



**ARTIST CALL FOR QUALIFICATIONS  
Historic Kempsville Public Art Opportunity  
City of Virginia Beach, VA**

**RFQ SUBMITTED DEADLINE: August 31, 2023 by 5:00 pm  
PROJECT BUDGET: \$125,000**

**The City of Virginia Beach, in collaboration with the Historic Kempsville Citizens Advisory Committee, is accepting qualifications from professional artists or teams of artists in response to a public art opportunity in the Historic Kempsville area of Virginia Beach.**

**ARTIST ELIGIBILITY**

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

**OPPORTUNITY**

This RFQ represents an opportunity for an artist or team of artists to create a dynamic, site-specific work that reflects the historical significance of the Historic Kempsville area which includes the histories of many cultures who have made it their home.

The selected artist, or artist team, will design and fabricate an iconic and meaningful artwork that reflects Historic Kempsville's rich history. The artwork will inform and educate the public about the unique sense of place of this area, with the intention of building a bridge between the remains of its past and the vibrant prospects for its future.

## **PROJECT GOALS**

As part of the development of this RFQ, we connected with a cross-section of representatives from the Historic Kempsville community and asked them to communicate goals of the project. Below is a sampling of the responses received:

- Relate thematically to the rich history and significance of the area and places including the many diverse cultures and religions who have chosen to reside in the area from the Pre-Colonial era to the present
- Connect stories with artistic, creative, historic, and cultural assets of the city
- Highlight the significance local waterways and rivers to the area's history
- Highlight the significance of the area as an agricultural, commercial, and community center, its phases of growth, and points of interest that make the area unique
- Reference ideas of the past, present, and future
- Engage the community throughout the process
- Create excitement and interest for the community while appealing to a mass audience
- Create an artwork that can be appreciated by occupants of tens of thousands of cars passing the site daily, as well as by pedestrians, residents, and customers in the Historic District
- Provide a statement that can be seen in day and night

The goal is to give people living in the Historic Kempsville area a sense of ownership of the completed artwork by providing opportunities to participate in its creation. The Selection Panel is looking for proposals that bring people together around public art and provide a landmark to connect people living there.

The panel will give more weight to applicants who include elements of community involvement in their proposal. This could include school outreach, neighborhood participation, or other local engagement in one or more phases of the project.

## **ARTIST AWARD**

This is a two-part award process.

### **Phase 1: Qualifications**

- The Selection Panel will review qualifications and select up to three artists or teams to participate in the design phase. Each shortlisted artist/team will be paid a stipend of \$1,500 to prepare a detailed design proposal.

### **Phase 2: Design and Execution (Short-listed finalists only)**

Detailed design proposal must include:

- Conceptual design drawings of proposed artwork.
- Statement about the proposed work which includes but is not limited to: descriptions of the materials, dimensions, weight, proposed 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/protective coatings of artwork.
- Detailed production timeline associated with the proposed art piece.
- Estimated budget which includes proposed itemization for artist fee, materials, foundation, engineering, materials, travel, etc.

Upon review of design proposals and completion of the interview process, the Selection Panel and the Arts and Humanities Commission will choose one artist/artist team to be commissioned to develop, fabricate, and install the artwork. Additional requirements will be outlined in instructions to finalists. Please see the timeline on Page 5 for further details.

### **PROJECT BUDGET: \$125,000**

The budget includes artist's design fee, all costs of materials and fabrication of the work, shipping, travel of the artist to include all expenses, retaining workers and equipment for installation, insurance costs, engineering expenses, permits, bonds, documentation, preparing specifications and providing all materials necessary for installation of the work. 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 of the City accrue with respect to the services contemplated herein over and above the amount of the commission.

