

**REQUEST FOR QUALIFICATIONS –
CITY VIEW PARK PUBLIC ART PROJECT
VIRGINIA BEACH, VIRGINIA**

PROJECT BUDGET: \$100,000

APPLICATION DEADLINE: 5:00 p.m. EST on Monday, February 26, 2024

INTRODUCTION

About Virginia Beach

Named the “best place to live in America” by USA Today Weekend Magazine, Virginia Beach offers its residents, and the millions of tourists who visit annually, a lifestyle unmatched by any other major American city. Virginia Beach is Virginia’s most populous city with over 450,000 permanent residents. It is the 43rd largest city in the country and is part of the 37th largest metropolitan region (Hampton Roads) in the United States. Virginia Beach is a year-round destination with over half of the almost three million out-of-town visitors coming between September and May, many of whom are drawn here by our famous three-mile oceanfront promenade and beaches.

The Virginia Beach Public Art Program is part of the Virginia Beach Cultural Affairs Department and is recognized as a national leader in creating a vibrant, innovative community where art, culture, and history are essential. The Cultural Affairs Department engages residents and visitors through meaningful arts, heritage, and cultural experiences to connect and strengthen communities.

Contact Information

City of Virginia Beach Department of Cultural Affairs
Emily Brookover, Public Art and Placemaking Manager

ebrookover@vbgov.com

757-385-2549

ELIGIBILITY

Local and national professional artists or artist teams are eligible to apply. Applicants must be at least 18 years of age and a U.S. citizen. Applicants must have experience with community-based projects and to have successfully managed and completed at least one similar commissioned project.

Artists are required to carry insurance for the duration of the project, be willing to meet all contractual obligations, adhere to a strict timeline, and are subject to a background check.

SCOPE OF WORK

Project Summary

The City of Virginia Beach seeks a professional artist or artist team to design, fabricate, and install a freestanding and interactive sculpture(s) for City View Park. This sculpture will serve as an invitation for families and children to play, engage, and explore in new and unique ways while in the park.

The artwork should balance the themes of community and learning with the invocation of whimsy and joy. Suggestions for inspiration include nature and wildlife, music, art history, human history, science, and visitor collaboration.

A high priority of this project is accessibility and offering individuals with and without disabilities a variety of multi-sensory ways to interact with and explore the artwork. Potential opportunities for accessibility may include the integration of light, sound, movement, color, pattern, texture, etc.

Project Goals

- Incorporation of themes that could include: nature and wildlife, music, art history, human history, science, and/or visitor collaboration.
- Offer a variety of meaningful, multi-sensory opportunities for individuals with and without disabilities to interact and explore the sculpture.
- Encouragement of imaginative play, learning, interactivity, and creativity.
- Attract new visitors to the park and motivate repeat visits.
- Create a sculpture that is durable, low maintenance, and safe for interaction.

Project Budget: \$100,000

The project budget is to include artist fees, all costs of materials and fabrication of the work, all subcontractor fees, shipping, travel of the artist/team including all expenses, insurance costs, engineering expenses, permits, bonds, documentation, and the cost of workers, materials, and equipment required for installation. The City of Virginia Beach will provide the concrete pad and exterior lighting.

The artist will coordinate all site preparation, installation plans, and timetables with the City. The artist agrees that under no circumstances shall any further payment obligation to the City accrue with respect to the services contemplated herein over and above the amount of the commission.

Payment Schedule

Upon the receipt of the following deliverables, payment will be issued to the artist in the amount listed within 30 days.

Upon execution of contract	\$20,000	Payment 1 of 5
Proof of engineering drawings	\$20,000	Payment 2 of 5
Fabrication contract	\$30,000	Payment 3 of 5
Proof of fabrication	\$15,000	Payment 4 of 5
City acceptance following installation	\$15,000	Payment 5 of 5

SITE

City View Park is a 43-acre park located at 2073 Kempsville Road in Virginia Beach, Virginia. The park includes four lighted softball fields, a large multi-purpose field, playgrounds with therapeutic cradle swing sets, basketball and volleyball courts, public restrooms, and a shared-use walking path.

Dimensions: The available space for sculpture placement is approximately 5,200 sq ft in size. Total footprint of sculpture cannot exceed 2,500 sq ft.

