

RESOLUTION NO. RS-2024- 3

**RESOLUTION APPROVING THE ARTWORK DONATION AGREEMENT BETWEEN
THE GEORGE WASHINGTON MEMORIAL COMMITTEE, TOBY MENDEZ
STUDIOS, LLC, AND THE COUNTY**

RECITALS

The Board of County Commissioners of Washington County, Maryland, is a body corporate and politic and a political subdivision of the State of Maryland ("County" or "Board").

The George Washington Memorial Committee ("Committee") has established the George Washington Memorial Fund with the Washington County Community Foundation, Inc. for the purpose of raising funds to design, create and install a larger-than-life sculpture of George Washington dressed as a soldier ("Artwork") at 95 West Washington Street in Hagerstown, Maryland ("Property").

The Committee previously commissioned Artwork titled "the George Washington Memorial" ("Artwork") from renowned artist Antonio Tobias Mendez ("Artist") pursuant to the terms of an agreement titled "Original Artwork Commission Agreement" ("Commission Agreement") entered into by the Committee and the Artist, and executed on October 2, 2024.

The Artist's limited liability company, Toby Mendez Studios, LLC, and the County have entered into an agreement concerning the construction of the site, located in front of the Washington County Circuit Courthouse, at the Property, on which the Artwork shall be installed entitled "Commitment to Construct George Washington Memorial Sculpture at 95 West Washington Street, Hagerstown, Maryland 21740" ("Site Construction Agreement") contemporaneously with this Agreement.

The parties expect that the Artwork shall be completed and installed at the Property before July 4, 2026, and the Committee has agreed to donate the Artwork to the County pursuant to the terms hereinafter set forth.


The Board finds it to be in the best interests of the citizens of the County to enter into this Artwork Donation Agreement with the Committee and Toby Mendez Studios, LLC.

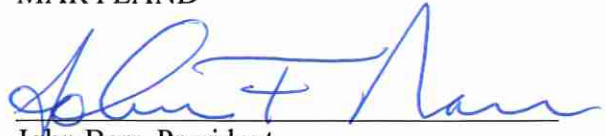
NOW, THEREFORE, BE IT RESOLVED, by the Board of County Commissioners for Washington County, that the foregoing recitals be and are hereby incorporated herein by reference; that the County is hereby authorized to execute and deliver the Artwork Donation Agreement, a copy of which is attached hereto and incorporated herein by reference; and that the County and its staff be and hereby are authorized to execute and deliver any further documentation that may be necessary to effectuate the purpose of this Resolution.

Adopted this 17th day of September, 2024.

BOARD OF COUNTY
COMMISSIONERS
OF WASHINGTON COUNTY,
MARYLAND

WITNESS:


Dawn Marcus, Clerk


John Barr, President

Approved as to form
and legal sufficiency:


Zachary J. Kieffer
County Attorney

ARTWORK DONATION AGREEMENT
by and among
**THE BOARD OF COUNTY COMMISSIONERS OF WASHINGTON COUNTY,
MARYLAND**
and
THE GEORGE WASHINGTON MEMORIAL COMMITTEE
and
ANTONIO TOBIAS MENDEZ
for the
GENERAL GEORGE WASHINGTON MEMORIAL

THIS ARTWORK DONATION AGREEMENT ("Agreement") is made and entered into this _____ day of _____, 2024, by and between the **BOARD OF COUNTY COMMISSIONERS OF WASHINGTON COUNTY**, a body corporate and politic and a political subdivision of the State of Maryland ("County") and the **GEORGE WASHINGTON MEMORIAL COMMITTEE**, a Maryland nonprofit unincorporated association ("Committee"), and **ANTONIO TOBIAS MENDEZ** ("Artist").

