



January 12, 2022

RE: Unsealed Request for Proposal (URFP) No. 22-12-37 for Art on the Roanoke River Greenway in Southeast Roanoke

To Whom It May Concern:

The City of Roanoke is seeking artists to design and fabricate public art at one of two sites along the Roanoke River Greenway in Southeast Roanoke. **The City will review each proposal and may elect to issue separate awards to multiple Offerors for such goods/services.**

Specifically, the City of Roanoke is seeking to hire Artists or Artist Teams to create a specific design or a general concept for the project. Artists must be flexible about the final outcome of the project and willing to cooperate with the input of community members on the execution of the project.

Background Information:

The Roanoke Arts Commission's "Southeast Greenway Gateways Project" seeks to engage Artists or Artist Teams develop public art projects on the greenway at the ninth and thirteenth street bridges. This project is funded in part by a grant from the National Endowment for the Arts (NEA). Once an offeror is chosen, their proposal must be approved by the NEA in accordance with the National Historic Preservation Act.

Three meetings have been held with residents, including one meeting in which the neighbors of the nearby Southeast neighborhoods visited with students from a Roanoke College class on public art who studied the site and made recommendations on goals that could be achieved through the project. Information from those meetings can be located at <https://roanokearts.org/>. The top goals established by the participants are listed below.

The selected projects will create a low-maintenance solution that:

1. **Creates a welcoming gathering space** that discourages graffiti by activating the space and adding color to the concrete under the bridges, encouraging stewardship of the greenway and the site.
2. **Engages viewers with the history, character, and future of Southeast Roanoke**, from honoring the indigenous people who first used the river and lived

on the land to welcoming new residents to the neighborhood and introducing greenway users to Southeast Roanoke. Specific themes that might be drawn upon and communicated in responses:

- a. The natural history of the site.
 - b. The Tutelo / Monacan people who first used the site.
 - c. The role of the Roanoke River in settlement.
 - d. Industrial history of the neighborhood including the railroad, the textile industry, and the workers who lived in the neighborhood and worked in the industries.
 - e. The transition from large family farm plantations.
 - f. The dynamic and resilient nature of the greenway and the community.
 - g. The diverse and energetic neighborhood today.
 - h. The welcoming sense of the neighborhood in attracting current and future residents and investment.
 - i. The (13th Street) site as the first fully accessible boat launch and river access point in the community.
3. **Engages the community in the process of art.** Some ways viewers and neighbors might be involved.
- a. Creation
 - b. Appreciation
 - c. Interaction with art through the senses: sight, sound, touch, etc...
 - d. Can viewers add to it?
 - e. Does it inspire the telling of more individual stories?
 - f. Does it create connections across people?
 - g. Does it evoke joy, happiness and a sense of belonging?

All goals and meeting notes can be viewed at artinroanoke.org.

Qualification

The project is open to all artists and artist teams. Student or youth involvement will be considered, if led by an adult. All applicants, regardless of race, age, sex, religion, nationality, origin, or disability will be considered. The City encourages Small, Women-owned, and Minority-owned business to submit a response to this URFP.

Scope of Services:

A description and/or listing of the services and/or items that the Successful Offeror (the term “Successful Offeror” includes all Offerors to whom an award may be made) will be required to provide to the City under this URFP are those that are set forth in this URFP and/or below and/or referred to in any way in the sample Contract.

Offeror should carefully read and review all such items and should address such items in its proposal. However, the final description of the services and/or items to be provided to the City under this URFP is subject to negotiations with the successful Offeror(s), and

final approval by the City.

A. Artist Responsibilities:

1. The Successful Offeror should furnish all equipment, materials, goods, labor and services necessary to design, fabricate and install public art.
2. The Successful Offeror is responsible for any liability insurance the City deems necessary for this project. The City is not liable under any circumstances.
3. The project should be completed in a timely manner. Work should be completed no later than November 15, 2022.
4. The artwork must use durable materials suitable for outside elements and change in temperature and as impervious to vandalism as possible.
5. The artwork shall require little or no maintenance.

B. City Responsibilities:

1. The City will provide, where possible, equipment needs such as ladders, safety cones and vests as well as arrange access to the site.
2. The City will power wash areas of the bridge as necessary before the installation of the artwork.
3. The City will handle marketing and public relations for this project including planning a dedication and/or celebration at the conclusion of the project.
4. The City will help facilitate further participation with the community if desired.

C. Proposed Timeline (Subject to Change):

1. Responses due by 2 PM, Tuesday, February 22, 2022
2. Roanoke Arts Commission votes on proposals on March 22, 2022
3. Artists notified by March 29, 2022
4. Successful Offeror(s) shall complete work by November 15, 2022

Note: The National Endowment for the Arts (NEA) requires that all project proposals be reviewed as required by the National Historic Preservation Act, which could extend the timeline. The City of Roanoke will be responsible for this review.

Budget: This project is funded in part by a grant from the National Endowment for the Arts, which is being matched by the City of Roanoke for a total of \$20,000. An individual project can be in the range of \$500 to \$20,000 and each artist or team may submit up to three projects per one proposal. One proposal per offeror may be accepted with the total of all projects not to exceed \$20,000. **Projects over \$10,000 require a signed contract.**

URFP Submittals:

Offeror should submit proposal(s); one (1) original, marked as such and one (1) redacted copy, marked as such.