Concrete Pad: The City of Virginia Beach will provide the concrete pad which will be designed to accommodate the load of the sculpture. Footings will need to be determined and constructed by the artist with feedback from the City.

Utilities: No electricity is available at the site. To the best of the City's knowledge, there are no utility lines or pipes that run underground the site location.

Please see Attachment A for visuals and additional information about the site.

DESIGN SPECIFICATIONS & MAINTENANCE GUIDELINES

The design must be engineered and secured to withstand unsupervised public interaction, hurricane-force winds up to 135 mph on vertical elements, and natural elements including seasonal changes.

The artwork must be of the highest quality, creatively and technically, including the use of long-lasting materials.

Artist must provide stamped engineering drawings by a qualified Virginia engineer.

The design must meet all public safety, structural, and maintenance standards including non-slip surfaces and no slip/trip/fall hazards. Artwork must be in compliance with the Americans with Disabilities Act (ADA.)

For final City acceptance following installation, artist is required to provide written guidelines that include material details, recommended maintenance practices, and anticipated future needs.

The artist will be responsible for the integrity of the materials and fabrication for one (1) year following installation.

If applicable, the artwork must have an anti-graffiti and/or UV-protectant coating.

SUBMISSION & SELECTION PROCESS

Application Process

Applications must be submitted by **5:00 p.m. EST on Monday, February 26, 2024.**

To constitute a complete application, all submissions must include the information outlined below under “Phase I Application Requirements.” There is no fee to apply.

Phase I: Qualifications

Please see “Phase I Application Requirements” below for the full description of submission specifications required for Phase I. The Selection Panel will review applications and select up to three (3) artists or artist teams as finalists to participate in Phase II. Each finalist will receive a stipend of \$1,500 to prepare and present a detailed design proposal.

Phase II: Design and Execution – Finalists Only

Each finalist will prepare and present a detailed design proposal to the Selection Panel. This proposal must include:

- Conceptual design drawings of proposed artwork
- Statement about proposed work to include but not be limited to:
 - Description of materials
 - Dimensions and weight
 - Specific site location
 - Installation process and method
 - Foundation and anchoring procedure including the ability to withstand the necessary environmental factors and wind loads
 - Maintenance plan which includes an explanation of longevity and necessary protective measures (i.e. UV or anti-graffiti coatings)
 - Production and installation timeline

- Estimated budget to include itemization of artist fees, subcontractor fees, materials, foundation, engineering, permits, delivery, travel, etc.
 - The City of Virginia Beach will provide the concrete pad and exterior lighting.
 - Footings will need to be determined and constructed by the artist in collaboration with the City.

Selection Process

A Selection Panel will be created by the Cultural Affairs Department. The committee will consist of at least three (3) City representatives, one (1) Public Art Committee member, one (1) arts professional (who may also be a qualified Public Art Committee member,) and at least one (1) citizen at large who represents the community where the artwork will be located.

Upon review of the design proposals and completion of the interview process, the Selection Panel and the Arts and Humanities Commission will choose one artist/team to be commissioned to develop, fabricate, and install the artwork. Additional requirements will be outlined in instructions to finalists.

Evaluation Criteria

Phase I

The artist/team's statement of interest, professional work history, and portfolio will be evaluated by the Selection Panel. The Panel will review applications on the basis of:

- Artistic and design excellence, innovation and originality as evidenced by representations of past work and other supporting material.
- Capability to create multi-sensory public art that is engaging and encourages exploration and play from all visitors.
- Capability to perform required services and meet the full range of requirements to deliver a similar project on schedule and within budget.

Phase II

The Selection Panel will review the finalists' submissions on the basis of:

- Vision for the project and clarity of conceptual approach.
- Ability to understand and incorporate project goals into concept.
- Consideration and broadness of appeal to a diverse audience.
- Realistic budget and timeline.
- Consideration of structural/surface soundness, safety, durability, resistance to theft/vandalism/weathering, and maintenance costs.

Phase I Application Requirements

Using the [online form](#), please complete the RFQ application.

All documents must be PDF, DOC or DOCX format only.

All images must be PDF, JPG, or GIF format only.

All requirements must be submitted on or before the application deadline of 5:00 p.m. EST on Monday, February 26, 2024.