WHEREAS, the George Washington Memorial Committee has established the Memorial Fund with the Washington County Community Foundation, Inc. for the purpose of raising funds to design, create and install a larger-than-life sculpture of George Washington dressed in the uniform of a General ("Artwork");

WHEREAS, the Committee expects to commission the Artwork titled "The General George Washington Memorial" (the "Artwork") from the Artist pursuant to the terms of an agreement titled "Original Artwork Commission Agreement" ("Commission Agreement") which the Committee and the Artist shall enter into on or about _____, 2024; and

WHEREAS, the Artist's limited liability company, Toby Mendez Studios, LLC, and the County have entered into an agreement concerning the construction of the Artwork and its installation at the Washington County Circuit Courthouse located at 95 West Washington Street, Hagerstown, Maryland 21740 ("Property"), entitled "Commitment to Construct George Washington Memorial Sculpture at 95 West Washington Street, Hagerstown, Maryland 21740" ("Site Construction Agreement") contemporaneously with this Agreement; and

WHEREAS, the parties expect that the Artwork shall be completed and installed at the Property on or before July 4, 2026; and

WHEREAS, the Committee has agreed to donate the Artwork to the County pursuant to the terms hereinafter set forth; and

WHEREAS, the County has approved the donation of the Artwork pursuant to the terms hereinafter set forth; and

WHEREAS, the Artist approves the donation pursuant to the terms hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Incorporation of Recitals and Defined Terms. The parties agree that the foregoing recitals are true, correct, complete and are hereby incorporated by reference. Further, except as specifically provided herein, each capitalized term used herein, if any, shall have the meaning ascribed to it in the Agreement.

2. The Committee agrees to donate to the County the "Artwork" in substantially the same form as particularly described in "Exhibit A," attached hereto and incorporated herein by this reference.

Upon installation of the Artwork, neither the Committee nor the Artist shall be responsible or held liable for any damage to the Artwork, its surfaces or environment caused by the County's personnel, contracted employees, visitors or others that are beyond the control of the Committee and/or the Artist.

3. To the extent that there is a conflict, this Agreement supersedes both the Commission Agreement and the Site Construction Agreement.

3. Risk of loss shall remain with the Committee until installation of the Artwork. Upon installation of the Artwork, risk of loss shall pass to the County. Title to the Artwork shall pass to County upon installation of the Artwork.

4. Identification; Ownership; The Visual Artists Rights Act

(a) It is understood that Artist conveyed to the Committee the physical Artwork and certain other rights, all of which the Committee is conveying to the County as described in this Agreement. The Artist is retaining copyright in the Artwork and all other rights not expressly granted to the County in this Agreement or otherwise retained by the Committee in the Commission Agreement. Artist shall place a copyright notice on the Artwork, the size and location of such notice shall be subject to approval by the County. Notwithstanding any rights retained by the Artist or the Committee, the County may, on a perpetual, worldwide, royalty-free basis, reproduce the Artwork for publicity purposes incidental to its public exhibition of the Artwork or the promotion of the County provided that, to the extent reasonably practicable, all such reproductions bear, or materials otherwise reference, appropriate credit to the Artist and a copyright notice.

(b) Artist expressly reserves every right available to him at common law and under the U.S. Copyright Act (including the Visual Artists Rights Act) to control the making and dissemination of copies or reproductions of the Artwork, except as those rights are expressly licensed to County hereunder or are otherwise limited by this Agreement.

(c) County shall have the perpetual non-exclusive right and license to make and reproduce photographic images and/or video images of the Artwork for its own non-commercial purposes. For the purposes of this Agreement, the following are among those uses deemed to be permissible reproductions for non-commercial purposes: reproduction on County websites, brochures and pamphlets pertaining to the Property and the services provided by County therein; reproduction in books, postcards, calendars, public relations, and similar materials designed to promote the County, the Property, and/or the services or products of the County. Non-commercial purposes may also include reproduction of images of the Artwork in a publication created to memorialize the dedication of the Artwork.

(d) Artist acknowledges and agrees that while on display at the Property, the Artwork may be incidentally included in photographs, films, and in other media depictions of the Property, including the facilities, personnel or grounds, that are created by third parties, and may appear as editorial matter in newspapers, magazines, periodicals, books, motion picture films and/or video recordings and that the County cannot control what credit, if any, is given to the Artist by such third parties.

