

STATE OF NEW YORK  
EXECUTIVE DEPARTMENT  
OFFICE OF GENERAL SERVICES

AGREEMENT FOR WORK BY ART

This AGREEMENT made this       day of       , 197       ,  
by and between the People of the State of New York, (hereinafter  
referred to as "STATE") acting by and through Harry Stevens, Jr.,  
Director, Design and Construction Group, Office of General Services,  
(hereinafter referred to as "DIRECTOR" and "OGS" respectively)  
whose office is at the Tower Building, Empire State Plaza, Albany,  
New York 12223 and       JOHN W. BROWN  
(hereinafter referred to as "ARTIST") whose studio is at  
23 Cranberry Street, Brooklyn, New York 11201.

WITNESSETH: That the STATE and the ARTIST, for the con-  
sideration herein specified, agree and covenant as follows:

1. SERVICES TO BE RENDERED BY THE ARTIST

The STATE hereby retains and employs the ARTIST to perform,  
and the ARTIST agrees to perform, the creation of one indoor  
sized Sculpture more particularly described as follows:

A. Description.

The Sculpture shall be produced for indoor installation  
and shall be of such construction as can be exhibited  
in heavy traffic areas of the New York State Harbor  
Office Building without requiring protective covers.  
The Sculpture shall be five feet to seven feet in  
height, bulk and horizontal and shall be similar to  
the Sculpture depicted in the attached photographs  
(Schedule B).

B. Uniqueness.

It being understood by the parties that it is the desire of the STATE that the Sculpture and the Maquette thereof be unique, and since a substantial portion of the consideration paid by the STATE to the ARTIST represents the value to the STATE of securing such a unique work: The ARTIST hereby conveys to the STATE all rights, title and interest in the idea, concept, and right of reproduction of the Maquette as well as the Sculpture itself and any model produced in developing the Maquette and the ARTIST shall not publicly exhibit the Sculpture or Maquette in any form unless authorized by the State in writing. The ARTIST shall not reproduce, duplicate, or copy any sketch from a drawing, plate, picture, or model of the Maquette or the Sculpture itself, except as herein provided. The ARTIST hereby assigns to the STATE the common law copyright in such Sculpture having first warranted to the STATE that he is the sole owner of such copyright. The ARTIST also assigns to the STATE the exclusive right to copyright the Sculpture as provided for by Federal statute. The ARTIST likewise assigns to the STATE all of his rights to renew and/or extend any Federal statutory copyright registered to the STATE on such Sculpture by the Copyright Office. The ARTIST hereby agrees to take all steps necessary to insure the Sculpture when completed and delivered to the STATE is protected against unauthorized copying.

C. Schedule and Approval.

The ARTIST shall complete the Sculpture within four months of the date of this AGREEMENT. Following its final, written approval and acceptance by the DIRECTOR.

the ARTIST shall deliver and install the Sculpture at a time to be mutually agreed upon and at such location in New York, New York as shall be determined by the DIRECTOR and designated in written notice of the DIRECTOR to the ARTIST. The ARTIST assumes and agrees to pay all costs of delivering the Sculpture to the location so designated by the DIRECTOR.

D. Installation:

The ARTIST shall render consultation and advice to the DIRECTOR as required with respect to all matters of the location, placement, foundations and installation of the Sculpture. All transportation materials, equipment and labor in connection with the delivery and installation of the Sculpture at the New York State Marine Office Building shall be furnished and paid for by the ARTIST. It is understood and agreed that the DIRECTOR shall have sole and conclusive determination of all aspects of the location, placement and installation of the Sculpture.

E. Warranty.

The ARTIST agrees to remedy all defects in the Sculpture and related work, paying the cost of any damage to other work resulting therefrom, which shall appear within a period of one (1) year from the date the Sculpture is accepted by the DIRECTOR.

