

**ARTIST AGREEMENT**

**Vermont Art in State Buildings Program  
Cover Sheet**

PROJECT NAME: Building Name/project, Town, VT  
ARTIST: Artist Name  
ARTWORK: ARTWORK E.G.Courtyard Sculpture

ROUTE: Please initial by your name after you have signed the contract and  
RETURN TO: Michele Bailey at Vermont Arts Council, 136 State Street, Montpelier, VT 05633  
 Artist Name (Signature required)  
 Name, Executive Director, Vermont Arts Council (Signature required)

AMT	FUND	ACCT	CHECK#	DATE PAID
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**ARTIST AGREEMENT**  
**Vermont Art in State Buildings Program**

THIS AGREEMENT is made and entered into this date by and among the State of Vermont, by and through its Department of Buildings and General Services, hereinafter referred to as the "State", the Vermont Arts Council acting as an agent for the State of Vermont, hereinafter referred to as the "Council" and **ARTIST NAME** hereinafter referred to as the "Artist", therefore, the State, the Council and the Artist, for the consideration hereinafter named, agree as follows:

**1. SCOPE OF WORK**

The Artist agrees to perform artistic services to create, fabricate, and install sculpture for the interior Courtyard of **the BUILDING NAME AND TOWN, VT** as per the approved Final Design and Specifications of Work.

**2. CONFORMANCE TO SPECIFICATIONS**

The Artist shall execute the commission (hereinafter referred to as the "Work") in accordance with the attached Specifications of Work. Any significant change in the scope, design, or materials of the proposed Work shall be made in writing and shall require review and approval of the Council.

**3. COST SUMMARY**

The State agrees to pay the Artist as compensation for such services a firm fixed price of **[specific amount e.g. \$30,000]** according to the provisions of Article 7 of this Agreement.

**4. SIGNATURES AND EXECUTION**

This Agreement is executed and dated on page two [2] as a matter of convenience. Other specifications and requirements are set forth on pages three [3] through nine [9], attached hereto. In witness whereof, the undersigned parties have caused this Agreement to be executed this **[DATE] sixth day of October, 2014.**

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Artist signature: **ARTIST NAME** SS# \_\_\_\_\_ Date \_\_\_\_\_

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Mailing Address \_\_\_\_\_ Telephone \_\_\_\_\_

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Vermont Arts Council: (NAME) Executive Director \_\_\_\_\_ Date \_\_\_\_\_

**5. WARRANTY OF ORIGINALITY**

The Artist warrants that the Work is the original product of his/her own creative efforts. The Artist also warrants that unless otherwise stipulated, the Work is original; that it is an edition of one [1]; and that the Artist shall not sell or reproduce the Work without the prior written consent of the Council.

**6. WARRANTY OF SERVICE**

The Artist shall guarantee the Work from faults of material and workmanship for a period of one [1] year after completion of installation and acceptance by the State and the Council.

**7. PAYMENTS FOR SERVICES**

- A. The State agrees to pay the Artist as compensation for such services a firm fixed price of \$30,000.** This amount includes Artist’s fees, the complete cost of executing or acquiring the Work and the installation or supervision of installation of the Work of art as specified below. The Council as administrator of the Art Acquisition Fund will make payments to the Artist on behalf of the State.
- B.** It is understood that the Council and the State have no obligations regarding sales commissions, or any agreements with galleries or agents with whom the Artist may have contracted.
- C.** Payments on account of the Artist’s basic services shall be made at agreed upon intervals, in proportion to services performed. The percentage payments to be made at each stage, as detailed in the attached Specifications, are as follows:

Upon receipt of signed contract:	\$15,000
Upon completion of 50% of sculpture fabrication & submission of written update with photos of work in progress	\$ 7,500
Upon completion of sculpture fabrication & installation	\$ 5,000
Upon approval of sculpture and submission of maintenance instructions and photos. (final payment)	\$ 2,500

- D.** The Council and the Artist shall have the sole responsibility for determining when the Work has reached a given stage of completion. The Council, the State and the Artist shall make final acceptance mutually.
- E.** The Artist shall be entirely responsible for cost control. No extra payments will be allowed as a result of cost overruns. However, unforeseen costs that are the fault of the State, or the Council, or the Contractor’s Architects or Agents, shall not be assigned to the Artist.

**8. TIME FOR PERFORMANCE OF THE WORK**

The Artist agree that time is an essential and important element of this contract and further agrees to perform the Work in accordance with the schedule as agreed to and set forth in the Specifications of Work.

**9. EXTENSION OF TIME FOR COMPLETION OF WORK**

If the State or Council delays the Artist in the performance of the Work, an appropriate time extension for completion shall be granted. If the performance of the Work is delayed by circumstances beyond the Artist's control a reasonable extension of time may be granted.

