



**SAMPLE DESIGN CONTRACT**

Vermont Arts Council – [Building Name & Town]

Artist Contract, Design Phase

**THIS AGREEMENT** is entered into this [DATE] 20<sup>th</sup> day of July, 20\_\_ between [ARTIST NAME] hereinafter called “the Artist” and the Vermont Arts Council, hereinafter called “the Council”.

**DEFINITIONS:** Following is a definition of terms used in this Agreement;

- “Artist” [ARTIST NAME],
- “Architect” [Architect Name],
- “DBGS” Vermont Department of Buildings & General Services,
- “Building Name” [Building Name]
- “The Community” Representative(s) from the community of [Town],
- “Art Selection Panel” Committee made up of representatives from DBGS, the Architect, [Building Name], and the community, designated to oversee development of artistic elements in the design,
- “Partners” Any combination of the Council, the Artist, DBGS, the Architect, [Building Name], The Art Selection Panel, the community, and other parties including any appropriate individuals, invested groups or regulatory agencies,
- “Project” [Building Name],
- “Site” [Town] Vermont,
- “Work” Services provided by the artist encompassing design and planning of artistic elements of the Project,
- “Legislative Advisory Committee” Committee designated to oversee the Vermont Art in State Buildings Program,
- “Design Phase” A period during which the Artist in partnership with the Architect and/or DBGS will conceive and/or refine overall design for the Work, including the selection of specific materials to be used in construction of the artwork to be integrated into the Site. This phase will culminate with final approval by the Art Selection Panel and the Legislative Advisory Committee,
- “Construction Document” Document from which the actual structure can be built,
- “Implementation Phase” A period during which the Design Development and Construction documents are completed, as well as fabrication and installation of artwork,
- “Design Team” Project group consisting of Artist, the architect, and representatives of DBGS,
- “Artisan” Subcontractor[s] recommended by the Artist to provide commissioned artwork for the Project.

**WHEREAS:**

- The Council entered into an Agreement with DBGS to facilitate procurement of services related to planning and installation of aesthetic design enhancements for the Project throughout the Site;
- The Artist has been selected by the Art Selection Panel to oversee and complete the Work, in two Phases as defined above, after consultation with the staffs of the Council, DBGS, the Art Selection Panel, and any other parties which may become stakeholders;
- Both parties wish to reasonably promote and maintain the integrity and clarity of the Artist's ideas and statements as represented by the Work;
- The Artist shall provide such services and such Work under the Agreement as may be required by the Council, as an independent contractor;

**NOW, THEREFORE**, the Council and the Artist agree that:

**SECTION I – Scope of Work**

**A. DESIGN AND PLANNING SERVICES**

1. The Artist, in consultation with the Architect and the Design Team, shall perform all services and furnish all supplies, material and equipment as necessary for the Design Phase; such as payment for all necessary permits outside the ordinary scope of the underlying capital project, taxes, supplies, materials, small tools, equipment, consultants and additional staff/personnel, and all other items incidental to producing a complete and acceptable final design proposal.
2. The Artist shall work in concert with the Architect and the Design Team to recommend the overall artistic expression, scope, design, color, size, material, texture, and location on the Site of the Work; subject to review and acceptance by the Art Selection Panel as well as the overall approval by the Legislative Advisory Committee as set forth in this Agreement.
3. The Artist, together with the Architect and the Design Team, shall be solely responsible for all aspects of design and planning in compliance with all applicable Federal, State and/or local laws, ordinances, statutes, codes, regulations, and/or requirements which may affect construction or installation of the Work.
4. The Council's authorized contracting officer shall be the Executive Director of the Vermont Arts Council or authorized representative, and that officer shall be the sole contact for administering this Agreement.  
  
The Artist may discuss the Work or its requirements with other parties, but all specific direction to, or requests of, the Artist must be recognized by the Council's authorized representative.
5. The Artist and all employees shall observe and comply with all prevailing Federal, State and local laws, ordinances, regulations and requirements which in any way affect conduct or work required under this Agreement.
6. If requested, the parties shall assist one another in filing any documents required to secure approval of all governmental authorities having jurisdiction.