### **SITE**

- Located in the northeast corner of the Witchduck Road and Princess Anne Road intersection within the City of Virginia Beach, Virginia
- Site Dimensions: 6,028.39 square feet

### **DESIGN SPECIFICATIONS & MAINTENANCE GUIDELINES**

- The design must be engineered and secured to withstand unsupervised public interaction, winds up to 135 mph on vertical elements, and the natural elements including seasonal changes.
- The artwork must be of the highest quality, creatively and technically, including long-lasting materials.
- Artist must provide stamped engineering drawings by a qualified Virginia engineer.
- Artwork must be low maintenance.
- The design must meet all public safety, structural and maintenance standards including non-slip surfaces, no slip, trip and fall hazards, and compliance with the Americans with Disabilities Act (ADA).
- The design must deter alternate use outside of the intended design, such as climbing, skateboarding, squatting or solicitation.
- The artist will be responsible for any repairs of the artwork for up to 2 years.

- The artwork must have an anti-graffiti top coat (if applicable), and the artist must be available for any major repairs if needed during the two years after installation.

## HOW SELECTIONS WILL BE MADE

### Selection Panel and Criteria

A Public Art Selection Panel will be created by the Cultural Affairs Department. The committee will consist of a minimum of two City representatives, a Public Art Committee member, an arts professional (*who may also be a qualified Public Art Committee member*), the project's landscape architect or engineer (if applicable), and at least one citizen at large who represents the community where the project is located.

### Phase 1: Qualifications Phase Evaluation Criteria

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

1. Artistic and design excellence, innovation and originality as evidenced by representations of past work and other supporting material.
2. Capability to perform required services and meet the full range of requirements to deliver a similar project on schedule and within budget.
3. Demonstrated past experience working with stakeholder groups.

### Phase II: Design Evaluation Criteria

The committee will review the finalists' submissions on the basis of:

1. Overall design, approach, and methodology.
2. Considers ways to meaningfully engage community.
3. Considers structural/surface soundness, safety, durability, resistance to theft, vandalism, weathering, and low maintenance costs.
4. Has a broad appeal, and considers the diverse audiences visiting the artwork.

## APPLICATION REQUIREMENTS

Submissions must be received as one (1) complete application to [artsinfo@vbgov.com](mailto:artsinfo@vbgov.com) with the subject line “**Historic Kempsville Public Art**” by August 31, 2023 at 5:00 pm. To ensure submissions are received, all responses must be submitted via email as attached files. Shared cloud documents and/ or condensed files may be blocked as spam.

The application submission must include the information described below, all of which are required to constitute a complete application. There is no fee to apply.

## SUBMISSION GUIDELINES

1. **Artist Statement of Interest:** (3,000 character maximum) Submission must include an Artist Statement of Interest that outlines a general interest in this opportunity.
2. **Resume:** (3,000 character maximum) Please include a current resume that outlines your professional accomplishments as an artist.
3. **Images of past work:** Visual representations of past artwork that demonstrate your qualifications for this project. Submit up to a total of 8 images of completed projects and brief descriptions. Proposal images from previous projects may be submitted but should be clearly marked as proposals. If submitting as a team, all members must be represented in the visual submittal.
4. **Descriptions of past work:** Include a list of the submitted images with descriptions that clearly explain both the projects and the images. Please indicate Title, Date, Location, Dimensions, Significant Materials, and Budget (if a public commission). If you were a member of a team, please indicate your role.
5. Completed and signed **Rules and Guidelines (PAGE 6)** of this document.

All requirements must be submitted on or before the application deadline.

### RFQ + PROJECT TIMELINE | PROCESS

RFQ Released:	June 29, 2023
<b><u>RFQ Submission Deadline:</u></b>	<b>August 31, 2023 by 5:00 pm</b>
Shortlisted Artists / Artist Teams Notified:	by October 2023
Virtual Meeting with Shortlisted Artists/Artist Teams:	by December 2023
Shortlisted Artists / Artist Teams Proposal Presentations:	Winter 2024
Selected Artist / Artist Teams Notified:	Winter 2024
Contracts Executed:	Spring 2024
Artwork Installation:	by Fall 2025

Questions: Please contact [artsinfo@vbgov.com](mailto:artsinfo@vbgov.com).