Each Offeror should carefully read and review all such items and should address such items in its proposal. However, the final description of the services and/or items to be

provided to the City under this URFP is subject to negotiations with the successful Offeror(s), and final approval by the City.

Each proposal, at a minimum, should include the following:

- A. Statement of interest, which describes Offeror's vision for this project and how Offeror's plan will involve the community in the design and/or execution of the project. The statement should also describe how the proposal responds to the goals developed in the public forums.
- B. Contact information for two professional references for which the Offeror has done design or art work in the last five years.
- C. A rough sketch or a plan for developing the design with community assistance. The Offeror's proposed design(s) shall be in the colors the Offeror plans to use. The sketch shall be detailed enough that the committee can get an idea of the artwork.
- D. Experience and Capacity: Describe background and related experience demonstrating ability to provide related services and provide a descriptive list of related experience in working with diverse communities and neighborhood scale projects.
- E. A current résumé with contact information, including a web site if applicable.
- F. A budget to include the following costs: artist design and project management fee, fabrication and installation costs.

The City may also request additional information, clarification, or presentations from any of the Offerors.

This URFP includes the following Attachments:

- A. Attachment A – Signature Page
- B. Attachment B – Sample Contract

The Successful Offeror selected for this work will be required to sign a Contract similar to Attachment B, subject to any changes that may be authorized by mutual agreement of the parties. Please review the document carefully. Any conditions to the Contract shall be provided in Offeror's response.

The City reserves the right to immediately terminate any Contract, with or without cause, upon written notice to the Successful Offeror(s). In the event of such termination, the Successful Offeror(s) will be compensated for services rendered through the date of termination at the rate agreed to and set out in the Contract between the parties.

All responses to this Unsealed Request for Proposal (URFP) shall be electronically submitted on or before 2:00 p.m. on February 22, 2022 to purchase@roanokeva.gov.

Delivery Alert: Due to measures the City of Roanoke is taking in response to COVID-19, the Noel C. Taylor Municipal Building is closed to the public with essential services still available to citizens. Offerors must submit their proposal via email to purchase@roanokeva.gov by the due date and time. Emails received after the due date and time will not be considered. The email must include the RFP number and title in the subject line with the Company name. The email must include two (2) digital copies of the proposal with RFP Number, Title, and name of Company on each with one named 'original', and one named 'redacted'. The redacted version should be void of all confidential and proprietary material. All other references to delivery methods in this solicitation are not valid.

Proposals received after the specified date and time may not be accepted. Faxed proposals are not acceptable.

Each Offeror who is a stock or Nonstock Corporation, Limited Liability Company, business trust, or a limited partnership or other business entity shall be authorized to transact business in the Commonwealth of Virginia as a domestic or foreign business entity if required by law. Each such Offeror shall include in its proposal response the Identification Number issued to it by the Virginia State Corporation Commission (SCC) and should list its business entity name as it is listed with the SCC. Any Offeror that is not required to be authorized to transact business in the Commonwealth as a domestic or foreign business entity as required by law shall include in its proposal response a statement describing why the Offeror is not required to be so authorized. (See VA Code Section 2.2-4311.2).

The City reserves the right to reject any or all proposals, to cancel this URFP, to waive any informalities in any proposal, to award any whole or part of a proposal, and to award to multiple Offerors whose proposal is, at the sole discretion of the City of Roanoke, determined to be in the best interest of the City.

Evaluation Criteria.

Offerors will be evaluated for selection on the basis of those most qualified to meet the requirements of this URFP. The City of Roanoke will use a weighted scoring system when evaluating selection criteria. Major criteria to be considered in the evaluation may include, but shall not necessarily be limited to the items referred to above and those set forth below:

- A. Experience: The background, education, and experience of the Offeror in providing similar services or items elsewhere, including the level of experience in working with municipalities and the quality of services performed or items supplied. **35 points**
- B. Cost/Fee: Reasonableness/competitiveness of proposed fee and/or benefits to the City, although the City is not bound to select the Offeror who proposes the lowest

fees or most benefits for services. The City reserves the right to negotiate fees and/or benefits to the City with the selected Offeror(s). **20 points.**

- C. Compliance: The Offeror's responsiveness and compliance with the RFP requirements and conditions. Determination that the selected Offeror has no contractual relationships which would result in a conflict of interest with the City's contract. Offeror's willingness to accept the City's sample contract. **10 points**
- D. Approach and Methodology to Meet Need: The Offeror's ability, capacity, and skill to fully and satisfactorily provide the services and/or items required in this URFP. The quality of Offeror's performance in comparable and/or similar projects. Whether the Offeror can provide the services and/or deliver the items in a prompt and timely manner. **35 points.**

Selection Process

All proposals submitted in response to this URFP will be reviewed by the Purchasing Division or its designee for responsiveness prior to referral to a selection committee or person. A committee consisting of City personnel and/or others and/or an appropriate individual will then evaluate and score all responsive proposals, conduct the negotiations, and make recommendations for award to the City Manager, or the City Manager's designee, as appropriate. The award of a contract, if made, will be made to the Offeror whose proposal best furthers the interest of the City, as determined by the City Manager, or the City Manager's designee. The City reserves the right to reject any and all proposals, to waive any informality or irregularity in the proposals received, and to make the award to the Offeror whose proposal is deemed to be in the best interest of the City.