II. COMPENSATION

As complete compensation for all services rendered by the ARTIST under this AGREEMENT and for all costs and expenses incurred in connection therewith, but not limited to the delivery and installation of the Sculpture, the STATE agrees

to pay the ARTIST and the ARTIST agrees to accept the sum of Five Thousand Dollars (\$5,000). The said compensation shall become due and payable in the following installments:

1. Fifty percent (50%) or Two Thousand Five Hundred Dollars (\$2,500) at the time this AGREEMENT is executed by all parties.
2. Fifty percent (50%) or Two Thousand Five Hundred Dollars (\$2,500) when the Sculpture is completed, delivered and installed at the New York State Barren Office Building.

### III. EXTRA WORK

The ARTIST shall modify and review the Maquette and the Sculpture, as may be requested by the DIRECTOR <sup>and</sup> preceding his approval, and shall render consulting services incidental to the creation and installation of the work.

- A. However, if the ARTIST is of the opinion that any work he has been directed to perform is beyond the scope of this AGREEMENT and constitutes extra work, he shall so notify the DIRECTOR. The determination of the DIRECTOR on whether the claimed services constitute extra work and, if he finds in the affirmative, the value thereof shall be conclusive and binding on the parties.
- B. The STATE may at its discretion commission the ARTIST to produce a Monumental Sized Sculpture of the Sculpture (hereinafter referred to as "MONUMENT"). However, the STATE shall, in any event, have the right to use the Sculpture for display whether or not a MONUMENT is commissioned.

C. If the ARTIST'S Sculpture is selected by the STATE for enlargement to monumental size, the ARTIST will receive an additional fee therefor. The value of each extra work will be determined by the DIRECTOR and such determination will be conclusive and binding on the parties. The STATE may, at its option and in its sole judgment, cause the enlargement to monumental size for its own account or may negotiate with the ARTIST for his execution of such enlargement. The ARTIST shall modify and revise the plans, drawings and specifications and the Sculpture as may be requested by the DIRECTOR preceding his approval, and shall render consulting services incidental to the creation, enlargement and installation of the work.

#### IV. INSURANCE

During the term of this AGREEMENT the ARTIST shall, at his sole expense, procure and maintain in effect an all risk insurance coverage, naming the ARTIST and the STATE as insured, in an amount not less than the total compensation to be paid under this AGREEMENT.

#### V. DEATH OR DISABILITY OF ARTIST

In the event of the ARTIST'S death, his rights and his obligations under this AGREEMENT, to the extent his obligations can be performed by others, shall devolve upon his legal representatives. In the event of the ARTIST'S disability, he shall cause the services prescribed in this AGREEMENT to be completed to the

extent feasible, and the DIRECTOR shall make payment to the ARTIST therefor, in accordance with ARTICLE II of this AGREEMENT and in proportion to the services completed, on a fair and equitable basis. Upon termination of the ARTIST'S services by reason of death or disability, all drawings and other design documents and the Maquette and any Sculpture thereof, to the extent completed, shall become the property of the STATE and shall be delivered to the STATE within sixty (60) days. Following such delivery of the documents and the Maquette and any Sculpture thereof, the STATE shall pay any compensation due in accordance with this Article.

VI. ABANDONMENT, CHANGES, TERMINATION

The STATE reserves the absolute right at any time, upon ten days written notice to the ARTIST or to his legal representatives to abandon the use of the Sculpture, to change all plans with respect to the Sculpture and to terminate this AGREEMENT. Such abandonment, change of plan or termination shall in no event constitute a breach of this AGREEMENT by the STATE. In the event of abandonment, change of plan or termination pursuant to this ARTICLE, the ARTIST or his representative shall upon request of the STATE deliver the Maquette and any Sculpture thereof, to the extent completed, and the same shall become the property of the STATE. The STATE shall pay for the services rendered by the ARTIST prior to the delivery of the Maquette and any Sculpture thereof provided for herein, in accordance with Article II of this AGREEMENT and in proportion to the services performed, in a fair and equitable amount as determined by the DIRECTOR.