## **RULES AND GUIDELINES - SAMPLE ARTIST CONTRACT ATTACHED (Pages 13-27)**

### **Business License Requirement for Shortlisted Artist/Artist Teams**

If the shortlisted 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 shortlisted Artist covenants that it has a business license where one is required to perform this Agreement. If selected Artist is not registered as a business, the application can be found at <https://www.vbgov.com/business/starting/Pages/registering-a-business.aspx> and all fees are the responsibility of the artist.

### **Right to Reject**

The City of Virginia Beach reserves the right, as its best interests may appear, to reject any or all submissions, to reject any finalist, to waive informalities in applications or proposals, to terminate the selection process for any project without prior notice. During evaluation, the Selection Panel reserves the right, where it may serve the City's best interest, to request additional information or clarification from the artist, or to allow corrections of errors or omissions.

### **Deviation from Approved Final Design**

Prior to installation of any artwork, the selected artist must provide a depiction of the proposed artwork; any deviation from that depiction in the installed artwork will be grounds for termination of the selected artist's involvement with the project.

### **Right to Remove**

The City of Virginia Beach makes no representation or guarantee that any artwork, once installed, will remain on display for any period of time. The City of Virginia Beach reserves the right, in its sole discretion, to paint over, replace or remove the artwork at any time.

### **Contract Between Artist and City of Virginia Beach**

Award of this solicitation will result in the establishment of a signed City Agreement to complete the work described within the proposal for an amount not to exceed \$125,000.

Application to any project advertised by the City of Virginia Beach constitutes agreement to all applicable rules and guidelines outlined in this RFQ and artist contract.

I agree to all terms and conditions of this RFQ.

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Signature

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Date

## **BACKGROUND: HISTORIC KEMPSVILLE**

### **KEMPS LANDING, the REVOLUTION and the NEW REPUBLIC**

Prior to English colonization beginning at Jamestown, remnants of the Algonquian-speaking Chesapeake native tribe traversed the area. Three decades after successors to Jamestown began to settle land south of the James River, George Kempe acquired a parcel of land in 1652 at the terminus of the Eastern Branch of the Elizabeth River. Farmers from the interior moved tobacco, and later timber and grain, into Norfolk via longboats. A drawbridge at Kempes Landing allowed ocean-going sailing ships to enter and dock at warehouses along the riverbank. By the 1740s the small port was designated as one of the Virginia Colony's official tobacco inspection stations, further elevating the village's stature.

In October 1775 the Royal Governor of Virginia, Lord Dunmore, anticipating the use of force by colonists protesting British taxation, made an unsuccessful effort to seize militia weapons and gunpowder in Kempes Landing. This was followed in November by a skirmish on the western edge of the village between Dunmore's British troops and locally assembled militiamen. The militiamen were so ill-equipped, they were nicknamed the "Tattered Shirt Brigade." The death of militiaman John Ackiss and six others, the first fatalities in Virginia, and the imprisonment of Patriot leaders, gave Dunmore an excuse to proclaim the Virginia Colony at war and impose martial law.

Dunmore's troops at Kempes Landing included his Ethiopian Regiment made up of formerly enslaved Virginians. His proclamation offered freedom to slaves who would join British forces. All area residents were ordered to take an oath of loyalty to the Crown. Many did so. Later, in 1781, the traitor Benedict Arnold assembled local citizens at Kempes Landing to again encourage them to take the oath of loyalty to King George III. Despite these efforts, Patriot support remained strong throughout the Revolutionary War.

### **BACKGROUND PROVIDED IN HISTORIC KEMPSVILLE MASTER PLAN, 2006**

The area surrounding the Princess Anne Road - Kempsville Road - South Witchduck Road intersection was the heart of the large portion of the City now called Kempsville since the Colonial era. Many of the early happenings in the City were located in this area. Located at the head of navigation on the Eastern Branch of the Elizabeth River, the area served first as a port to move cargo to and from the western and central portions of then Princess Anne County, as overland travel was poorly developed and unreliable at best. Rivers formed the backbone of the local transportation system, and the pattern of development was primarily agrarian in nature, consisting of widely dispersed farms. Few villages or urban areas existed in the County, as local farms could transport their cash crops to market aboard ships that would dock at the planter's own wharves. The area now known as Kempsville was one of the few exceptions to this rule. In 1652 George Kempe acquired a parcel of land at the headwaters of the Eastern Branch, and by 1700, the area had become the small village of Kempe's Landing, with tobacco warehouses

lining the banks of the riverfront. A similar village grew called New Town grew in the vicinity of present-day Newtown Road on the Eastern Branch, but attempts to form a thriving village on the Lynnhaven near the area's first church and courthouse failed.