1) Letter of Interest and Rules & Guidelines Agreement

Via the online form, provide all necessary contact information. Review and sign the City of Virginia Beach Rules & Guidelines Agreement.

Two (2) pages maximum. Upload a letter of interest that summarizes your understanding of the project scope, reason for interest in the project, and general approach to interactive public art.

2) Resume/CV

Four (4) pages maximum. Upload your or your team's resume(s) or curriculum vitae(s) to include educational background, public art experience, professional accomplishments, etc.

3) Images

Five (5) images minimum, eight (8) images maximum. Upload images of your original and completed commissions, not proposals, which demonstrate your qualifications for the project. Artists applying as a team must split the allotted number of work examples between themselves.

Using the submission form, include the title, medium, dimensions, project budget, year completed, location, and description for each artwork image. If you were a member of a team, please indicate your role in the description.

RFQ TIMELINE

This schedule represents the City of Virginia Beach Department of Cultural Affairs' best estimate of the schedule that will be followed for this RFQ. Schedule is subject to change. If a component of this schedule is delayed, the remaining schedule will be shifted accordingly.

RFQ Issued:	Friday, February 9, 2024
Application Deadline:	Monday, February 26, 2024, by 5:00 p.m. EST

Phase I Artist Notification: Wednesday, March 6, 2024
Phase II Proposal Deadline: Wednesday, April 3, 2024, by 5:00 p.m. EST
Panel Presentations: Monday, April 8 to Wednesday, April 17, 2024
Phase II Artist Notification: Monday, April 22, 2024
Contract* Execution: Monday, April 29, 2024
Artwork Installation: Spring 2025

*See Attachment B for a sample of the Artist Agreement to be signed by the selected artist.

ATTACHMENT A
SITE RELATED IMAGES



CITY VIEW PARK • VIRGINIA BEACH, VA



CITY VIEW PARK • VIRGINIA BEACH, VA



CITY VIEW PARK • VIRGINIA BEACH, VA



SCULPTURE SITE

CITY VIEW PARK • VIRGINIA BEACH, VA



PLAYGROUND

SCULPTURE SITE

TO OPEN AREA & BASEBALL FIELDS

WALKING PATHS

PICNIC TABLES

BASKETBALL COURT

ENTRANCE TO PARKING AREA

CITY VIEW PARK • VIRGINIA BEACH, VA

CITY VIEW PARK • VIRGINIA BEACH, VA
AVAILABLE SITE AREA

City View Park
Recreation spot for picnics & athletics

Total area: 5,228.14 ft² (485.71 m²)
Total distance: 338.35 ft (103.13 m)



ATTACHMENT B

ARTIST AGREEMENT

This Artist Agreement (“Agreement”) is made effective as of this XXXXX day of XXXXXXXXXX, 2024 (“Effective Date”), between The City of Virginia Beach, a municipal corporation of the Commonwealth of Virginia (“City”) and _____SAMPLE_____ (“Artist”), a principal place of business or residence located at _____SAMPLE – DO NOT COMPLETE_____.

I. PURPOSE:

See Exhibit A, Attached Hereto.

II. BACKGROUND:

See Exhibit A, Attached Hereto.

III. SITE DESCRIPTION:

See Exhibit A, Attached Hereto.

IV. SCOPE OF WORK:

See Exhibit A, Attached Hereto.

V. GENERAL TERMS AND CONDITIONS:

A. Term of Agreement.

This Agreement shall commence upon award and continue thereafter until acceptable completion. (See Exhibit A pg. 6)

B. Termination with Cause/Default/Cancellation.

In the event that the Artist shall for any reason or through any cause be in default of the terms of this Agreement, the City may give the Artist written notice of such default by certified mail/return receipt requested at the address set forth in Section IX.

Unless otherwise provided, the Artist shall have ten (10) days from the date such notice is mailed in which to cure the default. Upon failure of the Artist to cure the default, the City may immediately cancel and terminate this Agreement as of the mailing date of the default notice.

Upon termination, the Artist shall withdraw their personnel and equipment, cease performance of any further work under the Agreement, and turn over to the City any work in process for which payment has been made.

In the event of violations of law, safety or health standards and regulations, this Agreement may be immediately cancelled and terminated by the City and provisions herein with respect to opportunity to cure default shall not be applicable.

