

RESOLUTION NO. 79-24
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER Belinda Kenley ON THE
12th DAY OF August, 2024.

A RESOLUTION AUTHORIZING AND DIRECTING THE CITY MANAGER TO ENTER INTO AN ARTIST LICENSING AGREEMENT WITH OLIVIA FAILLACE FOR DESIGN, CONSTRUCTION, AND INSTALLATION OF A U.S. SPACE FORCE RELIEF SCULPTURE IN THE VETERAN'S MEMORIAL.

WHEREAS, the Veterans Memorial is contained within Stubbs Park and is open to the public; and

WHEREAS, the Veterans Memorial currently contains five armed forces bronze relief sculptures signifying the various branches of the armed forces; and

WHEREAS, it is the intent to add a relief sculpture for the U.S. Space Force; and

WHEREAS, Olivia Faillace is an Artist that has the skills necessary to design, construct, and install the U.S. Space Force relief sculpture in the Veteran's Memorial; and

WHEREAS, it is in the best interests of the City and the City desires to contract with Olivia Faillace for said services.


NOW, THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY RESOLVES:

Section 1. That the City Manager is hereby authorized to execute the Artist Licensing Agreement with Olivia Faillace. A Copy of the Agreement is attached and marked Exhibit "A" and incorporated herein.

Section 2. That the city Manager is hereby authorized and directed to do any and everything necessary to carry out the terms of said Agreement

Section 3. This Resolution shall become effective at the earliest date allowed by law.

PASSED this 12th day of August, 2024.



Mayor of the City of Centerville, Ohio

ATTEST:



Clerk of Council, 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 79-24, passed by the Council of the City of Centerville, Ohio, on the 12th day of August, 2024.



Clerk of Council

Approved as to form, consistency
with the Charter and Constitutional Provisions.

Department of Law
Scott A. Liberman
Municipal Attorney

Artist Licensing Agreement

This Artist Licensing Agreement (the "AGREEMENT") is entered into effective this date, July ____, 2024, between Olivia Faillace ("ARTIST") and the City of Centerville, an Ohio municipal corporation ("CITY").

WHEREAS, the City owns and maintains the Leonard E. Stubbs Memorial Park & Centerville Community Amphitheater ("Stubbs Park") within the City as a public park; and

WHEREAS, the Veterans Memorial is contained within Stubbs Park and is open to the public; and

WHEREAS, the Veterans Memorial currently contains five armed forces bronze relief sculptures signifying the various branches of the armed forces; and

WHEREAS, it is the intent to add a relief sculpture for the U.S. Space Force; and

WHEREAS, the City desires to contract with an artist to create and install the new U.S. Space Force relief sculpture; and

WHEREAS, the Artist has the skills necessary to design, construct, and install the U.S. Space Force relief sculpture in the Veteran's Memorial.

NOW THEREFORE, in consideration of the foregoing recitations and the benefits to them mutually accruing the parties agree as follows:

Section 1. The City hereby engages the Artist to design, construct, and install a U.S. Space Force bronze relief sculpture in the Veteran's Memorial of Stubbs Park (the "Project"). Artist will provide a template for the location for the City to drill holes in the place that the relief is to be mounted.

Section 2. The City hereby grants the Artist access to Stubbs Park for purposes of this Agreement to complete the Project. Additionally, the City agrees to provide assistance with lifting the approximately 140 pound relief to be installed and will assist in drilling the holes for mounting the relief.

Section 3. The City agrees to engage the Artist for a fee of \$13,890 for completion of the Project to be paid as follows:

\$6,945 upon execution of the Agreement;
\$6,945 upon completion of the Project.

Artist is responsible for any and all Artist fees, costs, and expenses expended by Artist under this Agreement to complete the Project.

Section 4. The Parties agree that any image, graphics, digital assets, or digital images created or taken by Artist and delivered to the City are collectively known as "Images". All Images and rights relating to them, including copyright

and ownership rights in the media in which the Images are stored, will be shared between the City and Artist. Upon completion of the Project, all Images shall become the property of the City.