VII. PROVISIONS REQUIRED BY LAW

The ARTIST agrees to comply with all the provisions set forth in Schedule A attached hereto and made a part of this AGREEMENT.

IN WITNESS WHEREOF, the parties have executed this AGREEMENT as of the day and year first above written.

FOR THE STATE OF NEW YORK

By \_\_\_\_\_  
Harry Stevens, Jr.  
Director

FOR THE ARTIST

By \_\_\_\_\_  
JOHN W. HICKEN













STATE OF NEW YORK  
EXECUTIVE DEPARTMENT  
OFFICE OF GENERAL SERVICES

SCHEDULE A

STANDARD CLAUSES FOR ALL NEW YORK STATE CONTRACTS

- A-1. The ARTIST agrees to the provisions of Section 139-a and 139-b of the New York State Finance Law which require that upon the refusal of a person, when called before a grand jury to testify concerning any transaction or contract had with the State, any political subdivision thereof, a public authority or with any public department, agency or official of the State or of any political subdivision thereof or of a public authority, to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning such transaction or contract,
- (a) such person, and any firm, partnership or corporation of which he is a member, partner, director or officer shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contract with the State or any public department, agency or official thereof, for goods, work or services, for a period of five years after such refusal, and
  - (b) any and all contracts made with the State or any public department, agency or official thereof, since the effective date of this law, by such person, and by any firm, partnership or corporation of which he is a member, partner, director or officer may be cancelled or terminated by the State without incurring any penalty or damages on account of such cancellation or termination, but any moneys owing by the State of New York for goods delivered or work done prior to the cancellation or termination shall be paid.
- A-2. The ARTIST agrees, as required by the provisions of the Labor Law, Section 230-e, as amended, that
- (a) in the hiring of employees for the performance of work under this contract or any subcontract hereunder, or for the manufacture, sale or distribution of materials, equipment or supplies hereunder, no contractor, subcontractor nor any person acting on behalf of such contractor or subcontractor, shall by reason of race, creed, color or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates;
  - (b) No contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this contract on account of race, creed, color or national origin.
  - (c) there may be deducted from the amount payable to the ARTIST by the State under this contract a penalty of five dollars for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of the contract; and

(2) this contract may be cancelled or terminated by the State and all moneys due or to become due hereunder may be forfeited, for a second or any subsequent violation of the terms or conditions of this section of the contract.

A-3. The ARTIST agrees

- (a) to comply with the provisions of the Labor Law and all State laws and Federal and local statutes, ordinances and regulations that are applicable to the performance of this agreement; and
- (b) to procure all necessary licenses and permits.

A-4. The ARTIST agrees, as required by the State Finance Law, Section 130, that

- (a) he is prohibited by law from assigning, transferring, conveying, subletting or to otherwise dispose of this contract, or of his right, title, or interest therein, or his power to execute such contract to any other person, company or corporation, without the previous consent in writing of the Commissioner.
- (b) if provision of law be violated the Commissioner shall revoke and annul this contract and the State shall be relieved from any and all liability and obligations thereunder to the person, company or corporation to whom the Artist shall assign, transfer, convey, sublet or otherwise dispose of the contract, and such transferee shall forfeit and lose all moneys theretofore assigned under said contract except so much as may be required to pay their employees.

A-5. The ARTIST specifically agrees, as required by the State Finance Law, Section 143, that

- (a) They will maintain Workmen's Compensation coverage during the life of the Agreement for the benefit of such employees as are required to be insured by the provisions of Chapter 41 of the Laws of 1914, as amended, known as the Workmen's Compensation Law, and
- (b) This Agreement will be void and of no effect unless the ARTIST complies with this provision.

A-6. The ARTIST, in accordance with his status as an independent contractor, covenants and agrees that he and his employees will conduct themselves consistent with such status, that he and his employees will neither hold themselves out as nor claim to be officers or employees of the State by reason hereof, and that he and his employees will not, by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the State, including, but not limited to workmen's compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit.