**B. PRELIMINARY DESIGN PROPOSAL**

1. The Artist, in consultation with the architect, shall prepare and submit a preliminary design proposal, conceptual drawings/plans or renderings of the Work and the Site. The preliminary schematic design proposal shall be submitted by [SPECIFIC DATE].
2. The proposal shall be subject to review and acceptance by the Art Selection Panel. Upon acceptance, the Artist shall prepare the final design and budget statement as described in Exhibit "A" and perform other services specified herein by [SPECIFIC DATE].

**C. FINAL DESIGN PROPOSAL**

1. Upon approval of the preliminary design proposal, the Artist shall further develop the proposal with the Architect and Design Team in consultation with the Art Selection Panel as necessary. The Artist may suggest additional Artisans to fabricate specific portions of the proposed Work. Selection of additional Artisans shall be made during the Design Phase, at the recommendation of the Artist to ensure the integrity and clarity of the Artist's vision. Artisan recommendations shall be brought before the Art Selection Panel for their approval.
2. The Artist shall prepare the final design proposal in observance of and in accordance with all recognized guidelines, rules and regulations of Federal, State and local laws.
3. The final design proposal shall consist of renderings, drawings, plans and/or models as appropriate and shall recommend, specific enhancements within the Site describing their scope, design, color, size, material, texture, location and maintenance requirements.
4. Together with a complete description of the proposed aesthetic treatments, the artist shall include a budget for the proposed treatments (see C6 below) and, a proposed schedule for completion of the Work. A sample of the details to be completed and a sample format is described in Exhibit "A" attached hereto.
5. If requested by the Council's authorized representative, the Artist, together with the Architect, shall also present the designs and a budget to the Partners. The Council shall use reasonable care in transporting, storing, and handling the rendering or model of the Work while in its custody. However, the Council shall not be responsible for loss or damage to the rendering or model of the Work while in its custody.
6. Exhibition-quality drawings or models, if required and requested of the Artist by the Council, will be viewed as, and paid for by the Council as "Additional Work", as defined in Section VII.E of this Agreement.
7. The submission shall also include a budget, to be determined in consultation with the Architect and DBGS, as described herein, that includes all costs for site-specific enhancements (design, execution, fabrication, transportation, delivery, installation, lightings, footings, insurance, consultant fees, permits, and any other associated costs), based on conditions, requirements, laws and regulations in effect as of the date thereof.
8. During the final design review, the Council may also require the Artist in consultation with the Architect to make such revisions to the design as are necessary only for the Work to comply with applicable statutes, ordinances or regulations of Federal, State or local governments. The Council may also request revisions for other practical and/or non-aesthetic reasons.

**D. ACCEPTANCE OF FINAL DESIGN PROPOSAL**

1. The final design proposal shall be brought before the Art Selection Panel for their acceptance. Final approval of the final design proposal shall be made by the Legislative Advisory Committee.
2. If the design, cost estimates and schedule are disapproved, the Council shall provide the Artist with reasons for such disapproval. In such event, the Artist shall be afforded an opportunity to submit a second proposal for the Work within a period of time specified by the Council.

Within a reasonable number of working days following such resubmission by the Artist, the Council shall notify the Artist whether the Final Design Proposal is approved or disapproved.

If the resubmitted Proposal is disapproved, the Council shall again provide the Artist with reasons for disapproval, whereupon the Artist shall make such modifications as are required.

3. The Artist shall retain ownership of all original materials and documents created by the Artist, including but not limited to renderings, drawings, plans and/or models referenced in section I.C.3. However; the Council will retain rights to reproduce said materials and documents as defined in Section VII.F, "Ownership of Documents," of this Agreement.

**E. COMMUNITY INVOLVEMENT**

1. The Artist shall accommodate, provide access to, contribute to and cooperate with other Partner sub-contractees as requested by the Council, such as consultants charged with the conceptual development and implementation of aesthetic design enhancements, as well as to occasional public, community-based forums, promoting the Project and strengthening the participation and information-sharing necessary within the context of a public art project.
2. The Artist shall not make any formal public information release in connection with services performed under this Agreement without the prior consent of the Council, which shall not be unreasonably withheld, conditioned or delayed.

