



Creation Grant Agreement

This Creation Grant ("Agreement") is entered into this day, **March 4, 2020** between «**Applicant**», with a principal place of business located in «Applicant_Address_1__City», Vermont ("Grantee"), and the Vermont Council on the Arts, Inc., d/b/a Vermont Arts Council ("Council").

WHEREAS, the Council desires to engage the Grantee to render certain services, hereafter described, in connection with the development of the arts and consistent with the purposes of the National Foundation for the Arts and Humanities Act of 1970, P.L. 91-346.

WHEREAS, funding for this Agreement is derived, in part, from the National Endowment of the Arts ("NEA") grant #**1855977-61-19**. The Council's CFDA number is 45.025.

NOW THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, both Grantee and the Council (collectively referred herein as the "Parties"), intending to be legally bound, agree as follows:

Article I, Scope of Work and Related Matters

- 1.1 **Work and Payments:** Grantee shall perform the following:
 - a. This grant shall be used «**Purpose**». These services are referred herein as "Work" or "Services."
 - b. Grantee shall receive up to «**Grant_Amount**» for the Work in accordance with this Agreement and payable in manner set forth in Article II.
- 1.2 **Schedule of Services:** Services to be provided shall be completed by «**End_Date**» as set forth in Article III below. The parties agree that delivery of these services by the completion date [or deadlines] set forth above is material to this agreement, and time is of the essence. Notwithstanding, Grantee may be entitled to suspend its performance of the Work due to any Force Majeure event as provided in section 1.10 below.
- 1.3 **Matching Funds:** Matching funds are not a requirement of this Agreement.
- 1.4 **Compliance with Laws:** Grantee shall comply with all Federal, State, and Local laws, ordinances, rules, regulations, and codes. This shall include, but not be limited to, the **Native American Graves Protection and Repatriation Act of 1990**, the **National Historic Preservation Act of 1966 as amended**, the **Drug Free Workplace Act of 1988**, and the **National Environmental Policy Act of 1969** where applicable.
- 1.5 **Right of Inspection:** The Work may be inspected at any time by the Council to ensure compliance with this Agreement. The Council's right of inspection shall not relieve Grantee of any responsibilities hereunder.

For Office Use:

Application: «Request_»

DEPT

FUND

ACCT

AMT

Date

APR

- 1.6. **Reporting and Assessment:** The Grantee will submit a final report to the Council for the completed Work, including final expenditures, a descriptive report, and such other information and documentation requested by the Council, including but not limited to, use of the Council's final report form in good order by «**Final_Report_Due**». The Council, at its full discretion, may require a final project assessment after completion of the Work to ensure compliance with this Agreement as a condition precedent to the payment of the retainage due under Section 2.1.
- 1.7. **Title and Ownership:** Unless expressly provided herein, Grantee shall retain all title and ownership of the Work. Notwithstanding Grantee's right to title and ownership, the Council shall be given all right, copyright, and/or license to use, record, reproduce and/or depict the Work to reasonably further its mission including, but not limited to, publicizing and promoting the Council.
- 1.8. **Use of Funds:** Grantee shall expend the payments or grant funds received from the Council in conformity with cost principals and other restrictions set forth in the NEA Partnership Program Guidelines. (See 2 C.F.R. Part 200 *et seq.*; [NEA Partnership Program Guidelines](#))
- 1.9. **Changes to Scope of Work:** Any material change to the scope of Work requires advance, written approval from the Council. Material change(s) shall include, but not be limited to, period of performance changes, final report filing extension, project scope changes, and budget revisions.
- 1.10. **Force Majeure:** Grantee shall be entitled to suspend its performance of the Work after immediate written notice to the Council upon the occurrence and during the continuance of any *Force Majeure* event which causes suspension of the Work, but Grantee shall be required promptly to resume its performance of the Work upon the cessation of such event. If a *Force Majeure* event causes suspension of the Work or other delay not caused by or within the responsibility of Grantee, the completion date above shall be equitably adjusted by the Council and the Grantee taking into account (among other factors) the length of any suspension or delay of the Work caused by such *Force Majeure* event and the stage of the Work during which such *Force Majeure* event occurred. An event of *Force Majeure* shall mean winds; hurricanes; tornadoes; fires; epidemics; landslides; earthquakes; floods; other natural catastrophes; strikes; lock-outs or other industrial disturbances; acts of public enemies; acts, failures to act or orders of any kind from any governmental authority acting in its regulatory or judicial capacity (and beyond the reasonable ability of a party to foresee or to contest or prevent such acts, failures to act or orders), provided, however, that any such discretionary acts or failures to act by a party may not be asserted as an event of *Force Majeure* by such party; insurrections; military action; war, whether or not it is declared; sabotage; terrorist acts; riots; civil disturbances; explosions; or any other cause or event, not reasonably within the control of the party (and its subcontractors and suppliers) claiming *Force Majeure* (other than the financial inability of such party), which precludes that party from carrying out, in whole or in part, its obligations under this Contract.