Proposal evaluation and award will be accomplished in accordance with this Request for Unsealed Proposals and Sections 23.2-1, et. seq. of the Code of the City of Roanoke, Virginia. General and/or technical questions regarding the Scope of Services and/or items required or procurement questions under this RFUP may be directed to nicholas.sloane@roanokeva.gov.

Sincerely,

Nicholas Sloane
Buyer

**ATTACHMENT A TO URFP NO. 22-12-37
CITY OF ROANOKE, VIRGINIA
FOR ROANOKE RIVER GREENWAY ART**

RFP No. 22-12-37
Commodity Code: 05000, 05200

Issued By: **City of Roanoke**
Purchasing Division
Nicholas Sloane, Buyer
Noel C. Taylor Municipal Building
215 Church Ave., SW, Room 202
Roanoke, VA 24011-1517
Phone: (540) 853-1574
Email: nicholas.sloane@roanokeva.gov

This section must be completed by the Offeror and this Attachment A must be submitted with the proposal. In compliance with this unsealed request for proposal and subject to all terms and conditions imposed herein, which are hereby incorporated herein by reference, the undersigned offers and agrees to furnish the services and/or items requested in this solicitation if the undersigned is selected as the Successful Offeror.

Organization Type (Check one)

Corporation		Partnership	
Sole Proprietor (individually owned)		Other (Describe)	

Conflict of Interest

_____ Offeror, owner, officer, employees, agents and immediate family members are not now, or have not been in the past year, an employee of the City of Roanoke or has not responsibility or authority with the City that might affect the procurement transaction or any claim resulting therefrom.

Or

State below the complete name and phone number or email address of each person and their connection to the City of Roanoke. Each Offeror is advised that the Ethics in Public Contracting and Conflict of Interests Act of the Virginia Code apply to this RFP, as set forth in Section 4 (L).

Name	Email and or Phone #

Convictions and Debarment

Each Offeror is to state whether or not any of Offeror’s owners, officers, employees, or agents, or their immediate family members, is currently, or has been in the past year, an employee of the City of Roanoke or has any responsibility or authority with the City that might affect the procurement transaction or any claim resulting therefrom. If so, please state the complete name and address of each such person and their connection to the City of Roanoke. Each Offeror is advised that the Ethics in Public Contracting and Conflict of Interests Act of the Virginia Code apply to this RFP, as set forth in Section 4.

If you answer yes to any of the following, state on **a separate attachment to firms proposal** the person or entity against whom the conviction or debarment was entered, give the location and date of the conviction or debarment, describe the project involved, and explain the circumstances relating to the conviction or debarment, including the names, addresses and phone numbers of persons who might be contacted for additional information.

1. In the last ten years, has your organization or any officer, director, partner, owner, project manager, procurement manager or chief financial officer of your organization:
 - a. ever been found guilty on charges relating to conflicts of interest?
Yes ___ No ___

2.
 - a. Is your organization or any officer, director, partner or owner currently debarred or enjoined from doing federal, state or local government work for any reason?
Yes ___ No ___

 - b. Has your organization or any officer, director, partner or owner ever been debarred or enjoined from doing federal, state or local government work for any reason?
Yes ___ No ___

Compliance

Has your organization, within the last five (5) years been terminated on a contract for cause?

Yes ___ NO _____

If you answered yes to the above, **on a separate attachment to firm proposal**, give the date or termination order, or payment, describe the project involved, and explain the circumstances relating to termination. Include the name, email address and phone numbers of person who might be contacted for additional information.

Confidential & Proprietary Information

Identify the page number and section of any information in your proposal that has been identified as confidential, proprietary or a trade secret (see Section 4(A) of the RFP.

Page No.	Section of Proposal	Description of Confidential/Proprietary Information

Acknowledge each addendum received (if applicable)

<u>Addendum Number</u>	<u>Issue Date</u>
<u>1</u>	
<u>2</u>	
<u>3</u>	

Legal Name and Address of Firm (according to your registration with the SCC): REQUIRED