C. Nondiscrimination.

Employment discrimination by the Artist shall be prohibited. During the performance of this Agreement, the Artist agrees as follows:

1. Artist will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification/consideration reasonably

necessary to the normal operation of the Artist. Artist agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

2. Artist, in all solicitations or advertisements for employees placed by or on behalf of the Artist, will state that the Artist is an equal opportunity employer.
3. Notices, advertisements, and solicitations placed in accordance with federal law, rule or regulations shall be deemed sufficient for the purpose of meeting the requirements of this section.

D. Artist will include the provisions of the foregoing Sections 1, 2, and 3 in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

E. Drug Free Workplace.

During the performance of this Agreement, the Artist agrees as follows:

1. Artist will provide a drug-free workplace for the Artist's employees.
2. Artist will post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Artist's workplace and specifying the actions that will be taken against employees for violations of such prohibition.
3. Artist will state in all solicitations or advertisements for employees placed by or on behalf of the Artist that the Artist maintains a drug-free workplace.
4. Artist will include the provisions of the foregoing Sections 1, 2, and 3 in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

F. Faith Based Organizations.

The City of Virginia Beach does not discriminate against Faith-Based Organization.

G. Compliance with Immigration Laws.

Artist does not currently, and shall not during the performance of this Agreement, knowingly employ an unauthorized alien, as defined in the federal Immigration Reform and Control Act of 1986.

H. Exclusivity.

The City reserves the right to procure goods or services covered under this Agreement from a third party when, in the City's sole discretion, it is deemed to be in the City's best interest.

I. Compliance with All Laws.

Artist shall comply with all federal, state, and local statutes, ordinances, and regulations now in effect or hereafter adopted, in the performance of scope of work set forth herein. Artist represents that it possesses all necessary licenses and permits required to conduct their business and will acquire any additional licenses and permits necessary for performance of this Agreement prior to the initiation of work.

- J. Business Entity Registration – Foreign and domestic business authorized to transact business in the Commonwealth
Artist shall be registered and authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 or as otherwise required by law. Artist shall submit proof of such registration to the City. Additionally, the Artist shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or canceled at any time during the term of the Agreement.
- K. Agreement interpreted under laws of Virginia.
This Agreement shall be deemed to be a Virginia contract and shall be governed as to all matters whether of validity, interpretations, obligations, performance or otherwise exclusively by the laws of the Commonwealth of Virginia, and all questions arising with respect thereto shall be determined in accordance with such laws. Regardless of where actually delivered and accepted, this Agreement shall be deemed to have been delivered and accepted by the parties in the Commonwealth of Virginia.
- L. Venue.
Any and all suits for any claims or for any and every breach or dispute arising out of this Agreement shall be maintained in the appropriate court of competent jurisdiction in the City of Virginia Beach, or the U.S. District Court for the Eastern District of Virginia, Norfolk District.
- M. Business License Requirement.
If the Artist is a business, located in the City of Virginia Beach or at any time during the performance of this Agreement obtains situs for purposes of business license taxes, it shall be unlawful for such business to conduct or engage in such business, trade or occupation without having first obtained the proper license from the Commissioner of the Revenue of the City, and the Artist covenants that it has a business license where one is required to perform this Agreement. If the selected Artist is not registered as a business, the application can be found online. Artist should include the application fee in their budget.
- N. Independent Contractor.
Artist shall agree and covenant that they are and shall be at all times, an independent contractor, and as such, shall have and maintain complete control over all of their employees and operations. Neither the Artist nor anyone employed by them shall be, represent, act, purport to act, or be deemed to be an agent, representative, employee, or servant of the City. Nothing in this section shall be deemed to absolve or otherwise limit the Artist's liability and responsibility to safely and correctly perform their duties under this Agreement.
- O. Integration/Merger.
This Agreement and any appendices attached hereto constitute the entire agreement of the parties and supersedes all prior agreements, understandings, and negotiations, whether written or oral, between the parties. This Agreement may not be modified,

except in a writing and signed by both parties that is expressly stated to be an amendment hereto.

P. Severability.

The provisions of this Agreement shall be deemed to be severable and should any one or more of such provisions be declared or adjudged to be invalid or unenforceable, the remaining provisions shall be unaffected thereby and shall remain in full force and effect.

