



Attachment A to URFP # 21-10-35

**Sample Loan Agreement for Art in Elmwood
Temporary Art Exhibition 2021-2023**

THIS AGREEMENT # _____, dated _____, 2021, between the City of Roanoke, Virginia, hereinafter referred to as “City”, and _____ [Name and Address of Artist], hereinafter referred to as “Artist”.

RECITALS:

WHEREAS, the City desires to obtain the services of the **Artist** for providing art work on loan as specified;

WHEREAS, **Artist** has represented to the City that it is fully capable of performing the services described in this Agreement, and the City has relied on such representation to select Artist to perform these services; and

WHEREAS, **Artist** was selected by the City based on the Artist’s response to the City of Roanoke’s Call for Artist dated _____, 2020 (the “Call”) submitted in response to the Call for Artist, the terms of which are incorporated into this Agreement by reference.

That in consideration of the mutual covenants hereinafter set forth, the parties covenant and agree that the **Artist** shall deliver for display an outdoor temporary artwork, as defined below, in a professional manner, and shall give the best possible services, consultation and advice to the City during the performance of this Agreement. The parties further agree as follows:

ARTICLE I
THE SERVICE

- 1.1. **Services** – Delivery and Pickup of the artwork is the responsibility of the Artist. The exhibition dates are **May 17, 2021 through April 14, 2023**. As specified in the Loan Agreement, all artwork is to remain on exhibit for the duration of the exhibition. No work shall be removed at any time prior to the end date.
- 1.2. **Artwork Location** – The Artist shall provide artwork titled _____ at Elmwood Park and pickup of the artwork is the responsibility of the Artist. The City agrees to support installation per Article II, under 2.6. The Artist shall have 30 days after the end of the exhibition to pick up the artwork, or the artwork shall become property of the City, and all rights and permissions pursuant to Section 1.3 shall be deemed permanently granted to the City.

- 1.3. **Permissions** – The Artist shall grant permission to the City of Roanoke to use any acknowledgement material or credit material provided in any press release, catalogues, or any other written material pertaining to the exhibit and the objects under loan. The Artist shall grant permission to the City of Roanoke to use, reproduce, communicate, publish, publicly perform, publicly display, and distribute such artwork. The rights granted in this license are for the limited purpose of operating, promoting, and highlight the City's Percent for Art Program.
- 1.4. **Understanding of the Service** - The Artist understands the requirements of the City as they relate to the loan and agrees to supply all work necessary to satisfy the requirements of the City.
- 1.5. **Sale of Artwork** – It shall be the responsibility of the Artist to conduct the sale of the artwork with any respective Buyer.

ARTICLE II

CITY'S RESPONSIBILITIES

- 2.1 The City warrants the items on loan may be photographed for publicity or study; however, no object may be removed from its frame or mount without the explicit permission of the Artist.
- 2.2 No object shall be retouched, repaired or in any way altered.
- 2.3 The City reserves the right to exclude artwork with sexually explicit or graphic content. Such material may be exhibited or withdrawn from the exhibition at the sole discretion of the City.
- 2.4 The City will exercise all due and reasonable care with respect to any items in its custody and care.
- 2.5 The City shall immediately report any damage or injury to an object in its custody to the Artist.
- 2.6 The City shall provide, on an as needed basis, concrete pads, crane, front end loader or forklift to unload at installation and reload at de-installation of objects. The City will assume responsibility for any injuries to its employees or volunteers that may occur as a result of work performed with this project.
- 2.7 The City shall install signage for each object on loan.

ARTICLE III

TERM OF AGREEMENT

- 3.1 The term of this Agreement shall be for the period commencing on **May 17, 2021 through April 14, 2023**.

ARTICLE IV
PAYMENTS TO ARTIST

- 4.1 Costs and Limit on Compensation. Upon written approval by the City, the Artist may invoice the City on a lump sum basis. Compensation to the Artist shall not exceed _____, without a written amendment to this Agreement signed by the City's Representative, and the Purchasing Manager.

ARTICLE V
GENERAL PROVISIONS

- 5.1 Termination for any reason. This Agreement or a portion of this Agreement may be terminated by either party, with or without cause, upon ninety (90) days written notice to the other party, provided, however, that if any work is in progress but not completed as of the date of such termination, this Agreement may be extended by the City until such time the parties agree.
- 5.2 Indemnity. The Artist agrees and binds itself and its successors and assigns to indemnify, keep, and hold the City and its officers, employees, agents, and representatives free and harmless from any liability on account of any injury or damage of any type to any person or property growing out of or directly or indirectly resulting from any act or omission of the Artist on or near City's property or arising in any way out of or resulting from any of the work or items to be provided under this Agreement. In the event that any suit or proceeding shall be brought against the City or any of its officers, employees, agents, or representatives at law or in equity, either independently or jointly with the Artist on account of any injury or damage resulting from any act or omission of the Artist, the Artist, upon notice given to it by the City or any of its officers, employees, agents, or representatives, will pay all costs of defending the City or any of its officers, employees, agents, or representatives in any such action or other proceeding, if such suit or proceeding shall have been brought against the City as a result of acts or omissions of the Artist.