(e) Artist shall retain portfolio rights to reproductions of images of the Artwork and shall also be allowed to access the Property at reasonable times, to photograph the Artwork, and shall retain the right to use such photographs for Artist's promotion purposes.

5. Graphic Reproduction Rights: Three-Dimensional Reproduction Rights. County shall have the non-exclusive right to create graphic, and certain three-dimensional reproductions of the Artwork.

(a) In the event the County incorporates graphic or three-dimensional reproductions of the Artwork in products including, without limitation, tee shirts and other items of apparel, novelties, and prints (collectively, "Products") for commercial use and sold by County or an entity acting on County's behalf, then the County shall pay to Artist a royalty in an amount not to exceed fifteen percent (15%) of the net profits attributable to the sales of the Products, the percentage amount of such royalty to be negotiated on an individual Product basis. If the County creates, or requests the Artist to create, a reproduction of the Artwork to be used for fundraising, the County must request permission, not to be unreasonably withheld, and if granted to the County, the County will ensure that credit is given to the Artist as the creator. Royalties will not apply to Products sold or given away as part of a fundraising program.

(b) All graphic and three-dimensional reproductions of the Artwork shall be subject to the Artist's prior written approval, not to be unreasonably withheld, conditioned or delayed. Upon submission to Artist of a printer's proof, maquette or other embodiment of the proposed graphic reproduction, Artist shall provide his approval (not to be unreasonably withheld, conditioned or delayed) or disapproval (and the reason for disapproval) to the County within fourteen (14) working days, and no response from Artist shall be automatically considered an approval, provided that limited edition sculptural works based on the Artwork shall be created only under Artist's supervision and the royalty to be paid to Artist therefor shall be negotiated in good faith on a case-by-case basis.

(c) The Artist retains the right to make, exhibit, and offer for sale, three-dimensional reproductions on a limited basis. The full-scale bronze figure (the "Artwork") is to be a "Unique" work, because the Artwork may become widely identified with the County, the Artist must have the County's written approval prior to making or exhibiting, and/or offering a second casting of the full-scale bronze figure for sale. The County grants to the Artist permission to reproduce the maquette along with any derivatives such as the cropped portrait bust in a limited edition of twelve bronzes with one Artist Proof, paid for by the Artist.

(d) The Artwork and any reproductions thereof shall contain, to the extent reasonably practicable, a credit to the Artist and a copyright notice in substantially the following form: Copyright© [Artist's name, date of publication].

6. Integrity: Repair: Warranty: Indemnity.

(a) In the event damage to the Artwork occurs during the Warranty Period (as such term is defined below) and such damage is unrelated to any defect and requires restoration or repair, the County shall offer the Artist the first opportunity to restore or repair the Artwork, and the Artist may either perform such work himself, or supervise or consult in its performance. The County shall pay to the Artist reasonable costs and fees associated with such restoration or repair (unless such damage resulted from a breach of the Artist's warranty hereunder). Any such reasonable costs and fees associated with the Artist's restoration or repair of the Artwork must first be approved by the County before the Artist commences such restorative or repair work. In the event Artist is unable or unwilling to undertake such restoration or repair, the County shall consult with Artist with respect to any restoration or repair. After execution of this Agreement, the County is solely responsible for maintenance of the Artwork and the County shall maintain the Artwork pursuant to the maintenance instructions attached hereto and made a part hereof as Exhibit B.

(b) The County shall not distort, destroy, or otherwise alter the Artwork without first offering to return ownership of the Artwork to Artist and affording Artist a reasonable opportunity to reclaim the Artwork by removing it whole at his own expense. In the event such distortion, mutilation, destruction, or other alteration occurs, whether by action of the County or otherwise, and in addition to such other rights and remedies as he may have, Artist shall have the right to have his name removed from the Artwork and to no longer have the Artwork attributed to him as its creator. If the Artist declines to reclaim the Artwork, it shall remain the property of the County.