_____ Date: _____

_____ By: _____
(Signature in Ink)

_____ Name: _____
(Please Print)

_____ Zip: _____ Title: _____

Phone: _____ FAX: _____

Email: _____ Business License# _____

Virginia State Corporation Commission Identification Number: _____

- A. The City agrees to pay the Artist for the Artist's complete and satisfactory performance of the Work, in the manner and as set forth in this Contract, the total amount of _____ (\$_____). This Contract amount may be increased or decreased by additions and/or reductions in the Work as may be authorized, directed, and approved by the City and the Contract amount may be decreased by the City's assessment of any damages against the Artist, as may be provided for in this Contract or by law, and the City retains the right of setoff as to any amounts of money the Artist may owe the City.
- B. The total amount of _____ Dollars (\$_____) to be paid to the Artist shall be paid in two equal installments, after receipt of an invoice from Artist, as follows:
- (1) \$_____ within ten (10) business days after full execution of this Contract.
 - (2) \$_____ upon proper and timely completion of Work. Payment of such amount will be due to Artist within ten (10) business days after the City's Project Manager confirms completion of all the Work.
- C. A written progress report may be requested by the City prior to any payment to the Artist and, if so, such progress report shall detail the work completed, identity of any problems with the progress of the Work, and the remaining Work to be done. Also, sufficient documentation of all costs, expenses, materials supplied, or time worked by the Artist may be requested by the City, and if so, may be required prior to processing any payment to the Artist. Payment will only be made by the City for work actually performed, services actually supplied, and materials or goods furnished to the City in accordance with the terms of this Contract, and all of which need to be approved and accepted by the City prior to such payment, except for the advance payments as noted above. Provided, however, the initial advance payment mentioned in Section 5 (B) above will be made as set forth therein.

SECTION 6. TIME OF PERFORMANCE.

The Artist shall provide a written schedule for the various phases or stages of the Work to be done on _____. Such schedule shall be subject to the approval of the City, such approval not to be unreasonably withheld. Furthermore, such schedule shall provide that such Work be completed, approved, and accepted by the City on or before _____. The Artist further agrees that the Work shall be performed promptly and shall be prosecuted regularly, diligently, and uninterruptedly at a rate of progress that will ensure full completion thereof in the shortest length of time consistent with the terms of this Contract and the Artist will cooperate and coordinate with other City contractors, employees, or representatives doing other work or using the area where the Artist may be working. Provided, however, any delays resulting from the City's failure to provide timely responses to questions from the Artist will not be the responsibility of the Artist.

SECTION 7. 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 acceptance of such _____ by the City.

SECTION 8. OWNERSHIP OF WORK CREATED FOR THE CITY.

- A. Artist represents and warrants that upon creation of the Work or any part thereof, the Artist will be the sole owner of all intellectual property rights in and to such Work and will hold the complete and undivided copyright interest in and to such Work. In order to transfer joint ownership to the City of such rights, Artist does hereby sell, assign, and transfer to the City, and further agrees to assign and transfer to the City, and the City's successors and assigns, a joint ownership interest in and to the Artist's entire right, title, and interest in and to all such intellectual property rights in and to such Work, including the copyright in and to such Work, and any registrations and copyright applications relating thereto and any renewal and extensions thereof. Artist agrees to and shall take any action and execute all documents and perform such other proper acts as the City may deem necessary to secure for the City, or its designee, all of the joint ownership rights herein transferred. Such transfer of rights shall be effective upon the City's approval of or acceptance of the Work or any part thereof, whichever occurs first.
- B. Artist agrees that upon transfer of such joint ownership rights, title, and interest in and to the Work or any part thereof to the City, the City shall be the joint owner, along with the Artist, of all rights of any type, intellectual or otherwise, in and to such Work, including, but not limited to, copyrights and trademarks related to such Work. The City may make photographs or copies thereof, distribute, publicly display, sell, license, and use the Work, or any part thereof, and all of such items as the City deems appropriate, without restriction or limitation on their use and without any cost or additional charges of any type to the City from the Artist. Furthermore, none of the parties shall owe any of the other parties to this Contract any royalty or other payments of any type for such party's use, sale, license, or other use of any of the intellectual property rights referred to in this Section 8. The Artist acknowledges that the Fee provisions in Section 5 of this Contract include compensation to the Artist for the matters set forth in this Section 8.
- C. The City will place appropriate signage, as reasonably approved by all parties, on such art giving credit to the Artist.
- D. All materials and work covered by this Contract, i.e. properly completed and accepted art, shall become the property of the City upon final acceptance and approval by the City of the properly completed Work. This provision shall not relieve the Artist from the responsibility for all materials, workmanship, and design and to repair all damaged Work during the one-year warranty period. The Artist warrants that the Artist has good title to all materials, equipment, and supplies which the Artist uses in the Work or for which the Artist accepts payment in whole or in part.
- E. The City hereby agrees that the Artist shall be the joint owners of the intellectual property rights set forth above and that the City shall be the sole owner of the art when such items are transferred to the City pursuant to the terms of this Contract.

SECTION 9. PAYMENTS TO OTHERS BY ARTIST.

The Artist agrees that Artist will comply with the requirements of Section 2.2-4354 of the Code of Virginia (1950), as amended, regarding Artist's payment to other entities and the Artist will take one of the two actions permitted therein within seven (7) days after receipt of amounts paid to Artist by the City. Artist further agrees that the Artist shall indemnify and hold the City harmless for any lawful claims resulting from the failure of the Artist to make prompt payments to all persons supplying the Artist equipment, labor, tools, or material in connection with the work provided for in the Contract. In the event of such

claims, the City may, in the City's sole discretion, after providing written notice to the Artist, withhold from any payment request or final payment the unpaid sum of money deemed sufficient to pay all appropriate claims and associated costs in connection with the Contract and make such payment, if the City determines it to be appropriate to do so.

SECTION 10. HOLD HARMLESS AND INDEMNITY.