**SECTION II – Period of Service**

**A. SCHEDULE**

1. All Design Phase services shall be completed in accordance with the schedule set forth in proposed Final Design Proposal provided that such services and schedule are approved by the Executive Director of the Council

**B. PROGRESS REPORTS AND ACCESS**

1. If requested by the Council, the Artist, together with the Architect, shall make written progress reports to the Council during the term of this Agreement. The Artist shall provide the Council with access to the Work during reasonable business hours to review the Work and progress in completing the Work.

**C. EXTENSION OF PERFORMANCE**

1. The Council shall grant a reasonable extension of time to the Artist in the event that there is:
  - a. A delay on the part of the Council in performing its obligations under this Agreement; or
  - b. A delay in completing the underlying capital project; or if
  - c. Conditions beyond the Artist's control such as Acts of God render timely performance of the Artist's services impossible or unexpectedly burdensome.

Failure to fulfill contractual obligations due to conditions beyond either party's reasonable control shall not be considered a breach of contract; provided that such obligations are suspended only for the duration of such conditions.

If delays by the Council result in increases in cost to the Artist, the Council shall grant an equitable budget adjustment, subject to requirements for further funding.

However, if the Council permits the Artist to proceed to complete any services, or any part of them, after the date to which the time of completion of those services may have been extended, such permission shall in no way act as a waiver on the part of the Council of any of its legal rights herein.

**D. TERMINATION**

1. Either party may terminate this Agreement with thirty (30) days written notice. Upon receipt of such notice, all Work on the Project shall cease.

**SECTION III -- Payments to the Artist**

**A. COMPENSATION AND REIMBURSEMENT**

1. For services described in this Agreement, the Council shall pay to the Artist:
  - a. **An amount not-to exceed INDICATE SPECIFIC AMOUNT E.G.three thousand (\$3,000); and**
  - b. **such amount in accordance with the schedule set forth in attached Exhibit "B"**
2. All expenses incurred on behalf of the Work in accordance with the final budget shall be paid by the Artist and are included in the basic fee above.

**B. TAXES AND RELATED OBLIGATIONS**

1. The Artist shall be responsible for any sales, use or privilege tax which might be required in connection with the Artist's performance of the services under this Agreement at the rates in effect as of the date the final budget as submitted in Final Design Proposal is approved.

Increases in rates, or changes in the method by which such sales, use, privilege or other ad valorem taxes are applied, shall be for the account of the Council.

2. The Council shall report payments made to the Artist in a 1099 form submitted annually to the Internal Revenue Service during the term of the Agreement. The Artist shall be responsible for payment of Federal and State income taxes on any income arising from this Agreement.

**C. DAMAGE, DELAY AND HINDRANCE CLAIMS**

1. No charges or claim for damages shall be made by the Artist for any delays or hindrances beyond the control of the Council during the progress of any portion of the services specified in this Agreement.

**SECTION IV -- Artist's Representations and Warranties**

**A. INTEGRITY OF THE WORK**

1. The Artist, together with the Architect, represents and warrants to the Council that the design of the Work shall be performed in a workmanlike manner and, where applicable, that the Work shall be designed free of defects in workmanship or materials, including inherent vice, and that the Artist shall, at the Artist's own expense, remedy any defects due to design, or to inherent vice, which are recognized prior to completion of the Design Phase.

The foregoing warranty also does not include repair of damage caused by external forces such as weather and other Acts of God, vandalism, neglect, and acts of third parties outside the Artist's and/or the Artist's control.

"Inherent vice" refers to a quality within material or materials which comprise the Work; which, either alone or in combination, results in the tendency of the Work to destroy itself.

2. Warranties provided to the Artist by any subcontractor shall be presented to and deemed satisfactory by the Council. All warranties related to the Work performed by any subcontractor are attached to this Agreement and are hereby incorporated by reference and are considered to define the extent and limitation of warranties extended by the Artist to the Council.
3. The Artist represents and warrants to the Council that except as against Force Majeure or acts of third parties, the Work shall be designed in such a way as to not require maintenance substantially in excess of that described in the maintenance recommendations to be provided by the Artist to the Council hereunder.
4. The Artist represents and warrants to the Council that the Work shall be designed free of inherent dangers and absent any attractive nuisance to the public and agrees to cooperate in making or permitting adjustments to the Work if necessary to eliminate any hazards which become apparent within one year of the date the Final Design Proposal is finally accepted by the Council.

