



**AGREEMENT FOR COMMISSION OF ARTWORK
BY AND BETWEEN
MARCUS BROWN AND _____**

THIS AGREEMENT, entered into this _____ day of _____ by and between Marcus Brown [“Artist”] and _____ [“Client”] whose mailing address, for the purposes of this contract, is

_____.

WHEREAS Client wishes to commission _____ pursuant to a contract with the Artist, and is allocating certain funds for the commission of the artwork and is authorizing the making of payments for the design, execution, fabrication, transportation, insurance, and installment of works of art, _____; and _____;

WHEREAS, the Artist and the Client have negotiated for the Artist to design, execute, fabricate and install a work of art [“Work”] located at _____, New Orleans, Louisiana [“Site”, Exhibit C], hereto attached; NOW, THEREFORE, the Artist and the Client agree as follows:

Article 1. Scope of Services

1.1 General:

- a. The Artist shall be responsible for the performance of all services and furnish all supplies, material and equipment necessary for the design, execution and fabrication of the Work.
- b. The installation of the Work will be coordinated by both the Artist and the Client. The Artist shall be responsible for the installation plan as approved by the Client as detailed in Exhibit D. The Artist present on-site throughout the installation as necessary. The Client will provide transportation for the Work to the Site, and provide for the necessary foundation fabrication (if any) as approved in Exhibit D.
- c. Prior to this Contract, the Artist shall determine the artistic expression, scope, design, color, size, material, texture and location of the Work, subject to review and acceptance by the Client [and any other necessary party].
- d. The Client will provide the Artist with the following information or services as required for performance of the work:
 - 1. permits, if any are necessary;
 - 2. existing site conditions and utility information [as available];
 - 3. construction drawings [as available];
 - 4. engineer review [if necessary];
 - 5. insurance [if called for]; and
 - 6. transportation of artwork and installation costs.

e. It is the intent of all parties [the Artist and the Client] to establish a close and cooperative working relationship throughout the duration of this Agreement.

1.2 Proposal:

The Proposal for the Work has been approved and developed through fair and equal negotiation between the Artist and the Client and both parties submit they are of sound mind and possess the legal ability to bind themselves to this contract.

1.3 Execution of the Work:

a. Within the _____ period following the date of the approval of the submissions and revisions made pursuant to Section 1.2, the Artist [if necessary and called for in the contract] shall furnish to the Client a schedule for completion of fabrication and installation of the Work [as described in attached Exhibit documents] by a date approved by the Client and include a schedule for the submission of progress reports directly associated with the payment schedule [Section 2.1 below]. The Artist shall fabricate, and be present to transport and install the Work in accordance with such schedule. The schedule [Exhibit A] may be amended by written agreement between the Artist and the Client.

b. The Artist shall complete the fabrication and installation of the Work in substantial conformity with the Proposal and as described in attached Exhibits _____. Recognizing that the shift in scale from models/drawings [if necessary and called for in the Contract] to full scale may require artistic adjustments, the Artist reserves the right to make minor changes in the final Work as deemed aesthetically and structurally necessary.

d. The Artist shall present to the Client in writing for further review and approval any substantive changes in the scope, design, color, size, material or texture of the Work not illustrated by or not in substantial conformity with the Proposal. A significant change is any change in the scope, design, color, size, material texture or location on the Site of the Work which affects installation, scheduling, site preparation or maintenance for the Work or the concept of the Work as represented in the Proposal. The client shall not unreasonably withhold approval of such changes.

1.4 Delivery and Installation:

a. The Artist shall notify the Client _____ prior to when fabrication of the Work will be completed and Work will be ready for delivery and installation at the Site.

b. The Artist shall coordinate the delivery and installation of the completed Work at the Site in compliance with the schedule approved pursuant to Section 1.3, Exhibit _____ and in partnership with the Client.

1.5 Post-Installation:

a. The Artist shall be available at such time or times as may be agreed between the Client and the Artist to attend a public ceremony relating to the installation of the Work and to give public presentations about the creation of the Work.

b. Upon installation of the Work, the Artist shall provide to the Client detailed written instructions for appropriate routine maintenance and preservation of the Work.