Artist shall indemnify and hold harmless the City and their officers, agents, and employees against any and all liability, losses, damages, claims, causes of action, suits of any nature, costs, and expenses, including reasonable attorney's fees, resulting from or arising out of Artist's or its employees, agents, or subcontractors actions, activities, or omissions, negligent or otherwise, on or near City's property or the area where the Work is performed or arising in any way out of or resulting from any of the work or items to be provided under this Contract, and this includes, without limitation, any fines or penalties, violations of federal, state, or local laws or regulations, personal injury, wrongful death, or property damage claims or suits. Artist agrees to and shall protect, indemnify, and hold harmless all the parties referred to above from any and all demands for fees, claims, suits, actions, causes of action, settlement or judgments based on the alleged or actual infringement or violation of any copyright, trademark, patent, invention, article, arrangement, or other apparatus that may be used in the performance of this Contract.

SECTION 11. COMPLIANCE WITH LAWS, REGULATIONS, AND IMMIGRATION LAW.

Artist agrees to and shall comply with all applicable federal, state, and local laws, ordinances, and regulations, including all applicable licensing requirements. Artist further agrees that Artist does not, and shall not during the performance of this Contract, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

SECTION 12. INDEPENDENT CONTRACTOR.

The relationship between Artist and the City is a contractual relationship. It is not intended in any way to create a legal agency or employment relationship. Artist shall, at all times, maintain its status as an independent contractor and both parties acknowledge that neither is an agent, partner, or employee of the other for any purpose. Artist shall be responsible for causing all required insurance, workers' compensation and unemployment insurance to be provided for all of its employees and subcontractors. Artist will be responsible for all actions of any of its subcontractors, and that they are properly licensed.

SECTION 13. REPORTS, RECORDS, AND AUDIT.

Artist agrees to maintain all books, records and other documents relating to this Contract for a period of five (5) years after the end of each fiscal year included in this Contract. The City, their authorized employees, agents, representatives, and/or state auditors shall have full access to and the right to examine, copy, and/or audit any of such materials during the term of the Contract and during such retention period, upon prior written notice to Artist.

SECTION 14. INSURANCE REQUIREMENTS.

Artist and any of its subcontractors involved in this Contract shall maintain the insurance coverages set forth in Exhibit B to this Contract and provide the proof of such insurance coverage as called for in Exhibit B, including workers' compensation coverage. Such insurance coverage shall be obtained at the Artist's

sole expense and maintained during the life of the Contract and shall be effective prior to the beginning of any work or other performance by the Artist or others under this Contract. Additional insured endorsements, if required, must be received by the City within 30 days of the execution of this Contract or as otherwise required by the City's Risk Manager.

SECTION 15. DEFAULT.

If Artist fails or refuses to perform any of the terms of this Contract, including poor services, work or materials, the City may, by written notice to Artist, terminate this Contract in whole or in part. In addition to any right to terminate, the City may enforce any remedy available at law or in equity in connection with such default, and Artist shall be liable for any damages to the City resulting from Artist's default. The City further reserves the right to immediately obtain such work or services from other entities in the event of Artist's default.

SECTION 16. NONWAIVER.

Artist agrees that the City's waiver or failure to enforce or require performance of any term or condition of this Contract or the City's waiver of any particular breach of this Contract by the Artist extends to that instance only. Such waiver or failure is not and shall not be a waiver of any of the terms or conditions of this Contract or a waiver of any other breaches of the Contract by the Artist and does not bar the City from requiring the Artist to comply with all the terms and conditions of the Contract and does not bar the City from asserting any and all rights and/or remedies it has or might have against the Artist under this Contract or by law.

SECTION 17. FORUM SELECTION AND CHOICE OF LAW.

By virtue of entering into this Contract, Artist submits itself to a court of competent jurisdiction in the City of Roanoke, Virginia, and further agrees that this Contract is controlled by the laws of the Commonwealth of Virginia and that all claims, disputes, and other matters shall only be decided by such court according to the laws of the Commonwealth of Virginia.

SECTION 18. SEVERABILITY.

If any provision of this Contract, or the application of any provision hereof to a particular entity or circumstance, shall be held to be invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of this Contract shall not be affected and all other terms and conditions of this Contract shall be valid and enforceable to the fullest extent permitted by law.

SECTION 19. NONDISCRIMINATION.

A. During the performance of this Contract, Artist agrees as follows:

- (i) Artist will not discriminate against any employee or applicant for employment because of race, religion, color, sex, sexual orientation, gender identity, 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.

- (ii) Artist in all solicitations or advertisements for employees placed by or on behalf of Artist will state that Artist is an equal opportunity employer.
- (iii) 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.

B. Artist will include the provisions of the foregoing Section A (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.

SECTION 20. DRUG-FREE WORKPLACE.

- A. During the performance of this Contract, Artist agrees to (i) provide a drug-free workplace for Artist'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 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 Artist that Artist maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
- B. For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to an Artist, 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.

SECTION 21. FAITH BASED ORGANIZATIONS.

Pursuant to Virginia Code Section 2.2-4343.1, be advised that the City do not discriminate against faith-based organizations.

SECTION 22. ASSIGNMENT.

Artist may not assign or transfer this Contract in whole or in part except with the prior written consent of the City, which consent shall not be unreasonably withheld. If consent to assign is given, no such assignment shall in any way release or relieve the Artist from any of the covenants or undertakings contained in this Contract and the Artist shall remain liable for the Contract during the entire term thereof.