As tobacco slowly diminished in importance as a local cash crop due to the depletion of the soil, the port of Newtown, and later, Kempe's Landing, gave way to Norfolk as the chief port in the region. Kempe's Landing continued to slowly grow as a population center in the County. In the summer of 1775, the royal governor of the Virginia colony, Lord Dunmore, was finding himself being forced into having to use force to maintain order against some colonists, who had learned of the fighting in Lexington and Concord. Patrick Henry was raising a militia, and Dunmore ordered the seizure of the Norfolk Gazette press, halting publication, and called for royal troop reinforcements. The British 14th Regiment searched the region around Norfolk for weapons that the patriots might use against the royal governor and his troops, and on October 12 came to Kempe's Landing searching for gunpowder that had just been relocated by patriots. On November 15, the royal troops returned to Kempe's Landing under Lord Dunmore's command, upon hearing that several hundred militia were assembled there. After a brief effort to hold, the local militiamen fled, after John Ackiss was killed (the first Virginian patriot to die in the Revolution), and two others were captured. Lord Dunmore remained at Kempe's Landing, hosted by loyalist merchant John Logan. Dunmore issued an order requiring all residents to take an oath of loyalty to the Crown, and issued an emancipation Proclamation establishing martial law and offering freedom to all blacks who joined the British troops, in effect declaring that a state of rebellion existed in the Virginia colony. The British suffered their first defeat in Virginia at Great Bridge in December, and Lord Dunmore soon left the colony in early 1776, after burning Norfolk to the ground.

By this time, New Town, which had become the third courthouse for the County, had declined in importance and no longer offered lodging or entertainment facilities for persons on county business, and was vulnerable to British attack. County residents petitioned and received approval from the Virginia General Assembly to move the county seat to the more secure and prosperous Kempe's Landing in 1778. Court sessions were held in George Logan's store until the court authorized construction of a courthouse and jail in 1782. In 1783, Kempe's Landing was granted town status by the General Assembly, its name was changed to Kempsville, and lots were laid out for a larger town.

Governor Thomas Jefferson and the General Assembly authorized the construction of a canal to link Kempsville to both the Lynnhaven and the North Landing Rivers, but neither project was ever completed. Kempsville remained the County seat until 1824, when the courthouse was moved to its present location at Princess Anne.

Kempsville remained the center of a thriving local farming community until the Civil War, when the area was largely under federal rule. During reconstruction, the area suffered widespread economic depression, which stymied economic recovery and expansion for decades. Following World Wars I and II, the region began its massive growth as a new suburb to Norfolk. Numerous



structures built in Kempsville from the colonial era through the mid 1800's still existed in Kempsville through the 1960's. It was recorded that the area had more concentration of historic structures as an intact village than any area in Hampton Roads with the exception of Williamsburg. Unfortunately, rapid suburbanization, followed by road construction, obliterated much of this setting.

With the plans for new transportation improvements for the area imminent, the concept to link roadway construction to a plan to recreate a sense of place for this important location in the history of the City gained momentum. Accordingly, this master plan for Historic Kempsville was conceived to reestablish a unique sense of place for this area, with the intention of building a bridge between the remains of its past and the prospect for *its* future as part of the Commonwealth's largest City.

Source: [Historic Kempsville Master Plan, 2006](#)

## **KEMPSVILLE IN THE 19TH CENTURY**

### Transportation

After the relocation of the Courthouse to Princess Anne Courthouse in 1823, many of the county's dirt roads continued to intersect at the town. Timber and farm produce replaced tobacco as products shipped on to Norfolk. Proposed road improvements failed to materialize, and later construction of a canal linking the Lynnhaven River and Kempsville remained incomplete.

