



FIRE DEPARTMENT

130 W. ST. PAUL AVENUE
WAUKESHA, WISCONSIN 53188-5172
TELEPHONE 262/524-3651 FAX 262/524-3670

August 7, 2015

Jennifer Andrews
Director of Community Development
Public Art Advisory Committee Staff
201 Delafield Street
Waukesha, WI 53188

Dear Jennifer,

The Fire Department would like to seek the approval of the City of Waukesha Public Art Advisory Committee to enter into a contract with John Rawlins, for the commissioning and installation of a sculpture in the atrium of Fire Station No. 1.

The total contract amount is \$54,500, with a call out for disbursements to be made in thirds. The first installment will be the down payment, the second installment will go for the foundry work, and the final installment will be paid at the completion of the project. The final contract is being reviewed by the City Attorney's office.

We appreciate the anticipated support of the Public Art Advisory Committee and are looking forward to seeing this project become a reality at Fire Station No. 1.

Sincerely,

Steve Howard, Acting Fire Chief
City of Waukesha

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Artwork Commission Contract
City of Waukesha – John Rawlins
Original Bronze Sculpture, "I Remember"

This Contract is by and between the City of Waukesha, a Wisconsin municipal corporation, 201 Delafield Street, Waukesha, Wisconsin 53188, referred to herein as the City; and John Rawlins, N8846 Branch Road, Ixonia, Wisconsin 53056, referred to herein as the Artist. Together, the City and Artist are referred to as the Parties.

Recitals

The City wishes to place a bronze sculpture in the lobby of Fire Station 1. The Artist has previously created for the Fire Department an acrylic painting entitled "I Remember," and the City wishes for the sculpture to be modeled after the painting. The Artist has the ability to produce a bronze sculpture based on the painting, and is willing to do so.

Now, therefore, the City and the Artist agree and contract as follows:

1. **Scope of Work.** The Artist shall create a sculpture in bronze, depicting in three dimensions the figure of the young boy depicted in the painting, "I Remember." The Sculpture shall reproduce as faithfully as reasonably possible the figure in the painting, subject to the Artist's reasonable artistic discretion, and shall be approximately 48 inches tall, excluding a base, which shall also be provided by Sculptor. All expenses of the creation of the Sculpture shall be borne solely by Artist. Before casting in bronze, the Artist shall produce a scale mock-up of the Sculpture and deliver it to the City for approval. Casting in bronze shall not be done until the City has approved the mock-up, and the final Sculpture shall conform to the mock-up. The Artist shall be responsible for delivery and installation of the Sculpture at Fire Station 1, in the location specified by the City.
2. **Delivery and Installation.** The Artist bears the risk of damage to the Sculpture until it is fully installed in Fire Station 1, and Artist is responsible, at his sole expense, for packing, loading, moving, unloading, unpacking and installing the Sculpture into place in Fire Station 1. Artist acknowledges that the Sculpture will be in a public area, accessible to the public, and that adults and children will be in contact with, and may climb upon, the Sculpture; therefore, Artist shall install the Sculpture so that it is solidly-mounted, will not tip, and will not have unreasonably sharp or otherwise-dangerous surfaces or edges.
3. **Payment.** The City shall pay to Artist a total Contract Price of Fifty-Four Thousand Five Hundred Dollars (\$54,500.00), as follows: \$17,500.00 upon execution of this Contract, \$17,500.00 upon approval of the scale mock-up, and \$19,500.00 upon completion of the Sculpture and delivery to the City. Artist shall invoice the City, and all invoices shall be payable net 30 days.
4. **Time.** Artist shall commence the Sculpture as promptly after execution of this Contract as is possible, and shall complete the Sculpture within 18 months of the execution of this Contract, subject only to delays for circumstances beyond Artist's control, provided Artist recommences work promptly in good faith upon the return of normal circumstances.
5. **Assignment Prohibited.** This Contract, and the Artist's responsibility to create the Sculpture under this Contract, may not be assigned in whole or in part by the Artist without the City's written consent.
6. **Standard of Performance, Warranty of Quality.** Artist shall create the Sculpture according to generally-accepted practices and using generally-accepted methods, commensurate with the quality of other works created by the Artist for the City, and to the highest standards of the Artist's trade. Artist warrants to the City that the Sculpture will be free from defects in materials and workmanship, for a period of three years after delivery of the Sculpture to the City. The Artist shall repair or replace the Sculpture, as necessary to conform with this warranty, if the City notifies Artist of defects in materials or workmanship within the stated three-year period.