Q. Waiver.

No failure of the City to exercise any right or power given to it by law or by this Agreement, or to insist upon strict compliance by the Artist with any of the provisions of this Agreement, and no custom or practice of the parties at variance with the terms hereof, shall constitute a waiver of the City's right to demand strict compliance with the terms of this Agreement.

R. Interpretation.

Whenever the context hereof shall require, the singular shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

S. Descriptive Headings.

The descriptive headings appearing in this Agreement are for convenience only and shall not be construed either as a part of the terms, covenants, and conditions hereof or as an interpretation of such terms, covenants, and conditions.

T. Representation Regarding City Employment; Conflict of Interest.

Artist represents at the time of contracting and through the pendency of this Agreement that no one with an ownership interest in the Artist or the Artist's corporate entity, if applicable, or other employee of the Artist is also an employee of the City of Virginia Beach, specifically in the City Department initiating or overseeing this Agreement. Artist further represents that no individual with an ownership interest in the Artist or the Artist's corporate entity, if applicable, or other employee has a spouse, other relative or person who resides with the individual that is currently an employee of the City of Virginia Beach, specifically in the City Department initiating or overseeing this Agreement. Should the Artist have reasonable belief of a possible conflict of interest, that issue should immediately be brought to the attention of the City's Purchasing Division for review.

U. Non-appropriation.

It is understood and agreed between the Parties hereto that the City shall be bound and obligated hereunder only to the extent that the funds shall have been appropriated and budgeted for the purpose of this Agreement. In the event funds are not appropriated and budgeted in any fiscal year for payments due under this Agreement, the City shall immediately notify the Artist of such occurrence and this Agreement shall terminate on the last day of the fiscal year for which appropriations were received without penalty or expense to the City of any kind whatsoever.

V. Assignment of Agreement.

Artist shall not, without the prior written consent of the City, assign, delegate, or otherwise transfer, in whole or in part, the Agreement or any of the Artist's rights or obligations arising hereunder. The City may, in its sole discretion, consent or decline to consent to any such assignment, delegation, or transfer, or may give its conditional consent thereto. In the event the City conditionally consents to such an assignment, delegation, or transfer, such consent may, without limitation, be conditional upon the Artist's remaining fully and unconditionally liable to the City for any breach of the terms of this Agreement by the Artist's transferee and for any damage or injury sustained by a third party or parties as a result of the intentional act or omission, negligence, or breach of warranty by the Artist's transferee.

W. Termination without Cause.

The City may at any time, and for any reason, terminate this Agreement by written notice to the Artist specifying the termination date, which shall be not less than thirty (30) days from the date such notice is mailed. Notice shall be given to the Artist by certified mail/return receipt requested at the address set forth in this Agreement. In the event of such termination, the Artist shall be paid such amount as shall compensate the Artist for the work satisfactorily completed, and accepted by the City, at the time of termination. If the City terminates this Agreement without cause, the Artist shall withdraw its personnel and equipment, cease performance of any further work under this Agreement, and turn over to the City any work completed or in process for which payment has been made.

X. Hold Harmless/Indemnification.

It is understood and agreed that until Acceptance by the City occurs, the Artist hereby assumes the entire responsibility and liability for any and all damages to persons or property caused by or resulting from or arising out of any act or omission on the part of the Artist, its subcontractors, agents or employees under or in connection with this Agreement or the performance or failure to perform any work required by this Agreement. Until Acceptance occurs, the Artist agrees to indemnify and hold harmless the City and its agents, volunteers, servants, employees, and officials from and against any and all claims, losses, or expenses, including reasonable attorney's fees and litigation expenses suffered by any indemnified party or entity as the result of claims or suits due to, arising out of, or in connection with (a) any and all such damages, real or alleged, (b) the violation of any law applicable to this Agreement, and (c) the performance of the work by the Artist or those for whom the Artist is legally liable. Upon written demand by the City, the Artist shall assume and defend at the Artist's sole expense any and all such suits or defense of claims made against the City, its agents, volunteers, servants, employees, or officials.