Section 5. The parties agree that Artist is an independent contractor, and that neither Artist, nor Artist's employees nor contract personnel are, or shall be deemed to be, employees of City. No agency, partnership, joint venture, or employee-employer relationship is intended or created by this Agreement. Neither party is authorized to act as agent or bind the other party except as expressly stated in this Agreement. Artist and the Images or any other deliverables prepared by Artist shall not be deemed a work for hire as defined under Copyright Law. All rights granted to Client are contractual in nature and are expressly defined by this Agreement.

Section 6. Images may contain copyright management information (CMI) at the discretion of the Artist or City in the form of either 1) a copyright notice © and/or 2) other copyright and ownership information embedded in the metadata or elsewhere, unless otherwise agreed to by the Parties. Removing and/or altering such information is prohibited and constitutes violation of the Digital Millennium Copyright Act (DMCA).

Section 7. The manner and method of creating any of the Images is solely at the discretion of Artist and the City has no right to control Artist's manner and method of performance under this Agreement. Artist will use his/her best efforts to: (a) ensure that the Images conform to City's specifications; and (b) submit all Images to City in publishable quality, on or before installation for City's review and approval prior to sending the medallion for casting in plaster.

Section 8. Artist may select delivery of Image photographs in JPEG, TIFF, or PNG at a high-quality resolution (8"x10" at 600 dpi minimum, larger sizes encouraged if possible) either electronically or via USB drive due at the time this license is signed. It is the City's responsibility to verify that the Images are suitable for reproduction and that if the Images are not deemed suitable, to notify the Artist with thirty (30) business days of receipt of the Images.

Section 9. This Agreement does not create an exclusive relationship between the parties. City is free to engage others to perform services of a similar nature to those provided by Artist, and Artist shall be entitled to offer and provide services to others, solicit other clients and otherwise advertise the services offered by Artist. Artist may not create the same relief sculpture using the Images specified in this Agreement within 100 miles of the Project location in the City of Centerville, Ohio.

Section 10. Neither party may assign or transfer this Agreement or any rights granted under it. No amendment or waiver of any terms is binding unless in writing and signed by the parties.

Section 11. Artist shall indemnify and defend City, its officers, employees, agents, and volunteers, against all claims, liability, damages, costs, and expenses, including reasonable legal fees and expenses, arising out of the

creation or any use of the Images or materials furnished by Artist. It is the Artist responsibility to obtain the necessary model or property releases and to ensure that any such releases are in full effect and force.

Section 12. This Agreement sets forth the entire understanding of the parties and supersedes all prior agreements between the parties. This Agreement shall be governed, interpreted and enforced in accordance with the laws of the State of Ohio. Any claim or litigation arising out of this Agreement, or its performance may be commenced only in courts physically located in Montgomery County, Ohio, and the parties hereby consent to the personal jurisdiction of such courts. In the event of any litigation arising out of or relating to this Agreement, the prevailing party shall be entitled to recover its attorneys' fees incurred in the litigation.

Section 13. If one or more of the provisions in the Agreement is found invalid, illegal or unenforceable in any respect, the validity and enforceability of the remaining provisions shall not be affected. Any such provisions will be revised as required to make them enforceable.

Section 14. No action of either party, other than in writing agreed to by the parties, may be construed to waive any provision of this Agreement and a single or partial exercise by either party of any such action will not preclude further exercise of other rights or remedies in this Agreement.

IN WITNESS WHEREOF, the parties have caused this Artist Licensing Agreement to be duly executed as of the dates written below.

CITY OF CENTERVILLE

Wayne S. Davis
City Manager

Date: _____

ARTIST

Olivia Faillace
Date: _____

Address: _____

Phone: _____

Email Address: _____

Approved as to form:

Scott A. Liberman, Municipal Attorney