# AGREEMENT

This Agreement is made and entered into this day of , 2016 between \_\_\_\_\_\_\_\_\_\_ (hereinafter referred to as the “Client”), and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(the “Artist”), for a commissioned work of art (the “Work”) to be created by the

Artist for the Client for a sculpture located at the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

# Description of the Work

1. The work consists of a\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. The Artist shall be responsible for the design and fabrication of the Work in consultation with representatives of the Client. The Artist shall submit one set of design drawings and models of the sculpture to the Client for approval. The design shall be subject to the approval of the Client which shall be evidenced by a writing executed by the Client. The design so approved is referred to herein as the “Approved Design.” Upon such written approval of the design, the Artist may proceed with detailed development and fabrication of the Work.

It is understood that the Artist will endeavor to create the Work in the spirit of the Approved Design, but that the necessity for refinement and development of the design may result in differences between the Approved Design and the final Work. Therefore, the Artist may make design refinements as the work progresses, as long as the general concept and materials remain the same. The three (3) stages of development shall be the creation of the full size model in clay, the casting in metal at the foundry and installation at the site. The Artist shall give reasonable advanced notice in writing at each stage of development. The Client shall review each stage of development and either approve or request changes in such stage. The Client’s failure to view and either approve or request changes in the final model before casting within two (2) weeks after receiving notice that the final model is ready for viewing shall constitute acceptance of the design of the final work. Notwithstanding an approval on the final model, prior to casting, the Client shall have the right to request refinements in the design of the Work as long as the general concept and materials remain the same and the change will not materially impact the schedule or increase the cost of the Work.

1. The Artist shall be responsible for the structural engineering in regard to the support of the \_\_\_\_\_\_\_ and the design of the foundation by the Artist’s structural engineer The Artist or his subcontractor shall be responsible for the installation of the Work. The Client shall be responsible for the installation of the foundation.
2. The Artist shall be responsible for consulting with the Client concerning any special requirements that materially may affect the design or installation of the Work and for giving detailed instructions to the Client regarding any particular installation requirements necessitated by the design. The Client shall inform the Artist about any special requirements known to the Client that may affect the design or installation of the work.
3. The installation of the Work shall be at the \_\_\_\_\_\_\_\_\_\_. The Work will be installed by the Artist at such reasonable date and time as the Client shall request, but in no case later that the month period provided in Section 9 below. The Artist shall have complete direction and control over the work performed by the laborers.

# Terms of Payment

1. The Client shall pay the Artist the sum of $\_\_\_\_\_ (the “Fee”) as set forth in Attachment A hereto. Artist shall invoice the Client in three installments in accordance with the terms of Attachment A hereto. Amounts unpaid thirty (30) days after the invoice date shall bear simple interest at the rate of 1 ½ % per month.
2. The Artist shall cooperate with the Client with respect to the design, and fabrication, of the work and shall keep the Client informed as to the progress of said design and fabrication.
3. If, after approval of the design of the final models of the work by the Client, the Client instructs the Artist to make major changes in the Work, the time required for the Artist to effect such changes shall be paid for by the Client at a rate of one hundred and fifty dollars ($150.00) per hour in addition to the fee set forth in this Agreement and Attachment A. The Client shall also pay any increased costs of fabrication as a result of such changes.
4. If the Client fails to make any payment that is due within thirty (30) days of the date of the Artist’s invoice for such payment and the Artist has substantially complied with the terms of this Agreement, the Artist shall be entitled to suspend services immediately. The suspension of services shall be in addition to, and not in lieu of, any other rights the Artist has in the event of non-payment of the Client. Client agrees to pay reasonable attorney’s fees, agency fees and other expenses or losses, prior to and through any trial and subsequent proceedings, incurred by Artist in the event Artist employs the services of an attorney or agency to collect sums due hereunder or to enforce any terms contained herein.
5. If the Artist fails to substantially comply with the terms of this Agreement and the Client has so complied, the Client shall be entitled to suspend payments immediately. The suspension of payments shall be in addition to, and not in lieu of, any other rights the Client has in the event of non-compliance by the Artist.

# Representation

The Artist represents that: (i) he will use reasonable care and diligence in the application of his skills to the Work, consistent with that level of care and skill ordinarily exercised by members of Artist’s profession, (ii) the overall Work is solely the result of the artistic effort of the Artist, (iii) to the best of his knowledge and belief, the Work is unique and original and does not infringe upon any copyright, (iv) he has not sold the Work, or a duplicate thereof, elsewhere, and has knowledge of any such sale, (v) the Work, as fabricated and installed, will be free and clear of liens or encumbrances, and (vi) the Work, as fabricated and installed, will be free of defects in material and workmanship. The Client shall give notice to the Artist of any observed breach of any such representation with reasonable promptness. The Artist shall, at the request of the Client and at no cost to the Client, cure reasonably and promptly the breach of any such representation that is curable by the Artist consistent with professional conservation standards. The representations described in this Section 3 shall survive for a period of one year after the installation of the Work (or the delivery of the Work, if installed by others). There are no other representations, either express or implied, given by the Artist.

# Liability and Insurance

The Artist shall be responsible for damage, theft or vandalism to the Work or any component thereof

until the completion of the installation of the Work unless such damage, theft or vandalism is a direct result of the negligence of the Client or its consultant(s). The Artist shall carry normal liability insurance for his studio. The Client shall be responsible for damage, theft or vandalism upon completion of such installation. Each party hereto shall procure its own insurance to protect against the risks stated herein. The Artist shall comply with a certificate of insurance evidencing sufficient coverage within ten (10) days after the receipt of the first payment hereunder.