Article II, Payment

- 2.1. **Payment:** Unless other provisions have been made in writing, the Council will set aside a grant fund of «Grant_Amount» for the Grantee. The Council shall pay 100% of the grant amount upon execution of this Agreement and after September 1, 20__, and upon satisfaction of the Conditions Precedent below.
- 2.2. **Conditions Precedent:** No payment shall be made by the Council until the following conditions precedent are met:
- a. Payment by the Council to Grantee is contingent upon the Council's receipt of funds for this program from the National Endowment for the Arts, an annual appropriation from the State of Vermont, and private sector contributions, as budgeted in 20__ for the fiscal year beginning July 1, 20__. In the event the funds from the NEA, the annual State of Vermont appropriation or private funds shall be at a lower level than budgeted by the Council, the Council reserves the right to reduce the grant/payment and/or change the payment schedule.
- 2.3. **Prohibited Uses:** Grantee shall not utilize payment for any of the following items: (a) project or Work costs that are funded in whole or part by another federally funded grant; (b) costs related to entertainment as defined by 2 CFR § 200.432; (c) costs related to fundraising (unless directly related to the "Work"); (d) rental costs for home office workspace; and (e) costs of goods intended for resale (however costs of items that are required to be produced as part of the approved project activity or Work, such as journals, exhibit catalogs, recordings, are permissible if incurred during the period of performance).
- 2.4. **Default:** No payment shall be due while the Grantee is in Default with respect to any of the provisions of this Agreement.

Article III, Term

- 3.1. **Grant Term.** The grant period is «Begin_Date» through «End_Date». Requests to extend the time period must be submitted in writing at least two weeks before «End_Date». **Due to National Endowment for the Arts funding requirements, extensions of time for grant projects will not be approved beyond August 31, 20__.**

Article IV, Termination and Limitation of Liability

- 4.1. **Termination for Convenience:** Notwithstanding any other provision of this Agreement, the Council may terminate this Agreement without cause by giving thirty (30) days advance written notice thereof to Grantee. Upon termination of this Agreement pursuant to this section, Grantee shall have no further obligation to provide services as described in section 1.1. Upon termination of this Agreement pursuant to this section, Grantee shall provide a final accounting of monies expended under the grant, issue a final report as required under section 1.6, and return the balance of unspent funds to the Council within thirty (30) days of receipt of notice of termination.

- 4.2 **Termination for Default:** Either party may terminate this Agreement in the event that the other party fails to materially adhere to any of the terms and conditions of this Agreement (“Default” or “Event of Default”). An Event of Default shall also constitute Grantee’s instituting or has instituted against it a proceeding for insolvency or bankruptcy, or other similar relief. In the event the Council provides a notice of termination under this section due to Grantee’s default, Grantee shall: (1) cease performing Work or services set for in section 1.1; (2) immediately cease the expenditure of any remaining grant funds, (3) return the balance of such grant funds to the Council, and (4) issue a final report as required under section 1.6. The Council shall also be entitled to such other remedy or relief existing at law or in equity in the event of Grantee’s default.
- 4.3. **Limitation of Liability:** The parties confirm and agree that under this agreement, no party is required to pay or will be liable for special, consequential, incidental, punitive, exemplary, or indirect damages, lost profit or business interruption damages, by statute, in tort, contract or otherwise, unless expressly provided for in this agreement.
- 4.4 **Arbitration:** Any disputes or differences arising out of this Agreement that cannot be amicably settled between the parties shall be finally settled under the Rules of Conciliation and Arbitration of the American Arbitration Association by one or more arbitrators appointed in accordance with said Rules. The arbitration shall take place in Montpelier, Vermont. The substantially prevailing party shall be entitled to its reasonable attorneys’ fees and costs.