VI. Intentionally Deleted

VII. Approval and Acceptance.

Artist shall provide City in writing with a notice of completion, which will only be effective upon the Artist's receipt of City's final acceptance ("Acceptance"). The City shall notify the Artist in writing of its Acceptance of the Work within fifteen (15) days of receipt of the Artist's notice of completion. The effective date of Acceptance shall be the date the City submits written notice to

the Artist of its final acceptance of the Work. The City's Acceptance shall mean that the City acknowledges completion of the Agreement in all its particulars, including the fabrication and installation of the Work and its base in conformity with the final design, and installation. Title to the Work shall pass to the City upon City's Acceptance. The City shall make final payment to the Artist as set forth in paragraph X (A) herein.

The City shall, if it disagrees with the Artist's notice of completion, file its objections in the form of a notice of termination for cause within twenty one (21) days of receipt of the Artist's notice of completion and withhold final payment, and the dispute shall proceed according to the provisions of this Agreement concerning termination for cause.

VIII. Intentionally Deleted

IX. Notice.

All notices and requests required or permitted hereunder shall be sent by United States certified mail, return receipt requested, and to be effective, shall be postmarked no later than the final date for giving of such notice; or such notices may be sent by commercial messenger service, in which event, to be effective, such notices shall be delivered to a commercial messenger service not later than the final date for giving such notice.

Notices for the City of Virginia Beach shall be addressed as follows:

Finance/Purchasing
2388 Liberty Way
Virginia Beach, VA 23456

Artist address as follows:

_____ SAMPLE – DO NOT COMPLETE _____

Such addresses may be changed at any time and from time to time by like written notice given by either party to the other.

AA. Claims For Extra Compensation.

If the Artist encounters work and services not included in this Agreement or any supplement thereto but which in the opinion of the Artist is necessary for the successful completion of the Agreement and requires extra compensation, the Artist shall, before it begins the work on which they base their claim, promptly notify the City in writing of their intention to perform the work and to make claim for extra compensation. Notification by the Artist under the terms of this paragraph shall not be construed as proving the validity of the claim. No claim for extra compensation will be filed or considered unless notification is given as herein set forth.

Upon notification, the City shall promptly review any claim for extra compensation. If a claim is accepted by the City, it shall be paid as extra work in accordance with the terms of a supplemental agreement executed by the parties before such work is begun.

The amounts claimed as extra compensation by the Artist shall be separately itemized, become a part of the claim, and serve as documentation thereto. The amounts itemized shall be in sufficient detail to enable the City to analyze the need for the extra work and the costs claimed for the work. Where the Artist intends to claim the costs (other than attorney's fees) of preparing a claim for extra compensation, such costs incurred by the Artist in preparing a claim shall be maintained in a separate account, clearly coded, and identified, and shall be subject to audit by the City.

BB. Offset/Setoff.

The City may withhold the payment of any claim or demand by any person, firm, or corporation against the City until any delinquent indebtedness or other liability, including taxes, due to the City from such person, firm, or corporation shall first have been settled and adjusted.

CC. Audits.

The City shall have the right to audit all books and records (in whatever form they may be kept, whether written, electronic, or other) relating or pertaining to this Agreement (including any and all documents and other materials, in whatever form they may be kept, which support or underlie those books and records), kept by or under the control of the Artist, including, but not limited to those kept by the Artist, its employees, agents, assigns, successors, and subcontractors. Artist shall maintain such books and records, together with such supporting or underlying documents and materials, for the duration of this Agreement and for at least three years following the completion of this Agreement, including any and all renewals thereof. The books and records, together with the supporting or underlying documents and materials shall be made available, upon request, to the City, through its employees, agents, representatives, contractors, or other designees, during normal business hours at the Artist's office or place of business in Virginia Beach, Virginia. In the event that no such location is available, then the books and records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location in Virginia Beach, Virginia, which is convenient for the City.

This paragraph shall not be construed to limit, revoke, or abridge any other rights, powers, or obligations relating to audit which the City may have by state, city, or federal statute, ordinance, regulation, or agreement, whether those rights, powers, or obligations are express or implied.

DD. Submission and Disposition of Contractual Claims.