(c) Artist warrants that the Artwork will be free from defects in materials and workmanship for a period of one (1) year after the date of installation of the Artwork ("Warranty Period"), said date of installation being on or about July 4, 2026, and that Artist shall make all necessary repairs and replacements to correct such defects at no charge to the County during the Warranty Period. The County agrees to maintain the Artwork according to Artist's maintenance instructions. The Artist's maintenance instructions are set forth in Exhibit B. If for any reason the Artwork should need repair, the County will contact Artist and offer him first opportunity to repair or restore the Artwork.

(d) If, after the expiration of the Warranty Period, the County observes any damage to the Artwork requiring restoration or repair or any defect(s) in the Artwork that is curable, the County shall consult with the Artist to discuss the required treatment and/or repairs of the damage or defect(s) in the Artwork. Any treatment(s) or repair(s) made after expiration of the Warranty Period shall be carried out in consultation with the Artist, but the Artist shall no longer have a first right of refusal to treat and/or repair the Artwork. The County will engage a qualified objects conservator with demonstrated experience in the conservation of outdoor bronzes to undertake any restoration, repairs, or treatments beyond that called for by the routine maintenance described in Exhibit B.

(e) The Artist affirms that the Artwork that is the subject of this Agreement is a unique or original product of the Artist's creative efforts and does not infringe upon any copyright, or, to the Artist's knowledge, any common law right, proprietary right, or other rights of a like or similar nature. The Artist affirms that the Artwork is free and clear of any liens from any sources whatever.

7. Force Majeure: Injury or Death of Artist. No party shall be liable for the failure to perform or delay in performing with respect to any provision of this Agreement to the extent performance in the customary manner shall be prevented, hindered, or delayed in whole or in part by transportation conditions, strikes, riots, earthquakes, pandemic, floods or other acts of God, compliance with an act or request of a governmental authority or persons purporting to act with governmental authority (including, but not limited to, orders or actions in response to shortages of fuel or other energy sources, or of raw materials), labor unrest (whether or not involving its own employees) or any other event that is not reasonably within such party's control.

8. Insurance: Title. Except as otherwise provided herein, title to the Artwork shall pass from the Committee to the County upon installation of the Artwork. Risk of loss shall pass to the County upon installation of the Artwork.

9. Binding Effect: Assigns. This Agreement will bind and ensure to the benefit of the County, its successors and assigns, the Committee, its successors and assigns, and to the Artist, his heirs, personal representatives, successors and assigns.

10. Notices. All notices, requests, consents, and other communications required or permitted to be given hereunder to any by the other will be in writing and will be deemed to have been duly given if delivered personally or by courier (*i.e.* FedEx or similar service), sent by registered or certified mail, postage prepaid (notices mailed will be deemed to have been given on the date sent), to the addresses of the parties set forth above or to such other address as any party may designate in writing from time to time.

11. Headings. The headings used herein are for convenience only, and the parties agree that such headings are not to be construed to be part of this Agreement or to be used in determining the meaning or interpretation of this Agreement.

12. Entire Agreement. This Agreement sets forth the entire agreement and understanding of the parties relating to the subject matter hereof, and supersedes all prior agreements, arrangements and understandings, written or oral, between the parties relating to the subject matter hereof.

13. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Maryland, without regard to its conflicts of laws principles.

14. Severability. The provisions of this Agreement shall be severable such that the invalidity of any provision, or portion thereof, shall not affect the enforceability of the remaining provisions.

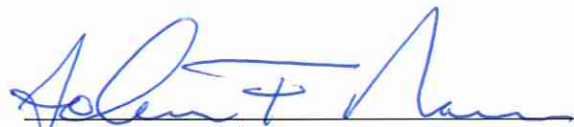
15. Amendment: Waivers. This Agreement may be amended, modified, superseded, canceled, renewed or extended and the terms or covenants hereof may be waived, only by a written instrument executed by both parties hereto, or in the case of a waiver, by the party waiving compliance. The failure of any party at any time or times to require performance of any provision hereof will in no manner affect the right at a later time to enforce the same. No waiver by any party of the breach of any term or covenant contained in this Agreement, whether by conduct or otherwise, in any one or more instances, will be deemed to be, or construed as, a further or continuing waiver of any such breach, or a waiver of the breach of any other term or covenant contained in this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the date first above written.