1.6 Final Acceptance:

a. The Artist shall advise the Client in writing when all services required prior to those described in Section 1.5[b] have been completed in substantial conformity with the Proposal.

b. Final acceptance shall be effective as of the 10th day after the Artist has sent the written notice to the Client required under Section 1.6[a] unless the Client, upon receipt of such notice and prior to the expiration of the 10-day period, gives the Artist written notice specifying and describing the services which have not been completed.

1.7 Risk of Loss:

Upon delivery of the finished Work to the Client, the Work becomes the property of the Client.

1.8 Title:

During fabrication and installation, the Client acts as intermediate owner of the Work with a vendors lien upon the Work by the Artist until payment is complete for all phases of the Work. Upon final payment and delivery of the work, the vendor's lien will be lifted and the Client shall have unencumbered ownership.

1.9 Ownership of Documents and/or Models:

All studies, drawings, designs, maquettes and models prepared and submitted under this Agreement are the property of the Artist and will be returned to the Artist unless otherwise agreed. The Client retains the right to keep maquettes, drawings, and studies for a reasonable time for exhibition and display purposes, and retains the right of first refusal to purchase maquettes, drawings, and studies for documentary purposes.

Article 2. Compensation and Payment Schedule

2.1 Fixed Fee:

The Client shall pay the Artist a fixed fee of _____ which shall constitute full compensation for all services and materials to be performed and furnished by the Artist under this Agreement, excluding any additional costs and/or expenses negotiated at the time of the signing of this contract and/or additional requests by the Client to the Artist above and beyond the Proposal contemplated in the Contract. The fee shall be paid in the following installments, expressed as percentages of such fixed fee, each installment to represent full and final, non-refundable payment for all services and materials provided prior to the due date thereof. This money shall be paid as follows:

- a. forty percent [40%], \$ _____ following the signing of this contract by all parties and upon approval by the Client of the schedule for completion;
- b. thirty percent [30%], \$ _____ upon completion of half the required construction or creation of the Work, as reported to and documented by the Client, per prior agreement between Client and Artist;
- c. ten percent [10%], \$ _____ upon completion of the Work;
- d. the remainder [20%], \$ _____ upon installation of the Work;

2.2 Artist's Billing:

In order to receive all except the initial payment, which will be made automatically after the Client has approved the schedule for completion and all parties have signed this contract, the Artist shall call or email the Client when the Artist believes each of the last three stages outlined above has been reached. If the Client disagrees with the Artist's estimation of the stage of completion of the Work, the Client must notify the Artist in writing within 14 days of receipt of billing or be foreclosed from raising objection to the Artist's estimation, and payment will be automatically authorized. A letter from the Artist that a given stage has been reached will accompany the billing to initiate the payment process.

2.3 Late Receipt:

If late receipt of a check causes the Artist to be unable to complete and install the Work by the date referred to in Section 1.4, the Artists may submit a letter of explanation to the Client. An alternative installation date will be mutually agreed upon in writing by the Artist and Client without penalty to the Artist.

Article 3. Time of Performance

3.1 Duration:

The services to be required of the Artist as set forth in Article 1 shall be completed in accordance with the Schedule [Exhibit A] for completion and [Exhibit D] for installation of the Work as proposed by the Artist and approved by the Client pursuant to Section 1.3, provided that such time limits may be extended or otherwise modified by written agreement between the Artist and the

Client. In the event that the Work and the delivery are not completed by this date, the Artist shall have a grace period of 7 days to complete and deliver the Work.

3.2 Early Completion of Artist Services:

The Artist shall bear any transportation and storage costs resulting from the completion of Artist's services hereunder prior to the time provided in the schedule for installation. If the Client is not prepared for the installation of the Work at the scheduled date, the Client shall have a 7 day grace period during which the Artist will house the work at his own cost. At the conclusion of the 7 day grace period, the Client shall become responsible for reasonable storage and shipping costs for housing the Work until installation.