### Education

The private Kempsville Academy occupying the former jail structure achieved regional educational recognition by the 1840s. Academy officer William Roberts led a successful effort to win county support for a public school system in 1847, one of only a dozen in Virginia. The Academy building then became Kempsville's first public school building, although for white children only. Rolleston Hall near Kempsville was owned by former Virginia Governor Henry A. Wise. After the war, Wise sold the property to the Freedmen's Bureau and it became a school serving freed slaves.

## **KEMPSVILLE—GROWTH in the 20TH CENTURY**

### Agriculture

Beginning in 1900, the climate and improved soil conditions that were fostering expanded truck farming and the promise of cheap land attracted the first families of what became a significant Amish-Mennonite community surrounding Kempsville. They formed the cooperative Yoder Dairy in 1929.

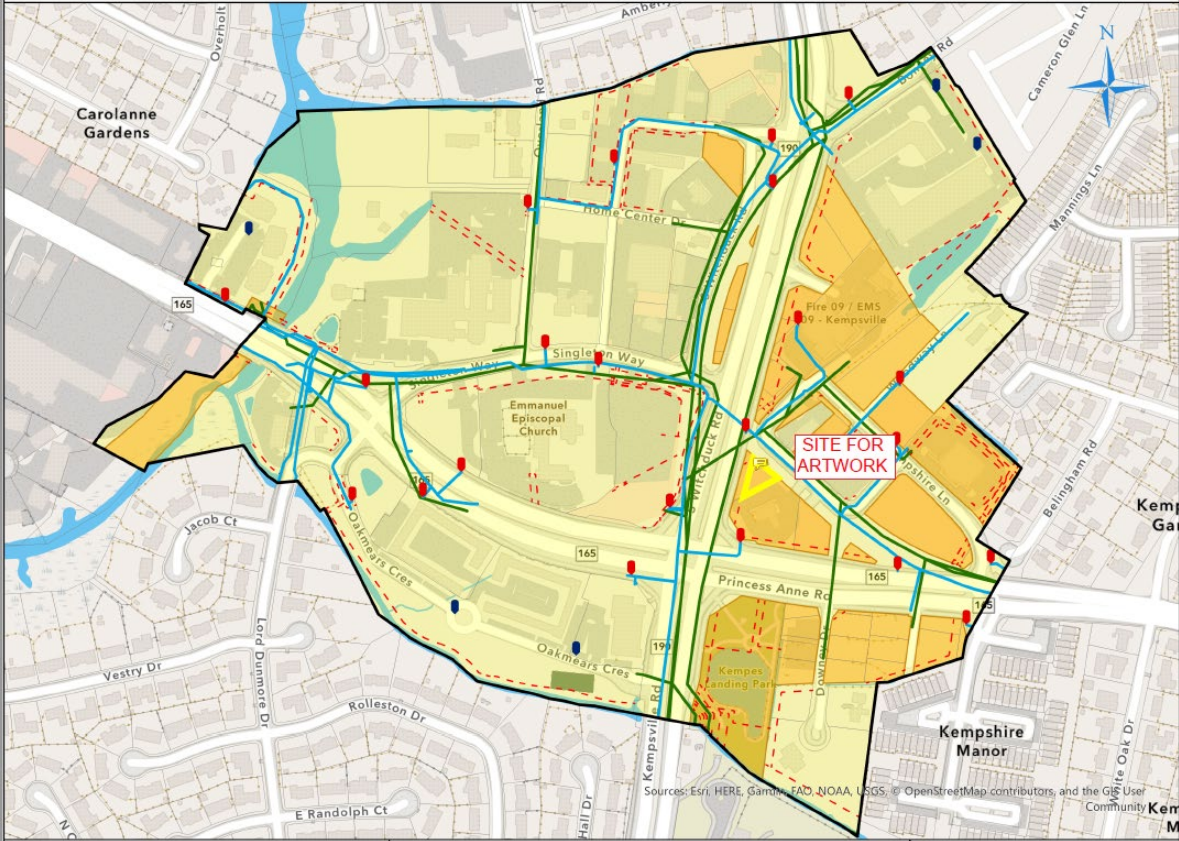
## Post-War Development

A 1941 account described Kempsville as "just a beautiful little country village, "but a larger new Kempsville High School (now the 757 Apartments) was already under construction, presaging a post-World War II population influx that would alter Kempsville permanently. Princess Anne became Virginia's fastest growing county by the early 1950s. In 1963 the county merged with Virginia Beach to form a large independent city.

With the Princess Anne/Witchduck intersection identified as the City's busiest, discussion began in the 1980s to address the "failed" traffic conditions. The present, realigned intersection, was complete by 2018. Pleasant Hall (ca. 1779), the Carraway House (ca.1735), and the Kempsville Baptist (organized in 1814) and Emanuel Episcopal (ca. 1843) churches remain as structural reminders of Kempsville's historical significance within the modern City of Virginia Beach.



# HISTORIC KEMPSVILLE



- HISTORIC KEMPSVILLE OVERLAY
- CITY PROPERTY