WITNESS/ATTEST:

BOARD OF COUNTY COMMISSIONERS OF
WASHINGTON COUNTY:


Dawn Marcus, County Clerk


John Barr, President

GEORGE WASHINGTON MEMORIAL COMMITTEE

Alfred E. Martin
Chairman

ARTIST:

Antonio Tobias Mendez
Antonio Tobias Mendez, Artist

Exhibit A: Concept Drawing of Artwork

EXHIBIT_ "B" MAINTENANCE FOR BRONZE SCULPTURES

1. NATURE OF PATINAS

Patination is the name for the process of coloring metals. These colors arise from chemical interaction between elements in the metal and various chemicals. A patina on bronze is the equivalent of rust on iron, only bronze is much more interesting than iron because the copper in the bronze reacts with different colors. The important thing to note is that the patina is not paint but a very thin conversion coat on the surface of the bronze. Accordingly, as different chemicals are brought into contact with the surface of the metal, the color is liable to change. The purpose of waxing and cleaning the bronze is to protect the surface from such interactions with pollutants.

Clean off any materials such as bird droppings, dust, tree resin, etc. which may come to rest on the surface of the bronze and result in permanent discoloration or stains.

2. PROHIBITIONS

Never use any chemicals, cleaning solutions, tarnish removers, or any other unknown or previously unused substance to clean the surface of the sculpture.

Never use abrasive cleaning pads, steel wool, or sandpaper on the sculpture. Use of such materials could mar the surface of the sculpture and require refinishing of the entire project.

3. PROCEDURE

The following maintenance instructions are to be used:

- Wash sculpture with warm water and soft cloths. A soft brush may help get into corners. A non-ionic cleaner should be used such as "Joy Liquid" (without fragrances or additives). This should be used with warm water. "Jet Dry" (made for dishwashers) can be added to the soap to avoid spotting problems. A commercial non-ionic cleaner called "Igepal" is also available from conservator supply companies and is mixed 1/8 cup to 5 gallons of warm water. High grade automobile washes, such as Dupont's "Rain Dance," are also acceptable.
- Accretions that are difficult to remove may be softened with a lacquer thinner. If a build-up remains, it can be removed by very carefully scraping with a soft plastic spatula. This should rarely, if ever, be necessary.
- Apply a good commercial wax such as Butchers to the surface with a soft bristle brush. Use a circular motion and try to rub the wax into the surface of the metal in a thin, uniform coat. If too thick a coat is put on, the wax may turn white or show brush strokes. One way to prevent build-up of wax is to wipe off the brush onto a paper towel before putting the brush to the surface of the bronze.
- After the wax base dries (usually 20 minutes) buff the surface to a good gloss with soft, clean cloths. Try to remember you are polishing the wax and not trying to rub through the wax or the patina.

4. FREQUENCY

Initially, treatment should be done four times per year: early spring, twice during the summer months and late fall. Temperature should be in the range of 55F to 75F. During the summer months, waxing should be done on a cloudy (but dry) day or early in the morning.

Appearance of the surface of the sculpture will dictate whether spacing between cleaning can be lengthened or shortened.

5. OTHER INSTRUCTIONS

If a pressure washer is used on the site use a lower pressure around the sculpture. Don't ever pressure wash the sculpture, even though pressure washers may have a filter, any sand or particle in the water will etch and remove the patina.

If the wax wears off (usually in the higher places, like the top of his shoulders and the top of his head) green will start to appear, that green is actually just underneath of the wax coating, if the sculpture is heated (the warm sun will do that) and you wax the green of the bronze, the green will be absorbed in the wax and disappear. If the patina is left alone, the green will eventually mix with pollutants in acid rain and the green will darken. If it mixes with bird droppings it will turn yellow and that is harder to restore.

If the sculpture is waxed and someone spray paints the sculpture, you can wipe off the paint with lacquer thinner, this will remove the paint with the wax layer. It will take off the wax, you may then see the underlying green, just let the sculpture warm up and re wax.