion of the Sculpture.
- C. Artist shall provide and pay for all Worker's Compensation insurance required for Artist and/or Artist's employees.

X. Reproduction:

City shall be entitled to reproduce photographs of the Sculpture. Any such reproduction shall be accompanied by a copyright notice in substantially the following form: © Spring Street Pottery 1996, All Rights Reserved. The Artist shall not physically reproduce the Sculpture without the express written authority of the City. The City and Artist shall be entitled to permit the reproduction of the Sculpture for non-commercial, educational, fundraising and publicity purposes.

XI. Amendments; Waivers:

- A. No provision of this agreement may be amended, modified or supplemented except in writing by both parties. The waiver or the breach of any provision of this agreement will not constitute a waiver of any subsequent breach thereof, nor of this Agreement.

- B. Artist warrants to City that all materials and equipment incorporated into the Sculpture will be new unless otherwise specified, and that the Sculpture will be of good and workmanlike quality, free from all defects and faults, and in the conformity with the terms of this Agreement. Any work not conforming to these standards will, at City's option, be considered defective. This standard of quality and workmanship shall include all work of any kind, whether or not subcontracted. Without limiting the preceding warranties, Artist shall correct any work that fails to conform to the requirements of this Agreement where such failure to conform appears during the progress of the Sculpture. Artist shall remedy any defects in the materials manufactured and/or installed by Artist that appear within a period of three year(s) from the date of completion of the Sculpture.

XII. Ownership of Documents, Models and Sculpture:

Upon final acceptance, all studies, drawings, designs, maquettes and models prepared and submitted under this Agreement shall be retained and owned by the Centerville Library. The Centerville Library will retain ownership of the Sculpture.

XIII. Non-Discrimination:

In carrying out the performance of the services designated, the Artist shall not discriminate as to race, creed, religion, sex, age, national origin or the presence of any physical, mental or sensory handicap. The Artist shall comply with the equality of employment opportunity.

XIV. Artist's Address:

The Artist shall notify the City of changes in address. The failure to do so, if such failure prevents the City from locating the Artist, shall be deemed a waiver by the Artist of the right subsequently to enforce the provisions of this Agreement that require the express approval of the Artist. Notwithstanding this provision, the city shall make every reasonable effort to locate the Artist when matters arise relating the Artist's rights.

XV. Assignability:

The Artist shall not assign any interest in this Agreement, and shall not transfer any interest in the same (whether by assignment or novation) without prior written consent of the City thereto; provided, however, that claims for money due or to become due to the Artist under this Agreement may be assigned to a bank, trust company, other financial institution or creditor without such approval. Notice of any such assignment or transfer shall be furnished promptly to the City.

XVI. Severability:

Each section and provision of this Agreement shall be independent of every other section and provision. If any section or provision of this Agreement, and/or appendices incorporated herein, prove to be, or is finally held by a court of law, tribunal, or board of authority of competent jurisdiction to be invalid under any prevailing law, the other sections of this Agreement shall continue to be, and shall be deemed to continue to be, valid and in force.

XVII. Captions Not a Part Hereof:

The captions of the several sections of this agreement are not a part of the contents hereof, but are only guides or labels to assist in locating and reading such sections. They shall be given no effect in construing this Agreement.

XVIII. Binding Effect:

This Agreement shall be binding upon and shall inure to the benefit of the City and the Artist and their respective heirs, successors, and assigns.

XIX. Warranty and Indemnification:

Artist warrants that the Sculpture will not infringe or contribute to infringement of any patent, copyright or trademark in the United States or elsewhere, and Artist shall indemnify City, its successors and assigns against any and all losses, damages and expenses including attorney fees and other costs in defending any infringement action which City may sustain or incur as a result of the breach of this warranty.

XX. Maintenance:

Upon installation of the Sculpture, the Artist shall provide to the City written instructions for suggested appropriate maintenance and preservation of the Sculpture.

XXI. Situs:

This Agreement is executed and delivered in the State of Ohio. The situs shall be the Stat of Ohio, and this Agreement shall be governed by, construed and administered in accordance with the laws of the State of Ohio.

XXII. Independent Contractor:

Artist shall act as an independent contractor in the design, fabrication and installation of the above mentioned Sculpture. City shall neither have nor exercise any control over the methods by which Artist delivers such services except that Artist agrees to use currently acceptable methods in the delivery of such services. The sole interest of City is to assure that Artist's service shall be performed in a competent, efficient and satisfactory manner.

XXIII. Termination:

- A. Performance by the Artist under this agreement may be terminated by the City in whole or in part whenever the City shall determine that such termination is in its best interests. Such termination shall be effected by delivery to the Artist of a Notice of Termination specifying (1) whether termination is for the default of the Artist or for the other than the default of the Artist, (2) the extent to which performance under the Agreement is terminated, and (3) the effective date of such termination.

- B. If the Agreement is terminated by the City for the default of the Artist, no further payments will be made to the Artist under this Agreement, except for the work already then performed pursuant to this Agreement.
- C. If the Agreement is terminated by the City for other than the default of the Artist, the Artist will be paid the full contract amount of Forty Nine Thousand Five Hundred Dollars (\$49,500) less any payments of compensation previously made by the City.

XXIV. Entire Agreement:

This agreement constitutes the entire understanding between the parties and shall not be changed or modified except in writing signed by all parties. This agreement shall be binding upon the parties hereto, their heirs, successors, assign and personal representatives.

IN WITNESS WHEREOF, the City has caused its presence to be subscribed by its duly authorized officer and (Artist) has hereunto set his hand, in multiple copies, each of which shall be deemed a duplicate original, but all constituting one and the same document on the day and year first above written.

SIGNED AND ACKNOWLEDGED
IN THE PRESENCE OF :

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THE CITY OF CENTERVILLE BY:

Gregory B. Horn, City Manager

SPRING STREET POTTERY BY:

Michael A. Frasca