- PROPERTY EASEMENTS
- SEWER MAINLINE
- WATER MAINLINE
- PUBLIC FIRE HYDRANT
- PRIVATE FIRE HYDRANT



**CITY OF VIRGINIA BEACH**  
MAP CREATED BY  
PLANNING DEPARTMENT ON 2/14/2023

ANTICOLLUSION/NONDISCRIMINATION/DRUG-FREE WORKPLACE CLAUSE

**ANTICOLLUSION CLAUSE:**

IN THE PREPARATION AND SUBMISSION OF THIS BID, SAID OFFEROR DID NOT EITHER DIRECTLY OR INDIRECTLY ENTER INTO ANY COMBINATION OR ARRANGEMENT WITH ANY PERSON, FIRM OR CORPORATION, OR ENTER INTO ANY AGREEMENT, PARTICIPATE IN ANY COLLUSION, OR OTHERWISE TAKE ANY ACTION IN THE RESTRAINT OF FREE, COMPETITIVE BIDDING IN VIOLATION OF THE SHERMAN ACT (15 U.S.C. SECTION 1), SECTIONS 59.1-9.1 THROUGH 59.1-9.17 OR SECTIONS 59.1-68.8 THROUGH 59.1-68.8 OF THE CODE OF VIRGINIA.

THE UNDERSIGNED OFFEROR HEREBY CERTIFIES THAT THIS AGREEMENT, OR ANY CLAIMS RESULTING THERE FROM, IS NOT THE RESULT OF, OR AFFECTED BY, ANY ACT OF COLLUSION WITH, OR ANY ACT OF, ANOTHER PERSON OR PERSONS, FIRM OR CORPORATION ENGAGED IN THE SAME LINE OF BUSINESS OR COMMERCE; AND, THAT NO PERSON ACTING FOR, OR EMPLOYED BY, THE CITY OF VIRGINIA BEACH HAS AN INTEREST IN, OR IS CONCERNED WITH, THIS BID; AND, THAT NO PERSON OR PERSONS, FIRM OR CORPORATION OTHER THAN THE UNDERSIGNED, HAVE, OR ARE, INTERESTED IN THIS BID.

**DRUG-FREE WORKPLACE:**

DURING THE PERFORMANCE OF THIS CONTRACT, THE CONTRACTOR AGREES TO (I) PROVIDE A DRUG-FREE WORKPLACE FOR THE CONTRACTOR'S EMPLOYEES; (II) 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 CONTRACTOR'S WORKPLACE AND SPECIFYING THE ACTIONS THAT WILL BE TAKEN AGAINST EMPLOYEES FOR VIOLATIONS OF SUCH PROHIBITION; (III) STATE IN ALL SOLICITATIONS OR ADVERTISEMENTS FOR EMPLOYEES PLACED BY OR ON BEHALF OF THE CONTRACTOR THAT THE CONTRACTOR MAINTAINS A DRUG-FREE WORKPLACE; AND (IV) INCLUDE THE PROVISIONS OF THE FOREGOING SECTIONS I, II, AND III IN EVERY SUBCONTRACT OR PURCHASE ORDER OF OVER \$10,000, SO THAT THE PROVISIONS WILL BE BINDING UPON EACH SUBCONTRACTOR OR VENDOR.