3.3 Time Extensions:

The Client shall always grant a reasonable extension of time to the Artist in the event of either of the following: [1] there is a delay on the part of the Client in performing its obligations under this Agreement; or [2] the Client, in its judgment, determines a delay is in the best interests of the project. If an extension in time is granted, a new installation date shall be agreed upon in writing between the Client and the Artist. Failure to fulfill contractual obligations due to Acts of God will not be considered a breach of contract, provided that such obligations shall be suspended only for the duration of such conditions. If an extension is granted, a new installation date shall be agreed upon in writing.

3.4 Installation Time Schedule:

The Artist shall complete and deliver the Artwork as proposed by the attached Schedule [Exhibit A], pursuant to Section 1.3, unless that date is extended in writing by an Artist/Client agreement.

3.5 Contract Termination:

Failure to adhere to terms of this contract will be considered a breach of contract, subject to the requirements of Article 10 below. In such case, the Client may cancel project and require Artist to return amount paid to date. If the Client causes the breach of contract by no fault of the Artist, a pro rata amount of money paid will be returned to the Client, minus any necessary expenses the Artist has expended to that point.

3.7 Force Majeure:

The Artist shall not be held responsible for any delay in the performance or progress of the work, or liable for any costs or damages sustained by the Client or the Client's representatives, or by any third person acting as the agent, servant or employee of the Client, or by changes ordered in the Work, or as a result of compliance with any order or request of any federal, state or municipal government authority or any persons purporting to act therefore, or by acts of declared or undeclared war or by public disorder, riot or civil commotion, or by any other cause beyond the control and without the fault or negligence of the Artist. In the event of any such delay, the Artist shall proceed with due diligence to alleviate such delay and continue the performance of all obligations under this Agreement. The time during which the Artist is delayed in the performance of the work, shall be added to the time for completion of the Artist's services to the extent such time is specified in this Agreement. All additional costs or damages resulting from any delay in the performance or progress of the work caused by any act or neglect of the Client, their agents, or representatives, shall be borne entirely by the Client.

Article 4. Warranties

4.1 Warranties of Title:

The Artist represents and warrants that: [a] the Work is solely the result of the artistic efforts of the Artist or other artist whose contributions are acknowledged; [b] except otherwise disclosed in writing to the Client, the Work is unique and original and does not infringe upon any copyright; [c] that the Work, or duplicates thereof, have not been accepted for sale elsewhere; and [d] at the

conclusion of payment and delivery, the Work is free and clear of any liens from any source whatever.

4.2 Warranties of Quality and Condition:

The Artist represents and warrants, except as otherwise disclosed to the Client in writing in connection with submissions of the Proposal pursuant to Section 1.2, that: [a] the execution and fabrication of the Work will be performed in a professional manner and conform substantially to the proposal; [b] the Work, as fabricated and installed, will be free of defects in materials and fabrication, including any defects consisting of "inherent vice" or qualities which cause or accelerate deterioration of the Work; and [c] reasonable maintenance of the Work will not require procedures substantially in excess of those described in the maintenance recommendations to be submitted by the Artist to the Client hereunder as Exhibit F. The warranties described in this Section 4.2 shall survive for a period of six months after the final acceptance of the Work, after which the Artist will not be responsible for damage or deterioration of the Work. The Client shall give notice to the Artist of any observed breach 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 warranty which is curable by the Artist and which cure is consistent with professional conservation standards [including, for example, cure by means of repair or re-fabrication of the Work].

Article 5. Reproduction Rights

5.1 General:

The Artist retain all rights under the Copyright Act of 1976, 17 U.S.C. 101 et seq., and all other rights in and to the Work except ownership and possession, except as such rights are limited by this Section 5.1.

In view of the intention that the Work in their final dimension shall be unique, the Artist shall not make any additional exact duplicates [unless agreed upon by the Client in writing], three-dimensional reproductions of the final Work [unless agreed upon by the Client], nor shall the Artist grant permission to others to do so without the written permission of the Client. The Artist grants to the Client and its assigns an irrevocable license to make two-dimensional reproductions of the Work for commercial and non-commercial purposes, including but not limited to reproductions used in advertising, brochures, media publicity, and catalogues or other similar publications, provided that these rights are exercised in a professional manner and provided provisions of 5.2 are met.

