

CITY OF ROCKVILLE CONTRACT FOR ARTIST SERVICES
FOR CONSTRUCTION OF ARTWORK TO BE LOCATED AT THE
NORTH WASHINGTON STREET AND BEALL AVENUE CORNER

THIS AGREEMENT, entered into this ____ day of _____, 2006, by and between the MAYOR AND COUNCIL OF ROCKVILLE, a municipal corporation of the State of Maryland (hereinafter referred to as the "City"), and WILLIAM COCHRAN (hereinafter referred to as "Artist").

WITNESSETH:

WHEREAS, the City's Art in Public Places Program as set forth in the Capital Improvements Program of the City of Rockville, requires the setting aside of certain funds for the purchase of artworks in or at public buildings, and authorizes the City Manager to select artists, works of art and suitable sites for the place of the works of art; and

WHEREAS, the City's Capital Budget Funds have been allocated for the selection, purchase and placement of artwork to be located at North Washington Street and Beall Avenue Corner, hereinafter referred to as the "project"; and

WHEREAS, the Artist was selected by the City Manager and approved by the Mayor and Council through procedures duly adopted by the City; and

WHEREAS, the Artist is able and desirous of performing such services.

NOW, THEREFORE, the parties hereto do mutually agree as follows:

1. SCOPE OF SERVICES. The Artist agrees to design, fabricate and install a piece of art in accordance with the previously approved concept design and specifications furnished to the City which is attached hereto as Exhibit "A."

2. PERFORMANCE OF SERVICES. The services of the Artist will begin upon receipt of written notice to proceed with design phase by the City Manager or his designated representative and shall proceed to completion.

3. TIME FOR PERFORMANCE. The work shall be completed on or before April 30, 2007.

4. COMPENSATION. The Artist shall receive compensation in the amount of Twenty-five Thousand Dollars (\$25,000.00) to be paid as follows:

(a) Two Thousand Dollars (\$2,000.00) upon execution of this Agreement.

(b) Nine Thousand Dollars (\$9,000.00) upon the purchase of construction materials, hiring of laborers and rental of equipment for the fabrication.

(c) Nine Thousand Dollars (\$9,000.00) upon the purchase of construction materials, hiring of laborers, and rental of equipment for installation.

(d) Five Thousand Dollars (\$5,000.00) upon completion, installation and acceptance of the artwork by the City.

5. COPYRIGHT. Except as provided herein, the Artist retains all reproduction rights under the Copyright Act of 1976, 17 U.S.C., Sections 101, et.seq. Since it is the intention of the parties that the artwork shall be unique, the Artist hereby agrees not to make an exact duplicate or three dimensional reproduction of the final artwork or permit others to do so except by written permission of the City. The Artist hereby grants to the City and its assigns an irrevocable license to make photographs, drawings, and other two dimensional reproductions of the artwork without prior consent of the Artist, including but not limited to reproductions used in advertising,

brochures, media publicity, noncommercial reproductions, in the City's portfolio of public art, catalogues or other similar publications, provided that these rights are exercised in a reasonable manner.

6. GUARANTEE. The Artist does hereby guarantee that said work shall be free from any and all defects of any kind and nature in material, workmanship, fabrication and installation, and the Artist shall provide the necessary materials and labor for, and shall bear any expenses in connection with repair of such defects of which the artist is given written notice by the City within two years from the date of completion. The Artist will not be responsible for damage resulting from fire, vandalism or acts of God.

7. ORIGINAL WORK. The Artist warrants that this work designed for purchase under this Agreement is a unique or original project of the Artist's creative efforts; that it is an edition of one, unless otherwise stated; and that it has not been nor will be accepted for sale or installed elsewhere.

8. LIABILITY. The Artist shall save and hold harmless the City and its agents with respect to any damages which may be alleged to have arisen from any acts or omissions alleged to have been done during the term of this contract, and further waives any rights against the City for any and all injuries or damages alleged to have arisen during the term of this Agreement.

9. INSURANCE. The Artist, at the time the work is installed on site until completion thereof, at the Artist's sole cost and expense, shall obtain, furnish and maintain in full force and effect a liability insurance policy to protect the City against any and all claims for personal and property injury, including death, arising from the work in the amount of Five Hundred Thousand

Dollars (\$500,000.00) per occurrence. The insurance policy shall remain in effect until one year after said work of art is accepted by the City and shall have the Mayor and Council of Rockville as named insured. A certified certificate of insurance shall be provided to the City verifying required insurance coverage.

10. COMPLIANCE WITH LAWS. The Artist shall comply with all applicable laws, ordinances, and codes of the State of Maryland and the City of Rockville.

11. SUBCONTRACTING AND ASSIGNMENT. If any part of the construction or installation is to be done through the use of subcontractors, the City must first approve the use of any subcontractor in writing. The City shall not unreasonably withhold the approval of any qualified subcontractor. The Artist shall not assign this Agreement without the written consent of the City.

12. CHANGES. All changes to this Agreement shall require a written agreement signed by all parties prior to any change.

13. TERMINATION. The City may, by written notice to the Artist, terminate this Agreement in whole or in part at any time, either for the City's convenience or because of the failure of the Artist to fulfill his contractual obligations.

If termination is for the convenience of the City, the Artist shall be entitled to the full \$25,000, less an amount equal to expenses anticipated to be incurred by the Artist at the time of execution of this contract but not yet incurred at the time of such termination per attached budget.

If termination of the Agreement is due to the failure of the Artist to fulfill the Artist's contract obligations, the Artist shall remit to the City a sum equal to all payments (if any) made pursuant to this contract prior to termination.

If the Artist terminates this Agreement due to death or an incapacity which prevents the Artist from completing the project, all materials purchased for the project or installed on site shall be the property of the City. The Artist shall provide the City with comprehensive models and plans which will enable the City to complete the project. The Artist shall not be entitled to further compensation and shall not be required to refund to the City funds previously paid to the Artist.

14. REMOVAL OR DISASSEMBLAGE. The Artist understands that the Art is owned by the City. As such, at some time in the future, the City may move the artwork to another location or disassemble it. If that happens, the City assumes full responsibility for the moving and reserves the right to reinstall the artwork at a different site, or to dispose of the artwork as the City deems appropriate. Such a determination is the sole right of the City. However, the City will attempt to contact the Artist to obtain the Artist's views regarding relocation or disposition of the artwork.

15. DISPUTES. This Agreement is governed by the laws of the State of Maryland and all actions shall be brought in an applicable court in Montgomery County, Maryland.

16. ENTIRE AGREEMENT. This Agreement contains the entire offer and agreement between the parties hereto, and they shall not be bound by any terms, conditions, statements, warranties or representations, oral or written, not herein contained.

THE MAYOR AND COUNCIL OF ROCKVILLE

ATTEST:

Claire F. Funkhouser
City Clerk

By: _____
Scott Ullery, City Manager

WITNESS:

William Cochran, Artist

APPROVED AS TO FORM AND LEGALITY:

City Attorney