FOR THE PURPOSE OF THIS SECTION, "DRUG-FREE WORKPLACE" MEANS A SITE FOR THE PERFORMANCE OR WORK DONE IN CONNECTION WITH A SPECIFIC CONTRACT AWARDED TO A CONTRACTOR IN ACCORDANCE WITH THIS CHAPTER, THE EMPLOYEES OF WHOM ARE PROHIBITED FROM ENGAGING IN THE UNLAWFUL MANUFACTURE, SALE, DISTRIBUTION, DISPENSATION, POSSESSION OR USE OF ANY CONTROLLED SUBSTANCE OR MARIJUANA DURING THE PERFORMANCE OF THE CONTRACT.

**NONDISCRIMINATION CLAUSE:**

1. EMPLOYMENT DISCRIMINATION BY OFFEROR SHALL BE PROHIBITED.
2. DURING THE PERFORMANCE OF THIS CONTRACT, THE SUCCESSFUL OFFEROR SHALL AGREE AS FOLLOWS:
  - A. THE OFFEROR, 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 OFFEROR. THE OFFEROR AGREES TO POST IN CONSPICUOUS PLACES, AVAILABLE TO EMPLOYEES AND APPLICANTS FOR EMPLOYMENT, NOTICES SETTING FORTH THE PROVISIONS OF THIS NONDISCRIMINATION CLAUSE.

- B. THE OFFEROR, IN ALL SOLICITATIONS OR ADVERTISEMENTS FOR EMPLOYEES PLACED ON BEHALF OF THE OFFEROR, WILL STATE THAT SUCH OFFEROR IS AN EQUAL OPPORTUNITY EMPLOYER.
- C. NOTICES, ADVERTISEMENTS, AND SOLICITATIONS PLACED IN ACCORDANCE WITH FEDERAL LAW, RULE OR REGULATION SHALL BE DEEMED SUFFICIENT FOR THE PURPOSE OF MEETING THE REQUIREMENTS OF THIS SECTION.
- D. OFFEROR WILL INCLUDE THE PROVISIONS OF THE FOREGOING SECTIONS A, B, AND C IN EVERY SUBCONTRACT OR PURCHASE ORDER OF OVER \$10,000, SO THAT THE PROVISIONS WILL BE BINDING UPON EACH SUBCONTRACTOR OR VENDOR.

**Name and Address of Offeror:**

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**Date:** \_\_\_\_\_

**By:** \_\_\_\_\_  
**Signature in Ink**

\_\_\_\_\_  
**Printed Name**

**E-mail Address:** \_\_\_\_\_

**Telephone Number:** (    ) \_\_\_\_\_

**Fax Phone Number:** (    ) \_\_\_\_\_

**FIN/SSN #:** \_\_\_\_\_

\_\_\_\_\_  
**Title**

If your firm a "minority" business:  Yes  No

If yes, please indicate the "minority" classification below:

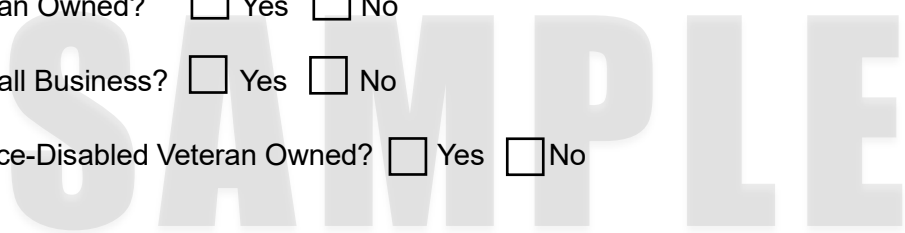
- African American     Hispanic American
- American Indian     Eskimo
- Asian American     Aleut