5.2 Notice:

All reproductions by the Client shall contain a credit to the Artist and a copyright notice substantially in the following form: Title, © [Artist's name], date of installation, installation location.

5.3 Credit to Client:

The Artist shall use his/her best efforts to give a credit reading substantially, "an original Work commissioned by the Client on {insert dates}" in any public showing under the Artist's control of reproductions of the Work.

Article 6. Artist's Rights

6.1 Identification:

The Client shall, at the Program's expense, prepare and install at the Site, pursuant to the written description from the Artist and subsequent approval by the Client, a plaque or plaques identifying the Artist, the titles of the Work and the year of completion, and brief descriptions of the Work; however, upon mutual consent between the Artist and the Program, the Artist may incorporate plaque information into the installation of the artwork.

6.2 Maintenance:

The Client recognizes that maintenance of the Work on a regular basis is essential to the integrity of the Work. The Client shall exercise its best effort to make reasonable arrangements to assure that

the Work will be properly maintained and protected throughout the six month warranty period, taking into account the instructions of the Artist provided in accordance with Section 1.5[c], against the ravages of time, vandalism and the elements, provided that the Client shall have no obligation to expend any of its own funds for such purpose.

6.3 Repairs and Restoration:

a. The Client shall have the right to determine, after consultation with a professional conservator, when and if repairs and restorations to the Work will be made. During the Artist's lifetime, the Artist shall have the right to approve all repairs and restorations, provided, however, that the Artist shall not unreasonably withhold approval for any repair or restoration of the Work. If, in the judgment of the Client, the Artist unreasonably fails to approve any repair or restoration, the Client shall have the right to make such repair or restoration. To the extent practical, the Artist, during the Artist's lifetime, shall be given the opportunity to make or personally to supervise significant repairs and restorations and shall be paid a reasonable fee for any such services, provided that the Client and the Artist shall agree in writing, prior to the commencement of any significant repairs or restorations, upon the Artist fee for such services.

b. All repairs and restorations shall be made in accordance with recognized principles of conservation.

6.4 Relocation or Alteration of the Work or of the Site:

a. The Client agrees that it will not move, alter, modify or change the Work without consultation with the Artist within the six month warranty period.

b. The Client agrees that the Work will be placed in the location as per approval of the Client, and that the Work is intended only for that location. Insofar as is possible and in an effort to maintain the integrity of the Work.

6.5 Artist's Address:

The Artist shall notify the Client of changes in the Artist's address. The failure to do so, if such failure prevents the Client from locating the Artist, shall be deemed a waiver by the Artist of the rights subsequently to enforce those provisions of this Article 6 that require the express approval of the Artist. Notwithstanding this provision, the Client shall make every reasonable effort to locate the Artist when matters arise relating to the Artist's rights.

6.6 Surviving Covenants:

The covenants and obligations set forth in this Article 6 shall be binding upon the parties, their heirs, legatees, executors, administrators, assigns, transferees and all their successors in interest, and the Client's covenants do attach and run with the Work and shall be binding to and until twenty [20] years after the death of the Artist. However, the obligations imposed upon the Client by Sections 6.4[a] and 6.6 shall terminate on the death of the Artist. The Client shall give any subsequent owner of the Work notice in writing of the covenants herein, and shall cause each such owner to be bound thereby.

6.7 Additional Rights and Remedies:

Nothing contained in this Article 6 shall be construed as a limitation on such other rights and remedies available to the Artist under the law which may now or in the future be applicable.

Article 7. Artist as Independent Contractors

The Artist shall perform all work under this Agreement as an independent contractor and not as agent or employee of the Client.

Article 8. Assignment, Transfer, Subcontracting

9.1 Assignment or Transfer of Interest:

Neither the Client nor the Artist shall assign or transfer an interest in this Agreement without the prior written consent of the other, provided however that claims for money due or to become due from the Client under this Agreement may be assigned to a financial institution without approval.

9.2 Subcontracting by Artist:

The Artist may subcontract portions of the services to be provided hereunder at the Artist's expense provided that said subcontracting shall not affect the design, appearance or visual quality of the Work and shall be carried out under the personal supervision, as necessary, of the Artist.