7. **Ownership of Sculpture, Warranty of Title.** Upon payment of the full Contract Price stated in section 2, title to the Sculpture shall pass to the City, and Artist warrants to the City that title to the Sculpture shall be free and clear of all claims, liens and encumbrances. Artist acknowledges that the Sculpture shall be a work for hire, and that upon payment of the full Contract Price stated in section 2, all of Artist's copyright in the Sculpture shall be assigned to the City.
8. **Copyright Warranty and Indemnification.** Artist warrants to the City that the Sculpture does not infringe the copyright of any third party, and Artist will indemnify and hold the City harmless from any liabilities or damages arising from any third-party claim of copyright infringement, including actual attorney fees and costs of defense.
9. **Amendment.** This Contract can only be amended by the written, mutual agreement of the Parties. No change to the scope of the Sculpture, or the total amount to be paid to Artist, shall be effective unless done by the written mutual agreement of the Parties.
10. **Parties Are Independent Contractors.** Nothing in this Contract shall be construed to create any relationship between the Parties other than independent contractors. Unless specifically provided in this Contract, the Parties are not agents for one another, have no authority to bind the other to contracts, and have no vicarious liability for the other's acts or omissions.
11. **Governmental Immunities and Notice Requirement Preserved.** Nothing in this Contract shall be construed to be a waiver or modification of the governmental immunities or notice requirements imposed by Wis. Stats. §893.80 or any other law.
12. **Assistance of Counsel, Voluntary Contract.** The Artist acknowledges that it has either had the assistance of legal counsel in the negotiation, review and execution of this Contract, or has voluntarily waived the opportunity to do so; that it has read and understood each of this Contract's terms, conditions and provisions, and their effects; and that it has executed this Contract freely and not under conditions of duress.
13. **Adequacy of Consideration.** The Parties acknowledge that the consideration expressed in this Contract is adequate and sufficient to make the obligations contained in this Contract binding upon the Parties.
14. **Costs of Enforcement.** The Parties agree that in the event legal action is necessary to enforce any term or condition of this Contract, then the breaching Party will pay the non-breaching Party's costs incurred in such legal action, including actual attorney fees. If a judgment is taken, then costs of enforcement will be added to the judgment.
15. **Severability.** If any term of this Contract is held unenforceable by a court having jurisdiction, then to the extent the unenforceable term can be severed from the remainder of this Contract without affecting the enforceability of the remainder of this Contract or substantially frustrating its purpose, it will be so severed, and the remainder of this Contract will remain in effect and enforceable.
16. **Survival and Parties Bound.** Unless specifically limited in this Contract, any term, condition or provision of this Contract will survive the execution of this Contract or any stated time periods, to the extent necessary for their performance. This Contract is binding upon, and inures to the benefit of, the Parties' successors, assigns, heirs, executors, trustees and personal representatives.
17. **Governing Law and Jurisdiction.** This Contract will be construed and enforced according to the laws of Wisconsin. If a lawsuit arises out of this Contract, it shall be filed in the state Circuit Court for Waukesha County, Wisconsin. The Parties consent to personal and subject-matter jurisdiction in Wisconsin, and waive all jurisdictional defenses.
18. **Integration.** This Contract constitutes the entire agreement of the Parties, and any other oral agreements or understandings, not expressed in a written, mutual amendment to this Contract, shall be void.

City of Waukesha

By Shawn N. Reilly, Mayor

Date: _____

Attested by Gina L. Kozlik, City Clerk

Date: _____

To certify that funds are provided for payment:

Richard L. Abbott, Director of Finance

Date: _____

Artist

John Rawlins

Date: _____