In the event of any settlement or any final judgment being awarded against the City or any of its officers, employees, agents, or representatives, either independently or jointly with the Artist, as a result of any act of omission of the Artist giving rise to such settlement or judgment then the Artist will pay such settlement or judgment, in full or will comply with such decree, pay all costs and expenses of whatsoever nature and hold the City or any of its officers, employees, agents, volunteers or representatives harmless therefrom.

- 5.3 Insurance. Artist shall be responsible for ALL liability insurance they deem necessary under this contract. The City is not liable under any circumstance.

- 5.4 Risk Of Loss. The Artist shall bear the risk of loss to the Work or any part thereof including any damages or loss from any cause of any type, loss, theft, mutilation, vandalism, or other damage, including those caused by acts of God, prior to the delivery of such artwork.
- 5.5 Non-Discrimination. During the performance of this Agreement, Artist agrees as follows:
- A. 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 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.
 - B. Artist in all solicitations or advertisements for employees placed by or on behalf of Artist will state that Artist 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.
- 5.6 Drug-free workplace: During the performance of this Agreement, the Artist shall: (i) provide a drug-free workplace for its 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 Artist'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 Artist, that the Artist maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over ten thousand dollars and no cents (\$10,000.00) so that the provisions will be binding upon each subcontractor or vendor. For the purpose of this section, a drug-free workplace means a site for the performance of work done in connection with this Agreement.
- 5.7 Licenses, Permits and Certificates. All licenses, permits and certificates required for and in connection with any and all parts of the service shall be secured by Artist entirely at its own expense.
- 5.8 Laws and Ordinances. Artist shall comply with the laws of the City or Roanoke, the Commonwealth of Virginia and the United States as they may apply. Artist shall also keep all necessary records as required by law or by the City.
- 5.9 Patents, Copyrights and Licenses. Royalties and fees for patents, licenses and copyrights covering software equipment, services, documents and work provided by Artist shall be included in the compensation provided in Article IV. Artist shall satisfy all demands that may be made at any time for such royalties or fees and it shall be liable for any damages

or claims for patent, copyright or license infringements directly arising from the work, documents, services or equipment provided by Artist. Artist shall, at its own cost and expense, defend all suits or proceedings that may be instituted against the City and hold the City harmless for infringement or alleged infringement of any patents, licenses or copyrights involved in the Program and, in case of an award of damages resulting from Artist's work, documents, services or equipment, Artist shall pay such award. Final payment to Artist by the City will not be made while any suit or claim under this section remains pending.

- 5.10 Confidential Matters. All documents and information created or obtained by Artist or its subcontractors pursuant to this Agreement, including but not limited to reports, notes, recommendations, statements, referrals, resumes, shall be treated by Artist and its subcontractors as strictly confidential. Artist agrees not to communicate or disclose, and agrees to prevent its subcontractors from communicating or disclosing, the aforesaid documents and information to a third party.
- 5.11 Modification. This Agreement shall not be modified, altered, or amended in any respect unless in writing and signed by the parties hereto.
- 5.12 Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be invalid or illegal, then such provision shall be deemed to be stricken herefrom, and this Agreement, as so modified shall remain in full force and effect.
- 5.13 Governing Law and Exclusive Venue. Artist and City agree that this Agreement shall be governed by, and construed in accordance with, the laws of the Commonwealth of Virginia, without application of Virginia's conflict of law provisions. Venue for any litigation, suits, and claims arising from or connected with this Agreement shall only be proper in the Roanoke City Circuit Court, or in the Roanoke City General District Court if the amount in controversy is within the jurisdictional limit of such court, and all parties to this Agreement voluntarily submit themselves to the jurisdiction and venue of such courts, regardless of the actual location of such parties. The provisions of this Agreement shall not be construed in favor of or against either party, but shall be construed according to their fair meaning as if both parties jointly prepared this Contract.
- 5.14 No Authority to Bind Other Party. Nothing in this Agreement will be construed as authority for either party to make commitments which will bind the other party beyond the provisions of this Agreement contained herein.
- 5.15 Titles and Headings. The titles, section headings and paragraph headings are inserted only for convenience and are in no way to be construed as a limitation of the scope of this Agreement.
- 5.16 Mailing of Notices and Statements. All written notices under this Agreement shall be sent to the parties at the following addresses:

To City: Douglas Jackson
Public Art Coordinator
117 Church Ave. S.W.
Roanoke, VA 24011

To the Artist: _____

All notices required or permitted under the Agreement shall be deemed to have been given to a party when deposited in the United States mail, properly stamped and addressed to the party at the party's address listed above, or, if United States Mail is not used when delivered to such party. A party may change its address for notice hereunder by giving written notice to the other party.

5.17 Entire Agreement. This Agreement contains all the terms and conditions agreed upon by the parties. No other prior agreements, oral or otherwise, regarding the subject matter of the Agreement or any part thereof shall have any validity or bind any of the parties. This Agreement supersedes all prior written or oral agreements or proposals between the parties.

Remainder of Page Intentionally left blank

IN WITNESS WHEREOF, the parties hereto have executed the same as of the day and year first hereinabove written:

[Name of Artist]

Printed Name and Title

[Name of Artist]

Printed Name and Title

CITY OF ROANOKE, VIRGINIA

Purchasing Manager

Approved as to form:

Assistant City Attorney

Approved as to Execution:

Assistant City Attorney

Appropriation and Funds Required for
this Contract Certified:

Director of Finance

Account # _____

Date _____