To the fullest extent permitted by law, the total liability of Artist with regard to this Agreement under any and all theories of liability to the total fee paid to Artist only, not including consultants for the Project. Limitations on liability provided in the Agreement are business understandings between parties and shall apply to all theories of liability, including breach of contract or warranty, tort including negligence, strict or statutory liability, or any other cause of action. No director, officer, shareholder, employee, representative or agent of the Artist shall have any individual liability to owner. Each party waives consequential damages for claims, disputes or other matters in question arising out of relating to this Agreement. Nothing contained in this Agreement shall create a contractual relationship with, or cause of action in favor of, any other person.

To the extent damages are covered by property insurance, the Client and Artist waive all rights against each other and against the consultants and agents of the other for damages, except such rights as they may have to the proceeds of such insurance. The Client and Artist, as appropriate, shall require of the consultant(s) or agents of any of them similar waivers in favor of the other parties herein.

# Inspections

Upon reasonable advance notification and at a mutually convenient time, the Client or an agent for the Client may inspect the Work during normal business hours. The Artist or designated agent for the Artist must be present during such visits.

# Maintenance

The Artist shall supply the Client with instructions for the care and maintenance of the Work; however, the Artist shall not be responsible for said care and maintenance after delivery of the Work for installation. The Artist shall provide the Client, at no additional charge, up to eight hours consulting time for problems arising after final installation in relation to the maintenance of the Work. Any time beyond eight hours shall be paid for at the rate of one hundred and fifty dollars ($150.00) per hour. The Client shall cause the Artist to be reimbursed for any reasonable out-of-pocket expenses, such as but not limited to travel, lodging and meals, in connection with services pursuant to this Section 5.

# Ownership Rights and Reproduction

The Artist retains all rights under the Copyright Act of 1976, 17 U.S.C. Copyright 101 et seq., and all rights in the Work itself except ownership and possession of the actual final Work, except as such rights are limited by this Section 7 or Section 11 below.

The Artist agrees not to offer for sale any two or three-dimensional reproductions of the Work and shall not make any additional three-dimensional duplicate reproductions of the Work, not assist to allow others to do any of such acts, without the permission of the Client, which permission shall not be unreasonably withheld. Notwithstanding the foregoing, both the Client and the Artist shall have the right to make two-dimensional reproductions of the Work for noncommercial and not-for-profit purposes, including,

but not limited to, reproductions for use in advertising, brochures, media publicity, and catalogues or other similar publications, provided that these rights are exercised in a tasteful and professional manner.

The Client shall have the right to make two-dimensional reproductions of the work for commercial purposes, including but not limited to, reproductions for use on postcards, calendars, books or similar publications, provided that these rights are exercised in a tasteful and professional manner.

All reproductions by the Client shall contain a credit to the Artist and a copyright notice substantially in the following form: “Copyright \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

# Mediation/Litigation

The parties shall endeavor to settle claims and disputes by non-binding mediation, unless the parties mutually agree otherwise. Any mediation shall be conducted in the state of Maryland. Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to litigation in Circuit Court for Prince George’s County Maryland or the U.S. District Court for the Maryland (Greenbelt Division). Both parties consent to personal jurisdiction and venue in the courts referenced above. Both parties specifically waive their right to a jury trial to resolve any and all claims, including but not limited to those sounding in contract, tort or statute, against the other arising out of or in any way connected to the Project or this Agreement.

Any and all claims and/or causes of action between the parties arising out of or relating to this Agreement shall be brought by either party within two (2) years of the date of installation or termination of this Agreement, whichever is sooner.

# Time of Performance

The Artist shall perform the design and fabrication of the Work within twelve months from the date of this Agreement. In addition, time of performance requirements are subject to extensions of time due to delays caused by factors beyond the control of the Artist.

# Assignment

This Agreement is for the personal services of the Artist, and neither the Artist nor the Client shall assign, sublet (except that the Artist shall be entitled to enter into subcontracts for the fabrication of the Work), or transfer any interest in this Agreement without the express written consent of the other.

# Waiver of Consequential Damages.

The parties waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party’s termination in accordance with this Agreement.

# No Waiver

1. No waiver of full performance by either party shall be construed or operate as a waiver of any subsequent default of any of the terms, covenants or conditions of this Agreement. The payment or acceptance of fees for any period after a default shall not be deemed a waiver of any right or an acceptance of defective performance.

# 12. Amendments

No modifications or amendment of the terms hereof shall be effective unless written and signed by the parties hereto, or their authorized representatives.

# Governing Laws

This Agreement shall be governed by the laws of the State of Maryland.

# No Third Party Beneficiary

Nothing contained in this Agreement shall create a contractual relationship with a cause of action in favor of a third party against either the Client or the Artist. The Client shall include a copy of this provision in its other contract(s) relating to the Project.

# 15. Entire Agreement

This Agreement contains all of the covenants, promises, agreements, and conditions, either oral or written, between the parties.

By

By

ATTACHMENT “A”

Payment No. One-Start-up $10,000

Payment No. Two-Shipment to Foundry $15,000

Payment No. Three-Installation $ 5,000