Prompt knowledge by the City of an existing or impending claim for damages or other relief may alter the plans, scheduling, or other action of the City and/or result in mitigation or elimination of the effects of the claim. Therefore, a written statement providing the City with notice of the Artist's intention to file a claim which (i) describes the act or omission by the City or its agents that the Artist contends caused it damages or entitles it to other relief; and (ii) provides a description of the nature and amount of

the claim. Such written statement shall be submitted to the City within 20 days of the time of the occurrence or beginning of the work upon which the claim is based; provided, however, if such damage is deemed certain in the opinion of the Artist to result from its acting on an order from the City, it shall immediately take written exception to the order. For purposes of this provision, "claim" shall include, without limitation, any request for an increase in the contract price or time and any request for equitable adjustment. Submission of a notice of claim as specified shall be mandatory, and failure to submit such notice shall be a conclusive waiver to such claim for damages or other relief by the Artist. Neither an oral notice or statement, nor an untimely notice or statement, will be sufficient to satisfy the requirements herein.

The City will review the claim and render a final decision in writing within thirty (30) days of receipt of the Artist's written request for a final decision. Such decision shall be final and binding to the fullest extent allowed by law.

EE. Intentionally Deleted

FF. Ownership of Work.

Upon Acceptance by the City, the title to the Work and ownership of the Work shall vest and be held in the name of the City of Virginia Beach. The City, at its sole discretion, may elect to contractually relinquish title to the Work. The City may retain copies of any drawings, slides, photographs, submittals, and other documents submitted to the City by the Artist related to the Work (the "Materials").

If the Agreement is completed without breach by the Artist, the Artist shall retain all rights under the Copyright Act of 1976, 17 U.S.C. §§101 et seq., as the sole author of the Work for the duration of the copyright.

Artist shall not make any additional exact duplicates of the Work, two or three-dimensional reproductions of the Work, or grant permission to others to do so, except with the written permission of the City. This restriction shall not apply to the Artist's use of photographic reproductions of the Work in portfolios or in critical and scholarly writings. The Artist shall use his best efforts to give a credit reading substantially "an original work commissioned through the City of Virginia Beach Cultural Affairs' Public Art Program" in any public showing under the Artist's control or in a reproduction of the Work

Artist grants the City an irrevocable license to make two-dimensional reproductions of the Work for non-commercial purposes, including, but not limited to, reproductions used in advertising brochures, media publicity, and catalogs or other similar publications. All reproductions by the City shall contain a credit to the Artist and a copyright notice. Should the City wish to make reproductions of the Work for commercial retail purposes, the City and the Artist shall negotiate reasonably and in good faith a separate agreement to address the terms of such a license based on a reasonable estimate from an objective source of the market value of the Work at the time of that negotiation.

GG. Intentionally Deleted

HH. Compliance with the Virginia Human Rights Act.

The Virginia Human Rights Act, as amended, includes protections against discrimination based on an individual's race, color, religion, sex, sexual orientation, gender identity, marital status, pregnancy, childbirth or related medical conditions, age, status as a veteran, or national origin. During the performance of this Agreement, the Artist shall comply with the Virginia Human Rights Act, as amended.

X. SPECIAL TERMS AND CONDITIONS:

A. Payment Schedule.

1. Payment for services rendered by the Artist shall be paid in accordance with the following schedule:

- a. \$20,000 paid to Artist upon the execution of the Agreement.
- b. \$20,000 paid to Artist upon City's approval of design and stamped engineering.
- c. \$30,000 paid to the Artist upon receipt of fabrication contract(s).
- d. \$15,000 paid to Artist upon proof of fabrication.
- e. \$15,000 paid to the Artist upon City acceptance following installation.

B. Production, Installation and Completion Schedules.

Production, installation and completion schedules shall be agreed upon by the parties and memorialized in the final Agreement.

C. Warranties of Title.

Artist represents and warrants all of the following concerning the title and the nature of the Work and associated goods and services rendered to City pursuant to this Agreement:

- (a) That the Artist has the full power to enter into and perform this Agreement and to make the grant of all the rights contained in this Agreement.
- (b) That all services performed hereunder shall be performed in accordance with all applicable federal, state, and local laws and regulations, including all permit requirements, and with all necessary care, skill, and diligence.
- (c) That the Work is solely the result of the artistic effort of the Artist, and that the Work and any other goods or services created or performed by the Artist under this Agreement, whether created by the Artist alone or in collaboration with others, shall be wholly original with the Artist and shall not infringe upon or violate the rights of any third party.
- (d) That the Artist has not (and shall not) sold, assigned, transferred, licensed, granted, encumbered, or utilized the Work or any element thereof or any copyright related thereto in a way which may affect or impair the rights granted to City pursuant to this Agreement.
- (e) That the Work is unique and original and does not infringe upon any copyright or any other rights of any person or entity and that Work is free and clear of any liens of any type from any source whatsoever.
- (f) That neither the Work nor any duplicate of it, regardless of media, has been offered or offered and accepted for sale before.