If the appearance of such hazards or the Council's determination of hazard does not relate to a breach of the Artist's warranty pursuant to subsection 1 above, then the Council shall compensate the Artist at rates to be mutually agreed for any modification work to be performed.

**D. ORIGINALITY OF THE WORK**

1. The Artist represents and warrants to the Council that the Work shall be original and solely the result of the artistic efforts of the Artist and that it shall be installed free and clear of any liens, claims or other encumbrances of any type from any source whatsoever.
2. Both parties recognize and accept that the personal skill, judgment, vision and creativity of the Artist as an essential element of this Agreement.

Therefore, although the parties recognize that the Artist may employ qualified personnel to work under the Artist's supervision, the Artist shall not assign, transfer or subcontract the creative and artistic portions of the Work to another party without the prior written consent of the Council.

3. The Artist represents and warrants to the Council that the Work shall be unique and an edition of one and shall not infringe upon any copyright or other interest protected by statutory or common law, and that the Artist shall not execute or authorize another to execute another Work of the same design, dimensions and materials as the Work commissioned pursuant to this Agreement.

**SECTION V -- The Council's Responsibilities**

**A. INFORMATION AND SERVICES PROVIDED**

1. Upon request by the Artist, the Council shall assist the Artist, at no cost to the Artist, in obtaining the following information or services, provided however that the Council does not guarantee the accuracy of information provided and assumes no liability therefore:
  - a. One (1) copy of all available data pertinent to the Work; and
  - b. information relative to policies, standards, criteria and studies.

However, the Artist shall be responsible for searching the records and requesting specific information required.

2. Examination of materials and information submitted by the Artist with all decisions pertaining thereto shall be rendered promptly, to avoid unreasonable delay in the progress of the Artist's performance.

The Council shall keep the Artist advised concerning the progress of any review of the Work. Response to the Artist's written request for decisions shall be made as soon as possible.

**B. GUARDIANSHIP OF THE WORK**

1. The Council shall not intentionally destroy, damage, alter, modify or change the Work except under conditions outlined in the Visual Artist Rights Act of 1990 ("VARA") as amended, insofar as same are relevant.
2. The Council shall not use the Work, the Artist's name in a way which reflects discredit on the Work or on the good name or reputation of the Artist. The Council hereby undertakes as a contractual obligation to the Artist the obligations of an owner of the Design Phase drawings/renderings and/or plans under VARA during the term of this Agreement.

**SECTION VI -- Insurance**

**A. TYPE AND COVERAGE**

1. The Artist shall procure and maintain throughout this Agreement:
  - a. Worker's compensation and employer's liability insurance with limits of no less than \$100,000 each accident. If the Artist has no employees as defined by Vermont Statutes and Regulations, the Council will waive this requirement; and
  - b. automobile liability insurance, with limits of not less than statutory requirements including coverage for owned, non-owned and hired vehicles, as applicable. Evidence of automobile insurance should be available upon request by the Council.

**B. PROOF OF INSURANCE**

1. Certificates of insurance evidencing worker's compensation, liability as set forth above shall be furnished to the Council if requested, before commencement of the Work. Upon request, certified copies of all policies shall be furnished to the Council.

If any insurance policy is due to expire during the life of this Agreement, the Artist shall provide a Certificate of Renewal evidencing the required insurance coverage to the Council not less than fifteen (15) calendar days prior to the expiration date.



2. The failure to provide and maintain in force any of the insurance provided for by this Agreement shall be deemed a material breach of the Agreement and may, at the option of the Council, operate as an immediate termination thereof.

## **SECTION VII—GENERAL CONSIDERATIONS**

### **A. RECORDS**

Records of the Artist's expenses pertaining to the Work and records of accounts between the Council and the Artist shall be kept on a general recognized accounting basis (including cash), and shall be available to the Council or its authorized representative for audit during normal business hours. In addition, the records shall be subject to audit by the Vermont Attorney General.