SECTION 23. CONTRACTUAL DISPUTES.

Contractual claims, whether for money or for other relief, shall be submitted, in writing, no later than sixty (60) days after the earlier of the final payment or termination of the Contract or notice from the City to

the Artist that the City disputes the amount of Artist's request for final payment. However, written notice of the Artist's intention to file such claim must be given at the time of the occurrence or beginning of the work upon which the claim is based. Such notice is a condition precedent to the assertion of any such claim by the Artist. A written decision upon any such claims will be made by the City Manager or the City Manager's designee (hereafter City Manager) within thirty (30) days after submittal of the claim and any practically available additional supporting evidence required by the City Manager. The Artist may not institute legal action prior to receipt of the City's decision on the claim unless the City Manager fails to render such decision within 120 days from submittal of Artist's claim. The decision of the City Manager shall be final and conclusive unless the Artist within six (6) months of the date of the final decision on a claim or from expiration of the 120 day time limit, whichever occurs first, initiates legal action as provided in Section 2.2 - 4364, of the Va. Code. Failure of the City to render a decision within said 120 days shall not result in the Artist being awarded the relief claimed nor shall it result in any other relief or penalty. The sole result of the City's failure to render a decision within said 120 days shall be Artist's right to immediately institute legal action. No administrative appeals procedure pursuant to Section 2.2 - 4365 of the Va. Code has been established for contractual claims under this Contract.

SECTION 24. SUCCESSORS AND ASSIGNS.

The terms, conditions, provisions, and undertakings of this Contract shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors and assigns.

SECTION 25. HEADINGS.

The captions and headings in this Contract are for convenience and reference purposes only and shall not affect in any way the meaning and interpretation of this Contract.

SECTION 26. COUNTERPART COPIES.

This Contract may be executed in any number of counterpart copies, each of which shall be deemed an original, but all of which together shall constitute a single instrument.

SECTION 27. AUTHORITY TO SIGN.

The persons who have executed this Contract represent and warrant that they are duly authorized to execute this Contract on behalf of the party for whom they are signing.

SECTION 28. NOTICES.

All notices must be given in writing and shall be validly given if sent by certified mail, return receipt requested, or by a nationally recognized overnight courier, with a receipt, addressed as follows (or any other address that the party to be notified may have designated to the sender by like notice):

To City: City of Roanoke
Attn: Arts and Culture Coordinator
117 Church Avenue, S.W.
Roanoke, Virginia 24011
Facsimile: (540) 853-1138

Copy to: City of Roanoke
Purchasing Division
Attn: Purchasing Manager
202 Noel C. Taylor Municipal Building
215 Church Avenue, S.W.
Roanoke, Virginia 24011
Facsimile: (540) 853-1513

To Artist:

Email:
Phone:

Notices shall be deemed to be effective one day after sending if sent by overnight courier or three (3) days after sending it by certified mail, return receipt requested.

SECTION 29. PROTECTING PERSONS AND PROPERTY.

The Artist expressly undertakes, both directly and through its subcontractors, until acceptance of the art by the City, to take every reasonable precaution at all times for the protection of all persons and property at the location of the Work or in the vicinity of the Work or that may be affected by the Artist's operation in connection with the Work. The Artist will maintain adequate protection of all Artist's Work to prevent damage to it and shall protect the City's property from any injury or loss arising in connection with this Contract and during the installation of the art to protect adjacent property to prevent any damage to it or loss of use and enjoyment by its owners. Artist agrees to be responsible for the entire Work and will be liable for all damages to the Work, including, but not limited to, damages to any property of the City or to any property at the location of the Work or in the vicinity or adjacent to the Work. All damage with respect to the Work caused by weather or any other cause, other than resulting from the sole negligence of the City shall be the responsibility of the Artist. Furthermore, any damage to concrete curbs, gutters, sidewalks, or any existing facility, whether owned by the City, or others that may occur during the Work shall be repaired or replaced by the Artist, at Artist's sole expense, as directed by and to the satisfaction of the City.

SECTION 30. WARRANTY OF MATERIAL AND WORKMANSHIP.

For a period of one year after the acceptance of the work by the City, the Artist warrants that, unless otherwise specified, all material and equipment used in the Work under this Contract shall be new, in first class condition, and in accordance with the Contract. The Artist further warrants that all workmanship shall be of the highest quality in accordance with the Contract and shall be performed by persons qualified in their respective trades. This warranty of material and workmanship is separate and independent from and in addition to any of the Artist's other guarantees or obligations under this Contract, or that may arise by law. Artist agrees that Artist shall repair or replace, at Artist's sole expense, and to the satisfaction of the City, any work, material, equipment, or part of the Work that is found by the City to be defective or not in accordance with the terms of this Contract.

SECTION 31. SUSPENSION OR TERMINATION OF CONTRACT BY CITY.