**10. INDEPENDENT CONTRACTOR STATUS OF THE ARTIST**

The Artist acknowledges that he is an independent contractor and not an employee of the State or agent or employee of the Council.

**11. ASSIGNMENT OF CREATIVE WORK PROHIBITED**

The Artist agrees that an essential element of this Agreement is the skill and creativity of the Artist. The Artist therefore shall not assign to other parties any creative or artistic portion of the Work or its production without the consent of the Council. Failure to conform to this provision will result in termination of the Agreement.

**12. INSPECTION OF THE WORK**

All Work performed by the Artist shall be subject to inspection and approval by the Council for the purpose of confirming that the Work has been performed in conformance with the Specifications of Work or approved changes. The Artist shall provide the Council all information concerning the Work and provide free access at all reasonable times to the facilities where the Work is being performed if not on the State's property. Inspection does not constitute a waiver of responsibilities of the Artist.

**13. RISK OF LOSS**

The risk of loss or damage to the Work shall be borne by the Artist until final acceptance, and the Artist shall take such measures as necessary to protect the Work from loss or damage until final acceptance; except that the risk of loss or damage shall be borne by the State prior to final acceptance to the extent that the wholly or partially completed Work is under the custody, control, or supervision of the State or Council for purposes of transporting, installing, or performing any other ancillary services to the Work.

#### **14. INSURANCE**

The Artist (and/or his subcontractors) will indemnify and hold harmless the Council and State of Vermont. The Council and/or State may specifically request certain Certificate(s) of Insurance as a condition of this Agreement.

**Insurance:** Before commencing work on this Agreement the Artist must provide certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of the Artist to maintain current certificates of insurance on file with the state through the term of the Agreement. No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the Artist for the Artists' operations. These are solely minimums that have been established to protect the interests of the State.

Workers Compensation: With respect to all operations performed, the Artist shall carry workers' compensation insurance in accordance with the laws of the State of Vermont. If the Artist has no employees as defined by Vermont Statutes and Regulations, the Council will waive this requirement.

General Liability and Property Damage: With respect to all operations performed under the contract, the Artist shall carry general liability insurance having all major divisions of coverage including, but not limited to:

Premises - Operations  
Products and Completed Operations  
Personal Injury Liability  
Contractual Liability

The policy shall be on an occurrence form and limits shall not be less than:  
\$1,000,000 Per Occurrence  
\$1,000,000 General Aggregate  
\$1,000,000 Products/Completed Operations Aggregate  
\$ 50,000 Fire/ Legal/Liability

Party shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this Agreement.

Automotive Liability: The Artist shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the Agreement. Limits of coverage shall not be less than: \$1,000,000 combined single limit.

Artist shall name the Council and/or the State of Vermont and its officers and employees as additional insureds for liability arising out of this Agreement.

#### **15. LIABILITY FOR NEGLIGENCE**

Prior to Final Acceptance, the Artist shall adequately protect the project, adjacent property, and the public, and shall be responsible for any damage or injury thereto due to the Artist's act or neglect, and shall save the State and the Council harmless in respect thereto.

**Independence, Liability:** The Artist will act in an independent capacity and not as officers or employees of the Council and/or State.

The Artist shall defend the State and its officers and employees against all claims or suits arising in whole or in part from any act or omission of the Artist or of any agent of the Artist. The Council shall notify the Artist in the event of any such claim or suit, and the Artist shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit.

After a final judgment or settlement the Council may request recoupment of specific defense costs and may file suit in Washington Superior Court requesting recoupment. The Artist shall be entitled to recoup costs only upon a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the Artist.

The Artist shall indemnify the State and its officers and employees in the event that the State, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Artist.

**16. BONDS**

Performance or Payment (labor and material) Bonds are not required of the Artist for goods or services provided herein.

**17. LICENSES AND PERMITS**

The Artist is responsible for obtaining all licenses and applicable certificates and permits in connection with the performance of this contract with the cooperation of the Department of Buildings and General Services. No work shall commence before all necessary permits are secured.

**18. COMPLIANCE WITH LAWS AND REGULATIONS**

The Artist agrees to comply with all applicable laws regarding performance of the Work and to pay for all required permits and fees, and upon written notice to comply with the regulations of any insurance company that issues a policy on any part of the Work or Site. The Artist agrees to comply with Title 21 V.S.A., Chapter 5, Subchapter 6 relating to fair employment practices and to include a similar provision in all subcontracts. The Artist will become acquainted with the limits of the Site or right-of-way of the State and shall not trespass on other property.

**19. ADVERTISING PRIVILEGES**

The Artist may advertise at the Site a sketch of the proposed Work along with the names of the Artists at a site mutually agreed upon by the Artist and the State.