### **B. ALTERATION IN CHARACTER OF WORK**

The goal of the parties is a Work which represents the creative talents of the Artist and satisfies the specifications of the Council. The parties recognize that they must consult closely in order to accomplish these goals and that changes in the design may become desirable as the Work is fabricated, under the Artist's personal supervision, in conformity with the approved Final Design. The Work shall not deviate from the approved Final Design unless the change is approved in writing by the Executive Director of the Council or an authorized representative.

### **C. TERMINATION**

As described in Section II.D of this Agreement, in the event the Council shall abandon the service or any part of the services as herein provided, the Council shall notify the Artist in writing, and immediately after receiving such notice, the Artist shall discontinue advancing the Work under this Agreement and proceed to close said operations under the Agreement.

1. The Artist shall determine the percentage of Work completed and submit such estimate to the Council for evaluation. The Council shall have the right to inspect the Artist's work to verify the claim.
2. The Artist shall receive a fee for the percentage of the Work actually completed as compensation in full for services performed to the date of such termination. This fee shall be equal to any Project related payments owed to the Artist and to the Artist's subcontractors, and shall be in an amount to be agreed upon mutually by the Artist and the Council. If there is no mutual agreement, the final determination shall be made in accordance with Section VII.K, "Disputes". However, in no event shall the fee ever exceed that set forth in Section III of this document as otherwise adjusted. The Council shall make this final payment within thirty (30) days after the Artist has delivered the last of the partially completed items, or, if applicable, has destroyed or ceded control of the Work to the Council.
3. The Artist may obtain termination only if the Council should substantially fail to perform its responsibilities as provided herein. In the event of termination, all finished or unfinished work relating to the preparation of the Work paid for by the Council shall become the property of the Artist.
4. The incapacity or death of the Artist shall automatically terminate this Agreement. Neither the Artist nor the Artist's estate shall have any further right to perform hereunder. The Council shall pay the Artist or the Artist's estate the compensation payable for any services rendered prior to such termination not heretofore paid reduced by the amount of additional costs which shall be incurred by the Council by reason of such termination.
5. The Artist may at any time prior to completion of the Work certify to the Council that the existing plans, drawings, and instructions for rendering the Work are sufficiently complete and detailed that, in the event of either of the Artist member's disability or death, the Work may be faithfully



rendered by artisans without the active participation of the Artist. The Artist may further make a recommendation as to which artisans are qualified to carry out such work. In the event the Artist has made such a certification, then the Council shall be permitted to cause the Work to be completed in accordance with such plans, drawings and instructions, and this Agreement shall not be terminated in accordance with subsection 4 above in the event of the Artist member's incapacity or death. Amounts paid to any artisans retained to complete the Work shall be deemed made under this Agreement to the extent of the budget therefore, and otherwise shall be subject to Section II.C.

**D. COMMUNICATIONS**

All notices, requests, demands and other communications which are required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given upon the delivery or receipt thereof, as the case may be, if delivered personally or sent by recognized courier service or registered or certified mail, return receipt requested, postage prepaid, as follows:

1. *If to the Council, to:* Michele Bailey, Art in State Buildings Coordinator  
Vermont Arts Council  
136 State Street  
Montpelier, VT 05633-6001  
mbailey@vermontartscouncil.org
2. *If to the Artist to:* [ARTIST NAME, ADDRESS, EMAIL, PHONE]

**E. ADDITIONAL WORK**

Additional Work, when authorized by the Council's authorized representative, shall be compensated for by a fee mutually agreed upon between the Council and the Artist.

**F. OWNERSHIP OF DOCUMENTS**

The Council shall have the right to graphically reproduce the materials and documents produced by the Artist solely for the purposes of publicity or exhibition, provided that such reproduction is credited to the Artist.

**G. OWNERSHIP AND INTELLECTUAL PROPERTY RIGHTS**

1. Title to the Work shall pass to the State of Vermont upon written notice to the Artist of final acceptance by the Executive Director of the Vermont Arts Council and a representative from DBGS.
2. The Artist shall retain:
  - a. All rights to the Work under the Copyright Act of 1976, 17 U.S.C. & 101, et seq., as amended by VARA and any successor act; and
  - b. all rights expressly granted in this agreement, as well as any and all other intellectual property rights in the Work, whether statutory or common-law, international, federal, state or local, except as specifically set forth herein.
3. The Artist hereby grants the Council the non-exclusive right to display the Work, and two-dimensional reproductions of the Work, and to lend such reproductions to others with authority to display them publicly.