Article 10. Termination

If either party to this Agreement shall willfully or negligently fail to fulfill in a timely and proper manner, or otherwise violate any of the covenants, agreements or stipulations material to this Agreement, the other party shall thereupon have the right to terminate this Agreement by giving written notice to the defaulting party of its intent to terminate specifying the grounds for termination. The defaulting party shall have thirty [30] days after receipt of the notice to cure the default. If it is not cured, then this Agreement shall terminate. In the event of default by the Client, the Client shall promptly compensate the Artist for all services performed by the Artists prior to termination. In the event of default by the Artist, all finished and unfinished drawings, sketches, photographs, and other work products prepared and submitted or prepared for submission by the Artists under this Agreement shall at the Client's option become its property, provided that no right to fabricate or execute the Work shall pass to the Client, and the Client shall compensate the Artist pursuant to Article 2 for all services performed by the Artist prior to termination.

Article 11. Administrator

The Administrator for this Agreement shall be the President/CEO of the Client and/or other proper representative nominated by the Client to sign this contract. Wherever this Agreement requires any notice to be given to or by the Client, or any determination or action to be made by the Client, the nominated individual above shall represent and act for the Client.

Article 12. Compliance

The Artist and the Client shall both be required to comply with Federal, State and City statutes, ordinances and regulations applicable to the performance of the Artist's services under this Agreement.

Article 13. Entire Agreement

This writing embodies the entire agreement and understanding between the parties hereto, and there are no other agreements and understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby.

Article 14. Modification

No alteration, change or modification of the terms of the Agreement shall be valid unless made in writing and signed by both parties hereto and approved by appropriate action of the Artist and the Client.

Article 15. Waiver

No waiver of performance by either party shall be construed as or operate as a waiver of any subsequent default of any terms, covenants and 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 acceptance of defective performance.

Article 16. Governing Law

This Agreement, regardless of where executed or performed, shall be governed by and construed in accordance with the laws of the State of Louisiana, including but not limited to substantive, procedural and specifically the counting of days.

Article 17. Heirs and Assigns

This Agreement shall be binding upon and shall inure to the benefit of the Client and the Artist and his/her respective heirs, personal representatives, successors and permitted assigns.

Article 18. Notices

Marcus Brown Artist Contract

All notices, requests, demands and other communications which are required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given upon the delivery or receipt thereof, as the case may be, if delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, as follows:

a. to the Artist:

_____.

b. to the Client

_____.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the day and year first written above.

Attest:

Client:

President/CEO

Date: _____

Witness

Witness

Date: _____

Date: _____

Marcus Brown:

Date: _____

Witness

Witness

Date: _____

Date: _____

**EXHIBIT A
Schedule of Completion**

Project:

Artist:

Marcus Brown Artist Contract

Contract Date:

50% Completion Date:

Description of work completed:

Delivery of Work Date:

Description of work completed: Installation of all components of project; site clean-up, removal of all construction equipment, barriers

and any debris; installation of plaque

Final Acceptance:

Upon completion of all contract requirements

_____ Date: _____
Marcus Brown

Project:

Site:

Budget Amount: _____

PROJECTED EXPENSES:

1. Fees / commissions

Artist's fee [25% suggested minimum]: _____

Wages for assistants: _____

[administrative/fabrication/project management]

Other, as applicable: _____

2. Fabrication expenses (please attach details as needed)

Materials: _____

Fabrication expenses: _____

Studio overhead (rent, utilities, private insurance): _____

Other: _____

3. Installation expenses

Fabrication of concrete bases, and rental of moving equipment will be coordinated by the Client.

You should account for your time, hardware, tools, and assistants as part of #1 and #2. _____

4. Project documentation _____

5. Contingency [5% recommended] _____

6. Other [specify] _____

TOTAL: _____

_____ Date: _____

Marcus Brown

Attach supplementary information as necessary. In submitting budget summary, the Artist warrants that the project proposed can be completed as presented for the above stated budget.

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EXHIBIT D
Installation Plan
[Detailed description of Budget line 4]

EXHIBIT F
Recommendations for Maintenance and Conservation