**20. DELIVERY OF WORK AND INSTALLATION**

- A.** The Artist shall deliver the Work to the Site or storage facility. The Artist will pay for storage fees.

- B. Installation shall be in accordance with the Specifications of Work.
- C. Installation shall occur over a series of dates to be determined by the Artist in consultation with the Council and Department of Buildings and General Services.
- D. The Council and State shall ensure that the Artist are supplied with adequate power to the site and make sure that the Site is free and clear of traffic and materials so the Artist can work without disruption and interference.

**21. NONDISRUPTION OF SERVICES**

The Artist will perform the Work in a manner and time so as not to cause unreasonable interference with any of the operations, construction, or maintenance of the State. If the Work will interfere with the operations of the State, the Artist shall give reasonable notice thereof and coordinate the Work with the State and the Council. The State and the Council will notify the Artist of their operation, construction and maintenance schedules in and around the area where the Work is to be performed. The Artist will make every reasonable effort to coordinate work with and cooperate with site contractors and state and local officials.

**22. CLEAN UP**

The Artist shall, when working on State property, clean up after each day's work to the degree necessary to provide for entrance and exit, public safety, fire lanes, and operation of necessary business. At the close out of the Work, the Artist shall clean up and remove their equipment, excess materials, wastes, etc.

**23. FINAL ACCEPTANCE AND RELEASE OF CLAIMS**

- A. The Artist agrees to deliver the Work to the State free and clear of any liens and claims, arising from any source whatsoever. The Council may withhold final acceptance until the Artist furnishes the Council with a signed and sworn statement stating that all bills, wages, claims, etc. have been paid.
- B. Upon installation and final acceptance the Council shall provide the Artist with written notice of acceptance, stating that the Work has become property of the State, and relieving the Artist of all liability for damage to the Work.

**24. PHOTOGRAPHS & MAINTENANCE INSTRUCTIONS**

Within 30 days after the installation of the Work, the Artist shall furnish the Council with five or more different digital photographs (min 300 dpi) of the installed work. The Artist shall also supply the Council with a written set of instructions for the State detailing permanent maintenance and care of the Work.

**25. TERMINATION**

- A. The services to be performed under this Agreement may be terminated by either party, subject to written notice submitted thirty [30] days before termination, provided that attempts to

reconcile the reason for termination have been undertaken but failed. The notice shall specify whether the termination is for convenience or cause.

- B.** *Termination For Convenience of the State:* If the termination is for convenience of the State, the Artist shall be paid on the basis of an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Artist as covered by this Agreement (without an allowance for anticipated profit on unperformed services). In that event, the State shall have the right at its discretion to possession and transfer of title to the sketches, designs and models already prepared and submitted or prepared for submission to the State or Council by the Artist under this Agreement prior to the date of termination, provided that no right to fabricate or execute the Work shall pass to the State or Council.
- C.** *Termination For Convenience of the Artist:* If termination is for convenience of the Artist, the Artist shall remit to the State a sum equal to all payments made to the Artist pursuant to this Agreement prior to termination.
- D.** *Termination For Cause:* If either party to this Agreement shall willfully or negligently fail to fulfill in a timely, professional, and proper manner, or otherwise violate any of the covenants, agreements or stipulations material to this Agreement, the other party shall thereupon have the right to terminate this Agreement by giving written notice to the defaulting party of its intent to terminate, specifying the grounds for termination. The defaulting party shall have thirty [30] days after receipt of the notice to cure the default. If it is not cured, then the Agreement shall terminate.
- E.** In the event of default by the State, the State shall promptly compensate the Artist for all services performed by the Artist prior to termination and reimbursement for costs incurred as a consequence of the State's default. The Artist shall be obligated to mitigate costs incurred as consequence of the default and must be able to provide sufficient proof of any costs incurred above and beyond any amounts already allocated to the Artist by the Council on behalf of the State.
- F.** In the event of default by the Artist, all finished and unfinished drawings, sketches, photographs, and other work products prepared and submitted or prepared for submission by the Artist under this Agreement shall, at the State's discretion, become the property of the State, provided that no right to fabricate the Work shall pass to the State, and the State shall compensate the Artist pursuant to this Agreement for all services performed prior to termination. Notwithstanding the previous sentence, the Artist shall not be relieved of liability to the State for damages sustained by the State by virtue of any breach of this Agreement by the Artist, and payment to the Artist may be reasonably withheld until such time as the exact amount of such damages due the State from the Artist is determined.

## **26. OWNERSHIP**

The State of Vermont shall be the sole owner of the Work of art being commissioned. Title shall vest in the State upon completion of installation and final acceptance of the Work of art by the Council and the

State. Upon final acceptance all studies, drawings, designs, and models prepared and submitted under this Agreement shall be returned to the Artist and shall belong to the Artist.