4. The Artist hereby nonexclusively licenses the Council to make, and to authorize the making of, photographs and other two-dimensional representation of the Work for education, public relations, art promotional and other non-commercial purposes. For the purposes of the Agreement, the limited distribution of brochures and pamphlets pertaining to the Council; exhibition catalogs, slides, photographs, postcards, posters and calendars; in connection with the promotion of the Vermont Arts Council, either without charge or at a charge not exceeding the ratable cost of production, and other uses that do not customarily pay for included visual material in traditional commercial channels shall be deemed non-commercial, regardless of whether the Council imposes a charge for them. On any and all such reproductions, the Council shall place a copyright notice with respect to the Work compliant with section 401 of the Copyright Act of 1976 as amended, or any successor Act.
5. The Council agrees that unless the Artist requests to the contrary in writing, all references to the Work and all reproduction of the Work shall credit the Work to the Artist.
5. The Artist agrees that wherever practicable, all formal reference to the Work and noncommercial reproduction of the Work under the Artist's control shall include the following credit line: "A Project of the Partnership Between the Vermont Arts Council and the Vermont Department of Buildings and General Services."

#### H. COMPLETENESS AND ACCURACY OF THE ARTIST'S WORK

The Artist shall be responsible for the completeness and accuracy of the Work, prepared or completed under the Artist's obligation for work provided under this Agreement.

#### I. CLAIMS AGAINST THE COUNCIL

1. The Artist hereby agrees to indemnify and save and hold the Council, any of its departments, officers or employees harmless from all damages, claims or liabilities and expenses (including Attorney's fees) arising out of, or resulting in any way from, the performance of professional services for the Council in the Artist's capacity as a consultant, and caused by any error, omission, or negligent act of the Artist or any person employed by the Artist, or of any others for whose acts the Artist is legally liable.
2. In the event that the services of the Artist are integrated into, combined or otherwise coordinated with the services by third parties not within the control of the Artist, the Artist shall not be responsible for such third party services. The Artist shall not be responsible for any liability or failure to fulfill the Artist's obligations due to such discrepancies or defects.
3. The Artist shall not be responsible for the acts or omissions of the Council, DBGS, the Advisory Committee, any consultants or sub-consultants, any contractors or subcontractors, any of the employees, or any other persons, aside from those retained by the Artist, who are performing any of the work related to the artistic services provided for in the terms of this Agreement.
4. The Artist's liability to the Council under paragraphs 1 of this subsection shall not exceed limits of liability of the insurance policies required to be maintained by the Artist hereunder. The Artist shall not under any circumstances be liable for any indirect, consequential, incidental, special or punitive damages, regardless of the theory on which such damages are based.

J. SUCCESSORS AND ASSIGNS

The Council and the Artist shall each bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns, and legal representatives of such other party in respect to all covenants of this Agreement. Neither the Council nor the Artist shall assign, sublet, or transfer any interest in this Agreement without the written consent of the other. In no event shall any contractual relationship be created between any third party and the Council.

K. DISPUTES

In any dispute arising out of an interpretation of this Agreement or the duties required therein not disposed of by agreement between the Artist and the Council that remains unresolved for thirty (30) days will be submitted to mediation by a mediator agreed upon by the parties. If the parties cannot agree on a mediator, they shall seek a neutral mediator from a recognized source. If mediation fails, the parties may pursue such other legal remedies as they may have.

L. RIGHT OF CANCELLATION

All parties hereto acknowledge that this Agreement is subject to cancellation by the either party within five (5) days of execution.

M. COVENANT AGAINST CONTINGENT FEES

The Artist represents and warrants to the Council that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for commission, percentage, brokerage, or contingent fee, and that no officer or employee of the Council has any interest, financially or otherwise in the Artist's business. For breach or violation of this warranty, the Council shall have the right to annul this Agreement without liability or at its discretion to deduct from the Agreement price or consideration, the full amount of such commission, percentage, brokerage, or continent fee.

