

**Mitchell, Parks, Recreation & Forestry Department
Special Board Meeting Agenda
Thursday, May 28, 2020
Council Chambers, 612 N Main St**

1. NEW BUSINESS

A. Red Cadwell Bust Contract

Documents:

[RED CADWELL BUST CONTRACT \(JJ 5-22-2020\).PDF](#)

2. ADJOURNMENT

THE RED CADWELL BUST

Conditional Contract

The intention of this contract is to leave nothing assumed or un-said, and to foster great success in producing this sculpture. This contract isn't intended to diminish the value of a handshake or friendship. On the contrary, it is intended to protect and solidify both.

Darwin Wolf at 7505 W. Chesapeake Ln., Sioux Falls, SD 57106, 605-362-5256, hereinafter referred to as the Sculptor, and the City of Mitchell, 612 N. Main St., Mitchell, SD 57301, 605-995-8420 hereinafter referred to as the Buyer, enter into this agreement under terms described herein.

The Buyer will commission a life-sized bust of Bernard "Red" Cadwell in bronze. The Sculptor will produce, sign, date and copyright the sculpture and provide a certificate of authenticity to the Buyer. The Buyer will receive the number one copy of the bust in the edition of three (3). All costs hereunder are related solely to the copy which Buyer will receive and not the other 2 copies. The bust will measure approximately 24"w x 28"h x 18"d.

The Sculptor will deliver the life-size bust to the installation site on a date no later than August 2020 on the property of Cadwell Park at Mitchell, SD. The Sculptor will deliver the sculpture installation-ready along with all necessary hardware, drilling templates and fixatives. The Sculptor will assist in installation but will not be responsible for, or liable due to, failure or deterioration of the installation pedestal negatively effecting permanent and safe installation of the sculpture.

The pedestal with sculpture anchor holes drilled and ready will be provided by the Buyer. Approximate dimensions for the square pedestal: 42"- 45" in height, 24" x 24" base, 24" x 24" top, 22"x 22" body. Pedestal must be of durable material such as stone, concrete or brick. Top must be thick enough to accommodate anchor holes for bronze installation. Pedestal base design to be determined by Buyer with input from Sculptor.

The selling price for the bronze bust and all associated work hereunder is a lump sum of \$11,250.

Approximate timeline based on August 2020 completion, and installment schedule are as follows:

June 1, 2020	To begin sculpting of the likeness in clay:	30%
July 1, 2020	Upon approval of the clay model and to begin foundry work:	30%
August 1, 2020	Upon completion and installation, the final amount due will be:	40%

The timeline and payment schedule may be adjusted as agreed upon by both parties. Foundry schedules are dependent upon many factors. Though the schedule has a three-week cushion built in, the project deadline cannot be guaranteed should the foundry experience unexpected setbacks.

Should funding become unavailable for completion of the sculpture, the Sculptor would be compensated for all work and expenses accrued up to that point in the process. The Sculptor is responsible for completion of all work which he has been compensated for.

Approval of the clay bust before going to the foundry constitutes final approval of the sculpture. Beyond this point in production there can be no design changes forced by either party without mutual agreement as to coverage of costs of these changes. Every effort will be made to get input from the Buyer when appropriate, but aesthetic decisions during the production of the bronze are made by the Sculptor and the foundry staff. Delivery and installation meeting industry standards will constitute acceptable completion by the Sculptor with final payment due.

Upon mutual agreement of the parties, Sculptor does hereby waive all artist rights provided by 17 USC 106A (commonly known as the Visual Artists Rights Act), including but not limited to the right to prevent distortion, mutilation, modification, or destruction of the work. Such waiver shall not prevent Sculptor from 1) claiming authorship of the work, 2) preventing others from claiming authorship of the work, or 3) preventing use of the Sculptor's name in the event the work is modified and would be prejudicial to Sculptors honor or reputation.

In light of Sculptor's waiver, Buyer agrees to make a good faith effort to seek input from Sculptor in the event the sculpture is distorted, mutilated, modified, or destroyed. If Buyer is aware of a project proposal which may result in the sculpture being distorted, mutilated, modified, or destroyed, Buyer shall make a good faith effort to seek input from Sculptor prior to the project's occurrence. Sculptor may provide Buyer with suggestions as to repair, relocation, maintenance or other items relating to the sculpture. Buyer will consider Sculptor's suggestions in good faith and will follow suggestions where Buyer determines that doing so is feasible and prudent in Buyer's sole discretion.

This agreement shall be binding upon the heirs, assigns and transferees of the parties. Should the Sculptor for any reason be physically unable to complete the project, he retains the right to name his successor in completing the Sculptor's original design and within the original agreement with the Buyer. Successors in order of preference would be Jonathan Moeller, Rosholt, SD; and James Maher, Belle Fourche, SD. These are individuals considered by the Sculptor to have the highest moral and artistic standards required to finish the sculpture.

This two-page document constitutes the entire agreement between the parties and shall not be altered unless in writing. Attached addendums signed and dated by both parties will be considered part of this contract. This agreement is subject to and construed under the Laws of the State of South Dakota.

Dated this _____ day of _____, 2020.

SCULPTOR

BUYER

Darwin Wolf, Wolf Bronze

Brian Johnson,
Mitchell Parks and Recreation Board President