## **27. REPRODUCTION RIGHTS**

The Artist shall retain all rights under federal copyright law and this section limits all other rights in and to the Work except ownership and possession. In view of the intention that the Work in its final dimension shall be unique, the Artist shall not make any exact duplicate, three-dimensional reproductions of the Work, nor shall the Artist grant permission to others to do so except with the written permission of the State. The Artist grant to the State and the Council an irrevocable license to make two-dimensional reproductions of the Work for non-commercial purposes provided they identify the Artist. Responsibility for registration with the United States Register of Copyrights shall rest with the Artist.

## **28. ALTERATION OF WORK OR OF THE SITE**

- A.** The State agrees that it will not intentionally damage, alter, modify or change the Work without the prior written approval of the Artist.
- B.** The State shall notify the Artist of any proposed alteration of the Site that would affect the intended character and appearance of the Work. The State shall make a reasonable effort to consult with the Artist in the planning and execution of any such alteration and shall protect the integrity of the Work.
- C.** Nothing in this section shall preclude the right of the State to destroy or remove the Work from public display following the appropriate procedures as adopted in the current Vermont Art in State Buildings Program: Guidelines and Policies.

## **29. CONTRACT ADMINISTRATOR**

The Contract Administrator for this Agreement shall be the Executive Director of the Vermont Arts Council or his designated representative(s). Whenever this Agreement requires any notice to be given to the Council, or any action or determination to be made by the Council, the Executive Director or his designee shall represent and act for the Council and/or State in consultation with the Commissioner of the Department of Buildings and General Services.

## **30. AMENDMENTS AND CHANGE ORDERS**

Only Change Order can accomplish any increases or decreases in the scope and fixed price of the project, extensions of completion dates, substantial alterations of the proposal and/or the finished Work, with or without a change in price, and amendments or modifications to other items of this Agreement or to the Work. The Council will initiate the Change Order, supported by written requests and documentation from any party of the Agreement and it will be signed by all these parties to be executed and made a part of this Agreement.

**31. TAXES DUE TO THE STATE**

- A.** Artist understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.
- B.** Artist certifies under the pains and penalties of perjury that, as of the date the contract is signed, the Artist are in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.
- C.** Artist understands that final payment under this contract may be withheld if the Commissioner of Taxes determines that the Artist are not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.
- D.** Artist also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Artist have failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Artist have no further legal recourse to contest the amount due.

**32. CHILD SUPPORT (Applicable if the Artist is a natural person, not a corporation or partnership.)**

The Artist states that, as of the date the contract is signed, he:

- A.** is not under any obligation to pay child support; or
- B.** is under such an obligation and is in good standing with respect to that obligation; or
- C.** he has agreed to a payment plan with the Vermont Office of Child Support Services and are in full compliance with that plan.

The Artist makes this statement with regard to support owed to any and all children residing in Vermont. In addition, if the Artist is a resident of Vermont, Artist makes this statement with regard to support owed to any and all children residing in any other state or territory of the United States.

**34. ENTIRE AGREEMENT**

This writing and the attached Specifications of Work embody the entire agreement and understanding between the parties hereto, and there are no other agreements and understandings, oral or written, with reference to subject matter hereof that are not merged herein and superseded hereby.

## SPECIFICATIONS OF WORK

### 1. DESIGN

The Artist shall fabricate and install the Work on the walls identified by the Local Art Selection Panel and as per the approved Final Design. The fabrication and installation shall address all provisions from the Committee and the Advisory Committee, including community outreach. (See attached documents).

### 2. LOCATION AND FINAL PLACEMENT OF WORK

The location of the work shall be as follows: (See drawings)

Interior Courtyard

See attached proposal provided by the Artist.

### 3. DIMENSIONS, SIZES AND COLORS

The dimensions of the finished Work shall be each appropriate to the specific space[s] intended for its installation and identified by the Committee. See attached proposal provided by the Artist.

### 4. MATERIALS AND FINISHES

The following is a list of materials and finishes that will be used to fabricate the Work. See attached proposal.

### 5. STUDIO FABRICATION/FIELD FABRICATION

Sculpture will be fabricated in the artist studio and brought to the site for installation.

### 6. PRESERVATION FEATURES

The following features are incorporated into or about the finished Work to prevent permanent disfigurement or damage to the Work from deterioration or purposeful destruction:

See attached proposal.

### 7. SCHEDULE FOR COMPLETION OF WORK

The following is a **tentative fabrication schedule** and shall be adhered to in the performance of the Work: The Artist should consult with the Arts Council and BGS Project manager to determine exact dates for work to begin on site. Note it may be earlier than the completion date listed below as this is a tentative schedule.

**A.** FABRICATION START DATE:

DATE October, 20\_\_

**B.** Sculpture Completed: (estimate)

DATE October/November, 20\_\_