N. EQUAL OPPORTUNITY/AFFIRMATIVE ACTION

The Artist shall comply with the provisions of this Agreement, including all local, State and Federal laws pertaining to discrimination, accepting applications or hiring employees. The Artist shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, gender, national origin, age or disability nor otherwise commit unfair employment practices, but shall take affirmative action to ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, gender, national origin, age or disability. Such action includes but is not limited to the following: employment, promotion, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship as well as all other labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with the Agreement.

1. **SPECIFIC COMPLIANCE:** Artist shall comply with the applicable provision of Title VI of the Civil Rights Act of 1964 as amended, Executive Order 11246 as amended by Executive Order 11375 and as supplemented by the Department of Labor regulations (41 CFR Part 60). The Artist shall also comply with the rules, regulations, and relevant orders of the Secretary of Labor. The Artist shall comply with all the requirements of Title 21, V.S.A., Chapter 5, Subchapters 6 and 7, relating to fair employment practices to the extent applicable. The Artist further agrees that noncompliance with this clause shall constitute a breach of the Agreement, and further, that this clause shall be incorporated in all subcontracts and sub-consultant agreements of this Agreement entered into by the Artist, except subcontracts for standard commercial supplies or raw materials.

O. INDEPENDENT CONTRACTOR

The Artist is and shall be an independent contractor and is not an agent or employee of the Council. Any provisions in this Agreement that appear to give the Council the right to direct the Artist as to the details of doing the Work or to exercise a measure of control over the Work means that Artist shall follow the wishes of the Council as to the results of the Work only, which shall comply with all applicable laws and ordinances.

**P. FORCE MAJEURE**

Notwithstanding anything to the contrary contained in this Agreement, if either party shall be delayed or prevented from the performance of any act required under this Agreement by reason of Acts of God or other cause beyond the control and without fault of the party (financial inability excepted), performance of that act shall be excused, but only for the period of the delay. The time for performance of the act shall be extended for a period equivalent to the period of delay plus one (1) day.

**Q. NON-WAIVER PROVISION**

The failure of either party to enforce any of the provisions of this Agreement or to require performance of the other party of any of the provisions hereof shall not be construed to be a waiver of such provisions, nor shall it affect the validity of this Agreement or any part thereof, or the right of either party to thereafter enforce each and every provision.

**R. JURISDICTION**

It is mutually understood and agreed that this Agreement shall be governed by the laws of the State of Vermont, both as to interpretation and performance. Any action at law, suit in equity or judicial proceeding for the enforcement of this Agreement or any provision thereof shall be instituted only in the state or federal courts with jurisdiction in the State of Vermont.

**S. AMENDMENTS TO THE AGREEMENT**

The terms of this Agreement constitute the entire understanding between the parties hereto and no statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid. This Agreement may only be amended or modified by mutual consent of the parties hereto in writing signed by both parties. These terms notwithstanding, the Council reserves the right to change terms and conditions as required by Federal and State laws which may come to bear during the lifetime of this Agreement.

**THIS AGREEMENT** shall be in full force and effect only when it has been approved by the duly authorized agents or officers of the Artist, The Council and the Vermont Department of Buildings & General Services.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement

\_\_\_\_\_  
**Executive Director, Vermont Arts Council**

\_\_\_\_\_  
Date

\_\_\_\_\_  
**Artist Name** (Artist signature)

\_\_\_\_\_  
Date

\_\_\_\_\_  
FEI or Social Security #

Artist Mailing Address: \_\_\_\_\_  
\_\_\_\_\_

Artist Phone: \_\_\_\_\_

## EXHIBIT A

### Sample Format for Final Design Proposal, Budget and Project Schedule

This exhibit is intended as a guide to and format for the information which, to the degree possible, must be submitted as part of the Artist's Final Design Proposal and is not intended as a form to be filled out by the Artist. Proposal information should be submitted on separate sheets. **NOTE:** Not all information or categories below may apply to this Project.