Article V, Insurance and Indemnification

- 5.1 **Insurance:** Grantees are responsible for securing insurance coverage, as follows, when applicable to their projects:

- a. Workers’ compensation and employers’ liability insurance, as required by law
- b. General liability insurance
- c. Automotive insurance to cover any vehicles used in connection with this Agreement

The Council may request certificates of insurance documenting that this coverage is in effect.

- 5.2 **Indemnification and hold harmless:** Grantee, its successor and assigns, shall defend, indemnify, save and hold harmless the Council, its board members, employees, and representatives from and against all lawsuits including arbitration and mediation proceedings, causes of action, judgments, claims, debts, demands, damages, losses, penalties, fines and expenses (including expenses and attorneys' fees) of whatever kind in law or in equity, relating to any injury, death, property damage, infringement of any intellectual property, loss, suit or claim, known or unknown, foreseen or unforeseen, arising from or out of this Agreement and/or any subsequent acts related thereto, including but not limited to the Work, actions or omissions by the Grantee or any of Grantee’s employees, representatives, sub-contractors or successors or assigns, in connection with this Contract. **The provisions of this section shall survive completion or termination of this Agreement.**

Article VI, Representations and Warranties

- 6.1 Grantee represents and warrants at the time of the execution of this agreement and during the fulfillment of this agreement, the following:
- a. It has the authority and power to execute, deliver and perform the services as described in section 1.1 of this agreement and enter into any transaction contemplated hereby.
 - b. It has both the financial resources and technical ability to fulfill the terms of the Agreement.
 - c. It is neither disbarred, suspended, declared ineligible nor voluntarily excluded from participating or entering into contracts or receiving other monies from either the Federal Government or State of Vermont.
 - d. It has not been found by a court of competent jurisdiction to be in arrears of any child support obligation.
 - e. It has received and maintained the necessary Endorsement by the Council.
 - f. The Work does not involve an “invention” subject to the regulatory requirements of 37 C.F.R. § 401.1 *et seq.*
 - g. The Work does not involve the construction, rehabilitation, alteration, extension, demolition or repair of buildings, highways, or other changes or improvements to real property.
 - h. The Grantee is not delinquent in the repayment of any Federal or State debt. Examples of relevant debt include delinquent payroll, income or other taxes, audit disallowances, and benefit overpayments.
 - i. The Grantee has not been convicted of charges involving fraud, bribery, or gratuity violations.
 - j. Neither Grantee nor its employee(s) or members of their immediate family is employed by the Council.

Article VII, Miscellaneous

- 7.1 **Document Retention and Cooperation:** Grantee shall retain all records, including those in electronic format, related to the Work for three years after the completion of this Agreement. Without limitation these records shall include financial, accounting, payroll, invoices, etc. In the event Council provides notice, Grantee’s obligation to retain records can be extended in the event of an audit, litigation, or other claim. Grantee shall be further obligated to cooperate with any additional, reasonable request for record keeping, record retention, and/or assessment of the Work for contract compliance by the Council, the NEA, or the State of Vermont.

7.2 **Nondiscrimination and Accessibility:**

- a. Grantee warrants, represents, and otherwise agrees that it will not discriminate:
- On the grounds of race, color, religion, gender identity, sex, national origin, sexual orientation, age or disability in accordance with Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), the Age Discrimination in Employment Act of 1975, Title IX of the Education Amendments of 1972; Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, Vermont's Fair Employment Practices Act (21 V.S.A. § 495 et seq.), Vermont's Public Accommodations Act (9 V.S.A. § 4502 et seq.);
 - On the grounds of disability, in accordance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and the Americans with Disabilities Act of 1990 (42 U.S.C. 12101-12213) known as ADA, and the ADA Amendment Act of 2008.
- b. **Individuals and Corporate Grantees:** Agree to make its programs, services, and facilities accessible to individuals with disabilities in providing the above assurance of compliance.
- The Grantee understands that failure to adhere to the requirements of the ADA and the Amendment Act of 2008 and Section 504 of the Rehabilitation Act of 1973 could result in the withdrawal of financial and other support by the Council, the imposition of compliance conditions upon the grant, a reduction in a grant amount, and/or may otherwise jeopardize current and future funding and support from the Council.
 - The Grantee further agrees to consider accessibility in choosing program sites, and in program planning. The Grantee agrees to include in its publications and publicity information concerning available access accommodations (sign language interpreters, large print programs, audio descriptions, assistive listening devices, physical access, etc.) and to include applicable universal disability access symbols (such as the wheelchair) next to access information in printed materials and on the site of the program.
 - Finally, the Grantee agrees to inform the Council immediately of any and all formal access complaints or grievances filed against it so that the Council may better assist the applicant in achieving a timely and meaningful resolution of the complaint. The Grantee agrees to provide documentation of its access compliance efforts if requested by the Council.