A-7. It is understood by and between the parties hereto that this agreement shall be deemed executory to the extent of moneys available to the State and no liability on account thereof shall be incurred by the State beyond moneys available for the purpose thereof.

CLAUSE A-B

During the performance of this contract, the ARTIST agree as follows:

(a) The ARTIST will not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin, and will take affirmative action to insure that they are afforded equal employment opportunities without discrimination because of race, creed, color or national origin. Such action shall be taken with reference, but not be limited, to: recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on-the-job training.

(b) The ARTIST will send to each labor union or representative of workers with which he has or is bound by a collective bargaining or other agreement or understanding, a notice, to be provided by the State Commission for Human Rights, advising such labor union or representative of the ARTIST'S agreement under clauses (a) through (g) (hereinafter called "non-discrimination clauses"). If the ARTIST was directed to do so by the contracting agency as part of the bid or negotiation of this contract, the ARTIST shall request such labor union or representative to furnish him with a written statement that such labor union or representative will not discriminate because of race, creed, color or national origin and that such labor union or representative either will affirmatively cooperate, within the limits of its legal and contractual authority, in the implementation of the policy and provisions of these non-discrimination clauses or that it consents and agrees that recruitment, employment and the terms and conditions of employment under this contract shall be in accordance with the purposes and provisions of these non-discrimination clauses. If such labor union or representative fails or refuses to comply with such a request that it furnish such statement, the ARTIST shall promptly notify the State Commission for Human Rights of such failure or refusal.

(c) The ARTIST will post and keep posted in conspicuous places, available to employees and applicants for employment, notices to be provided by the State Commission for Human Rights setting forth the substance of the provisions of clauses (a) and (b) and such provisions of the State's law against discrimination as the State Commission for Human Rights shall determine.

(d) The ARTIST will state, in all solicitations or advertisements for employees placed by or on behalf of the ARTIST, that all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color or national origin.

(e) The ARTIST will comply with the provisions of Sections 291-299 of the Executive Law and the Civil Rights Law, will furnish all information and reports deemed necessary by the State Commission for Human Rights under these non-discrimination clauses and such sections of the Executive Law, and will permit access to his books, records and accounts by the State Commission for Human Rights, the Attorney General and the Industrial Commissioner for purposes of investigation to ascertain compliance with these non-discrimination clauses and such sections of the Executive Law and Civil Rights Law.

(f) This Agreement may be forthwith cancelled, terminated or suspended, in whole or in part, by the contracting agency upon the basis of a finding made by the State Commission for Human Rights that the contractor has not complied with these non-discrimination clauses, and the contractor may be declared ineligible for future contracts made by or on behalf of the State or a public authority or agency of the State, until he satisfied the State Commission for Human Rights that he has established and is carrying out a program

a program in conformity with the provisions of these non-discrimination clauses. Such finding shall be made by the State Commission for Human Rights after conciliation efforts by the Commission have failed to achieve compliance with these non-discrimination clauses and after a verified complaint has been filed with the commission, notice thereof has been given to the contractor and an opportunity has been afforded him to be heard publicly before three members of the commission. Such sanctions may be imposed and remedies invoked independently of or in addition to sanctions and remedies otherwise provided by law.

(g) The contractor will include the provisions of clauses (a) through (f) in every subcontract or purchase order in such a manner that such provisions will be binding upon each sub-contractor or vendor as to operations to be performed within the State of New York. The contractor will take such action in enforcing such provisions of such subcontract or purchase order as the contracting agency may direct, including sanctions or remedies for non-compliance. If the contractor becomes involved in or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor shall promptly so notify the Attorney General, requesting him to intervene and protect the interests of the State of New York.

(h) The State, acting through the Office of General Services or the State Comptroller, reserves the right to examine any and all accounts of the ARTIST in connection with this agreement as it may desire.