- I. Location of Work:
- II. Specifications of Work:
  - A. Title of Work:
  - B. Narrative Description of Work:
  - C. Approximate Dimensions of the Work (Length x Height x Depth, Weight):
  - D. Primary Discipline of Work:
  - E. Materials and Finishes (complete list of all to be used to fabricate the Work): **NOTE:** Any changes to the plans contained within the Exhibit "A" must be documented and approved by the Executive Director of the Council or an authorized representative before fabrication begins.
  - E. Studio Fabrication/Field Fabrication (a description of the aspects of the work which will be studio and/or field fabricated):
  - G. Proposed Collaborators (Artisans or others under direction of Artist):
    - 1. Name, address and phone number of (each) Collaborator:
    - 2. Primary Discipline of Collaborator:
    - 3. Narrative Description of Collaboration:
    - 4. Approximate Dimensions of Artwork Commissioned:
    - 5. Materials and Finishes of Artwork Commissioned:
    - 6. Studio Fabrication/Field Fabrication:
  - H. Other Proposed Subcontractors, Fabricators, Sub-consultants and the work they will perform (include name, address and phone number):
- III. Proposed Installation Method:
- IV. Proposed Maintenance Recommendations:

**EXHIBIT A**

(Cont'd)

Sample Format for Final Design Proposal, Budget and Project Schedule (cont'd)

**V.** Total Cost of Work:

- A.** Artist' fee, materials costs, cost of Artwork Commissioned, Subcontractor/Fabricator/Sub-consultant fees, Reimbursable Expenses:

COST ESTIMATE. Please complete this form. We recommend that vendor quotes be attached to this document, complete with per unit/costs (no lump sums) for all items designated with an asterisk (\*).

TRAVEL

Mileage/Vehicle Rental:

Per diem:

OFFICE/STUDIO EXPENSES

Phone/FAX charges, supplies, other: (detail on separate sheet as needed)

INSURANCE

Auto:

General liability for Artist/subcontractors:

Worker's Compensation:

CONSULTANTS/SUBCONTRACTORS (Attach detailed list)

Architect/Artisan:

Structural/Electrical Engineer\*

Other:

MATERIALS/FABRICATION (Attach detailed list)

Materials\*

Labor\*

Subcontractors\*

TRANSPORTATION

Materials to fabrication site\*

Other\*

SITE PREP

Landscaping, irrigation\*

Removal\*

Utilities modification\*

Other\*

INSTALLATION COSTS When applicable, costs must include allowance for after-hours installation. Please attach a complete list of equipment and individual estimates with this submittal.

Labor

Scaffolding/equipment\*

Traffic management (off duty police/traffic barriers/)

Storage facility rental\*

Other\*

LIGHTING

Designers\*  
Fixtures\*  
Bulbs\*  
Site Preparation\*  
Installation\*

OTHER COSTS RELATED TO THE PROJECT\* (Attach detailed list)

SUBCONTINGENCY

ARTIST'S FEE

GRAND TOTAL

SAMPLE



**EXHIBIT B**

Payment Schedule

All contractual obligations regarding the Work shall begin upon execution of the Agreement and be **completed no later than October 5, 20\_\_**. The schedule and Artist's fee payments for completion of the Work phases shall be as follows:

<b>Upon receipt of signed contract</b>	\$ 1500.00
<b>Upon receipt of final design proposal, budget and schedule</b>	<u>\$ 1,500.00</u>
Estimated completion October 5, 2017	
<b>Agreement TOTAL:</b>	not to exceed \$ 3,000.00

SAMPLE

**EXHIBIT C2**

Invoice

Artist Name (Please Print):

Telephone Number:

Address:

Date Submitted:

**PAYMENT FOR Final Design Proposal**

Artist Fee \$1,500

**Total Amount Payable \$1,500**

**To insure payment, Artist must submit with this Invoice October 5, 2017:**

1. Final Design proposal which includes areas for aesthetic treatments, drawings of the work and the site, rendering and/or plans for the work along with such other graphics, written materials and models as necessary.
2. Completed budget for proposed aesthetic treatments for the Project.
3. Completed timeline for the Project.
4. Other information requested by the Council.

\_\_\_\_\_  
Artist's Signature

\_\_\_\_\_  
Social Security Number

Approved by: \_\_\_\_\_  
Senior Program Director

\_\_\_\_\_  
Date