Other, Please Explain: \_\_\_\_\_

Is your firm Woman Owned?  Yes  No

Is your firm a Small Business?  Yes  No

Is your firm Service-Disabled Veteran Owned?  Yes  No



## ARTIST AGREEMENT

This Artist Agreement (“Agreement”) is made effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 2023 (“Effective Date”), between The City of Virginia Beach, a municipal corporation of the Commonwealth of Virginia (“City”) and \_\_\_\_\_, a principal place of business or residence located at \_\_\_\_\_ (“Artist”).

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. 3)

B. Termination with Cause/Default/Cancellation.

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

Unless otherwise provided, Artist shall have ten (10) days from the date such notice is mailed in which to cure the default. Upon failure of 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, Artist shall withdraw its 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 Artist shall be prohibited. During the performance of this Agreement, 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 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 Artist, will state that 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, Artist agrees as follows:

1. Artist will provide a drug-free workplace for 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 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 Artist that 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 its 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

The 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. The 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 selected Artist is not registered as a business, the application can be found at <https://www.vbgov.com/business/resources/Pages/business-forms.aspx>. Artist should include the application fee in their budget.

N. Independent Contractor.

The 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 it 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.

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 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 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 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.

The 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 Artist's remaining fully and unconditionally liable to the City for any breach of the terms of this Agreement by 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 Artist's transferee.

W. Termination without Cause.

The City may at any time, and for any reason, terminate this Agreement by written notice to 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 Artist by certified mail/return receipt requested at the address set forth in this Agreement. In the event of such termination, Artist shall be paid such amount as shall compensate Artist for the work satisfactorily completed, and accepted by the City, at the time of termination. If the City terminates this Agreement without cause, 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, 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 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, 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 Artist or those for whom Artist is legally liable. Upon written demand by the City, Artist shall assume and defend at 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 Artist's receipt of City's final acceptance ("Acceptance"). The City shall notify Artist in writing of its Acceptance of the Work within fifteen (15) days of receipt of 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 VI (A) herein.

The City shall, if it disagrees with 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 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:

Artist address as follows:

\_\_\_\_\_

\_\_\_\_\_

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 Artist encounters work and services not included in this Agreement or any

supplement thereto but which in the opinion of Artist is necessary for the successful completion of the Agreement and requires extra compensation, Artist shall, before it begins the work on which it bases its claim, promptly notify the City in writing of its intention to perform the work and to make claim for extra compensation. Notification by 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 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 Artist intends to claim the costs (other than attorney's fees) of preparing a claim for extra compensation, such costs incurred by 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 Artist, including, but not limited to those kept by 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 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 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.

The 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

The 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 catalogues 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, 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. For Agreements where the Artist is paid ten thousand dollars (\$10,000) or more, the Artist shall receive payment as follows:
    - i. 3% paid to Artist upon execution of the Agreement.
    - ii. 20% paid to Artist upon City's approval of design and stamped engineering.
    - iii. 30% paid to Artist upon City's receipt of proof of fabrication.
    - iv. 40% paid to Artist upon City's Acceptance of Work.
    - v. 7% paid to Artist for de-installation or repairs, or at the end of the contacted lifespan of the Work.
  - b. For Agreements where the Artist is paid up to or less than ten thousand dollars (\$10,000), the Artist shall receive payment as follows:
    - i. 40% paid to Artist upon execution of the Agreement.
    - ii. 60% paid to Artist upon City's receipt and Acceptance of Work.

**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 Artist, and that the Work and any other goods or services created or performed by 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.

The 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 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.

The 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 it 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

**SAMPLE**

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.

**CITY OF VIRGINIA BEACH**

**ARTIST**

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to Content:

Approved as to Legal Sufficiency:

\_\_\_\_\_  
Department of Cultural Affairs

\_\_\_\_\_  
Office of City Attorney

**SAMPLE**