- A. The City, at any time, may order Artist to immediately stop work on this Contract, and/or by seven days written notice may terminate this Contract, with or without cause, in whole or in part, at any time. Upon receipt of such notice, the Artist shall immediately discontinue all services affected (unless the notice directs otherwise), and deliver to the City all data (including electronic data), drawings, specifications, reports, project deliverables, estimates, summaries, and such other information and materials as may have been accumulated by the Artist in performing this Contract whether completed or in process (unless otherwise directed by the notice).
- (1) If the termination or stop work order is due to the failure of the Artist to fulfill any of its Contract obligations, the City may take over the Work and prosecute the same to completion by contract or otherwise. In such case, the Artist shall be liable to the City for any damages allowed by law, and upon demand of City shall promptly pay the same to City.
 - (2) Should this Contract be terminated or work is stopped not due in any way to the fault of the Artist, the Artist shall only be entitled to compensation for services actually performed and materials actually supplied prior to notice of termination or to stop work and which are approved by the City and any applicable federal or state approving agency. No profit, overhead, or any other costs of any type are allowed after the date of such notice of termination or stop work order.
 - (3) The rights and remedies of the City provided in this Section are in addition to any other rights and remedies provided by law or under this Contract and City may pursue any and all such rights and remedies against Artist as it deems appropriate.

SECTION 32. ETHICS IN PUBLIC CONTRACTING.

The provisions, requirements, and prohibitions as contained in Sections 2.2-4367 through 2.2-4377, of the Va. Code, pertaining to bidders, offerors, contractors, and subcontractors are applicable to this Contract.

SECTION 33. CONTRACT SUBJECT TO FUNDING.

This Contract is or may be subject to funding and/or appropriations from federal, state, and/or local governments and/or agencies and/or from the Council of the City of Roanoke. If any such funding is not provided, withdrawn, or otherwise not made available for this Contract, the Artist agrees that the City may terminate this Contract on 7 days written notice to Artist, without any penalty or damages being incurred by the City. Artist further agrees to comply with any applicable requirements of any grants and/or agreements providing for such funding.

SECTION 34. ENTIRE CONTRACT.

This Contract constitutes the complete understanding between the parties. This Contract may be modified only by written agreement properly executed by the parties.

SIGNATURE PAGE TO FOLLOW.

IN WITNESS WHEREOF, the parties hereto have signed this Contract by their authorized representatives.

CITY OF ROANOKE, VIRGINIA

ARTIST

City Manager or Authorized City Representative

Printed Name and Title

Printed Name and Title

Date _____

Date _____

Approved as to form:

Appropriation and Funds Required
for this Contract Certified:

Assistant City Attorney

Director of Finance

Date _____

Date _____

Approved as to Execution:

Account # _____

Assistant City Attorney

Date _____

_____ Approved COI Received

**EXHIBIT 1
TO CONTRACT
BETWEEN CITY OF ROANOKE AND**

FOR: ROANOKE RIVER GREENWAY ART

SAMPLE CONSULTANT'S INSURANCE REQUIREMENTS

The Consultant shall comply with the insurance requirements set forth in the Contract, including the items set forth below:

- A. Neither the Consultant nor any subconsultants shall commence work under this Contract until the Consultant has obtained and provided proof of the required insurance coverages to the City, and such proof has been approved by the City. The Consultant confirms to the City that all subconsultants have provided Consultant with proof of such insurance, or will do so prior to commencing any work under this Contract.

- B. Consultant, including all subconsultants, shall, at its and/or their sole expense, obtain and maintain during the life of this Contract the insurance policies and/or coverages required by this section. The City and its officers, employees, agents, assigns, and volunteers shall be added as an additional insured to the general liability and automobile coverages of any such policies and such insurance coverages shall be primary and noncontributory to any insurance and/or self insurance such additional insureds may have. The Consultant shall immediately notify in writing the City of any changes, modifications, and/or termination of any insurance coverages and/or policies required by this Contract. The Consultant shall provide to the City with the signed Contract an Accord certificate of insurance along with one of the following types of additional insured endorsements:
 - (1) ISO endorsement CG 20 33 which provides that the insured status of such entities is automatic if required by a contract or a written agreement otherwise known as a blanket additional insured endorsement. The coverage shall extend to the City and its officers, employees, agents, assigns, and volunteers. (If additional insured status is automatic under a different coverage form, Consultant must attach a copy of the coverage form to its certificate. Any required insurance policies shall be effective prior to the beginning of any work or other performance by Consultant and any subConsultants under this Contract).

OR

- (2) ISO endorsement CG 20 10 will be issued, prior to the beginning of any work or other performance by Consultant under this Contract, to the City

and its officers, employees, agents, assigns, and volunteers naming them as an additional insured under the general liability coverage. (A copy of the binder confirming the issuance must be attached to the certificate. Any required insurance policies shall be effective prior to the beginning of any work or other performance by Consultant and any subConsultants under this Contract).

However, if B (1) or (2) cannot be provided, the City's Risk Manager, in such Manager's sole discretion, may approve such other certificate of insurance or insurance document(s) that the Risk Manager deems acceptable. The Certificate Holder should be addressed as follows: City of Roanoke, Attn: City Manager, 215 Church Ave, Roanoke VA 24011.

C. The minimum insurance policies and/or coverages that shall be provided by the Consultant, including its subConsultants, include the following:

(1) Commercial General Liability: \$1,000,000.00

\$1,000,000.00 General Aggregate Limit (other than Products/Completed Operations).