- (g) That these representations and warranties are continuing in nature and shall survive the termination or other extinction of this Agreement.

D. Warranties of Quality and Condition.

The Artist represents and warrants that (a) the Artist will execute and fabricate the Work in a professional manner; (b) the Work, as fabricated and installed, will be free of defects in material and workmanship, including any defects or qualities which cause or accelerate deterioration of the Work; and (c) reasonable maintenance of the Work will not substantially exceed those described in the maintenance recommendations submitted by the Artist in the Artist's response to the Request for Proposals.

The warranties described herein shall survive for the period of time that the Work is located on City property. The City shall give written notice to the Artist of any breach of the Artist's warranty within one hundred twenty (120) days of the breach during that period. The Artist shall, at the request of the City, and at no cost to the City, cure reasonably and promptly the breach of any such warranty which is repairable by the Artist and which repair is consistent with accepted practices of professional conservation (including, for example, repair by means of restoration, refurbishing or re-creation of part or all of the Work).

E. Changes in Design.

Artist shall create the Work in accordance with the proposed and approved designs set forth in the proposal and in the subsequent correspondence with the City. Recognizing that the change in scale from the renderings to full scale may require adjustments, the Artist has the right to make minor changes in the Work that are aesthetically necessary. Any change in scope, design, or material that significantly alters the original and approved concept and design of the Work or affects installation, scheduling, site preparation, location, or maintenance for the Work shall require the prior review and written approval of the City. Approval of the design shall be made in writing and addressed to the Artist.

F. Modification.

There may be no modification of the Agreement, except in writing, executed by the authorized representatives of the City and the Artist.

G. Company Personnel Standards.

1. Personnel shall be trained/qualified to perform requested services. If any of the successful Artist's personnel are not satisfactory in the performance of services to be furnished hereunder in a proper manner and satisfactory to the City, the Artist shall remove any such personnel and replace them with satisfactory personnel.
2. Artist shall use all reasonable care, consistent with its rights to manage and control its operations, not to employ any persons or use any labor or have any equipment or permit any condition to exist which shall or may cause or be conducive to pose any liability to the general public as well as any activity to be construed as a nuisance. The City retains the right to require the successful Artist to halt all work activities until such conditions are resolved.

H. Independent Contractor.

Artist shall agree and covenant that it is and shall be at all times, an independent contractor, and as such, shall have and maintain complete control over all of its employees and operations. Neither the Artist nor anyone employed by them shall be, represent, act, purport to act, or be deemed to be an agent, representative, employee, or servant of the City. Nothing in this section shall be deemed to absolve or otherwise limit the Artist's liability and responsibility to safely and correctly perform its duties under this Agreement.

I. Access to Site.

The City shall have the right of entry to the premises where the Work is being created. The City may enter the premises where the Work is being created to recover the Work or materials, in the case of default by the Artist, under this Agreement.

J. Ownership

Artist acknowledges that all services it provides under this Agreement are provided as an independent contractor on a work-for-hire basis. All intellectual property rights and other proprietary rights in any work resulting from the performance of services under this Agreement shall vest and be held in the name of the City.

VII. Intentionally Deleted

VIII. Intentionally Deleted

This Agreement contains the entire agreement of the parties and there are no other promises or conditions in any other agreement whether oral or written. This Agreement supersedes any prior written or oral agreements between the parties.

The following signatures make this Agreement effective as of the Effective Date written above.

ARTIST

Date: _____

By: _____ SAMPLE – DO NOT SIGN _____

Print Name: _____ SAMPLE – DO NOT SIGN _____

CITY OF VIRGINIA BEACH

Date: _____

By: _____ SAMPLE – DO NOT SIGN _____
City Manager's Office

Approved as to Content:

Approved as to Legal Sufficiency:

_____ SAMPLE – DO NOT SIGN _____
Department of Cultural Affairs

_____ SAMPLE – DO NOT SIGN _____
Office of City Attorney