\$1,000,000.00 Products/Completed Operations Aggregate Limit.

\$1,000,000.00 Personal Injury Liability (including liability for slander, libel, and defamation of character).

\$1,000,000.00 each occurrence limit

(2) Automobile Liability: \$1,000,000.00 combined single limit (**add: with applicable endorsement to cover waste cargo, if transporting hazardous materials**).

(3) Workers' Compensation and Employer's Liability:

Workers' Compensation: statutory coverage for Virginia

Employer's Liability:

\$100,000.00 Bodily Injury by Accident each occurrence

\$500,000.00 Bodily Injury by Disease Policy Limit.

\$100,000.00 Bodily Injury by Disease each employee.

3(A) **Errors and Omissions coverage in an amount of not less than \$1,000,000 per occurrence and in the aggregate. Coverage may be written on an occurrence or claims made coverage form. However, if**

a claims made coverage form is used; coverage must remain in effect for a minimum of 3 years after the Consultant's work is concluded.

[Note: This Section 3(A) may be needed in some contracts and not others. Therefore, check with the Risk Manager if Section 3(A) should be left in or deleted. If left in, change the Bold to regular type and delete this Note. If taken out, delete 3(A) and this Note.]

- (4) The required limits of insurance for this Contract may be achieved by combining underlying primary coverage with an umbrella liability coverage to apply in excess of the general and automobile liability policies, provided that such umbrella liability policy follows the form of the underlying primary coverage.
- (5) Such insurance policies and/or coverages shall provide for coverage against any and all claims and demands made by a person or persons or any other entity for property damages or bodily or personal injury (including death) incurred in connection with the services, work, items, and/or other matters to be provided under this Contract with respect to the commercial general liability coverages and the automobile liability coverages. With respect to the workers' compensation coverage, Consultant's and its subConsultants' insurance company shall waive rights of subrogation against the City and its officers, employees, agents, assigns, and volunteers.
- (6) **Consultant shall provide such other insurance policies and/or coverages that may be required by other parts of this Contract. If required by the Contract, such policies and/or coverages could include, but are not limited to, Errors and Omissions/Professional Liability, Crime/ Fidelity, Environmental and/or Pollution, Builder's Risk, Umbrella/Excess.**

[Note: Please Delete this Note when finalizing the Contract. Check with the Risk Manager if above bolded sentence should be left in or deleted. If left in, change the Bold to regular type and if taken out, delete. If you are not sure what additional coverages, if any, are needed, check with the Risk Manager.]

- (7) Should any required insurance coverage be canceled or materially altered before the expiration term of the contract, it is the responsibility of the Consultant to notify the City of such within thirty (30) days of the effective date of the change.

D. Proof of Insurance Coverage:

- (1) Consultant shall furnish the City with the above required certificates of insurance showing the type, amount, effective dates, and date of expiration of the policies.
 - (2) Where waiver of subrogation is required with respect to any policy of insurance required under this Section, such waiver shall be specified on the certificate of insurance.
- E. Insurance coverage shall be in a form and with an insurance company approved by the City, which approval shall not be unreasonably withheld. Any insurance company providing coverage under this Contract shall be authorized to do business in the Commonwealth of Virginia.
- F. The Consultant's insurance policies and/or coverages shall not contain any exclusions for the Consultant's subConsultants.
- G. The continued maintenance of the insurance policies and coverages required by the Contract is a continuing obligation, and the lapse and/or termination of any such policies or coverages without approved replacement policies and/or coverages being obtained shall be grounds for termination of the Consultant for default.
- H. Nothing contained in the insurance requirements is to be construed as limiting the liability of the Consultant, and/or its subConsultants, or their insurance carriers. The City does not in any way represent that the coverages or the limits of insurance specified are sufficient or adequate to protect the Consultant's interest or liabilities, but are merely minimums. The obligation of the Consultant, and its subConsultants, to purchase insurance shall not in any way limit the obligations of the Consultant in the event that the City or any of those named above should suffer any injury or loss in excess of the amount actually recoverable through insurance. Furthermore, there is no requirement or obligation for the City to seek any recovery against the Consultant's insurance company before seeking recovery directly from the Consultant.

END

**EXHIBIT 2
TO CONTRACT**

**BETWEEN CITY OF ROANOKE AND
FOR _____**

REFERENCE: URFP # _____

FINAL SCOPE OF WORK

The following are the services and/or items that the Successful Offeror will be required to provide and such services are to be included in the proposal.

The services, work, and/or items that the Consultant shall provide in a timely and proper manner in accordance with the Contract include, but are not necessarily limited to, the following:

Scope of work to be negotiated and finalized with successful Offeror.

**EXHIBIT 3
TO CONTRACT
BETWEEN CITY OF ROANOKE AND
FOR _____**

REFERENCE: URFP # _____

CONSULTANT'S RESPONSE TO URFP NO. _____

TO BE PROVIDED AFTER SELECTION OF SUCCESSFUL OFFEROR.

**EXHIBIT 4
TO CONTRACT
BETWEEN CITY OF ROANOKE AND
FOR _____**

REFERENCE: URFP # _____

URFP NO. _____

TO BE PROVIDED AFTER SELECTION OF SUCCESSFUL OFFEROR.