For copies of the nondiscrimination laws identified above, and for any question relating to compliance, contact the Council's 504/ADA Coordinator:

Michele Bailey
Vermont Arts Council
136 State Street
Montpelier, VT 05633-6001 802.828.3294 - voice or relay calls welcome

Information about making facilities and programs accessible to individuals with disabilities is also available from the National Endowment for the Arts:

Office for AccessAbility
National Endowment for the Arts
400 7th Street SW
Washington, DC 20506
202.682.5532 (voice) or 202.682.5496 (TTY)

OR

Office for Civil Rights
National Endowment for the Arts
400 7th Street SW
Washington, DC 20506
202.682.5794

- 7.3 **Labor Laws:** The Grantee shall comply with the Fair Labor Standard Act (29 U.S.C. § 201 *et seq.*); Vermont's Wage and Hour laws (21 V.S.A. § 301 *et seq.*), the Davis-Bacon Act (40 U.S.C. § 3141 *et seq.*), and the Copeland Anti-Kickback Act (40 U.S.C. § 3145 *et seq.*). Grantee shall comply and assure that personnel, performers, mechanics, and laborers, who are to be employed under this grant, will be compensated at or above the prevailing community rate for similar services, and will be provided a safe and healthy working environment. In addition, Grantee warrants, represents, and agrees that it shall be prohibited from inducing, by any means, any person employed by it (or its independent contractors, or subcontractors) from giving up any part of the compensation for which he or she is otherwise entitled.
- 7.4 **General Management:** The grantee is also required to execute projects, productions, workshops and programs in accordance with the requirements and regulations of the of National Endowment for the Arts' and/or the State of Vermont and related Executive Orders. The Grantee will manage and administer all operations of the project, such as procurement of facilities and material, publicity, collection of proceeds from sales of tickets or objects, and payment of all expenses. The Grantee is encouraged to use U.S. air carriers for foreign travel, and to purchase American-made products. When managing the project, the Grantee will adhere to the project budget described in the grant application or an amended budget approved by the Council. The Grantee's fiscal control and accounting procedures will ensure proper accounting for both grant and matching funds. Fiscal records will be utilized and maintained pursuant to Adequate Standards to permit an accurate audit, and will be open to review by the Council, Federal, or State government(s). Adequate Standards require that the Grantee: (a) maintain a bookkeeping system for recording receipts and disbursements; (b) distinguish Council grant transactions from other, unrelated transactions; (c) retain supporting documentation of transactions (including, but not limited to, invoices, cash reconciliations, records documenting in-kind matching contributions and the basis for determining their value, time sheets and other pertinent data) in conformity with the document retention requirements set forth in section 7.1; and (d) prepare financial reports to be submitted to the Council.
- 7.5 **Publicity:** All events funded by this grant must be open to the general public. Further, the Grantee is responsible for making sure that all announcements, posters, performance programs, news releases, and other publicity for the project include the following statement: "**This project (or the name of your project) is supported in part by the Vermont Arts Council and the National Endowment for the Arts.**"
- There are additional requirements for television and radio broadcast. Information about those requirements and logos can be found in the grants section of the [Council's website](#) . The Grantee agrees to credit additional funding sources if requested in writing by the Council.

- Most grantees will be required to share depictions of participants via photographs or video for publicity purposes. If Grantee seeks to utilize depictions of participants as part of the publicity associated with its Work, Grantee shall procure the necessary releases and authorizations for the use of such depictions. Grantee may utilize the [sample release and authorization form](#) contained on the Council’s website.

7.6 **Lobbying:** The Grantee is prohibited from conducting political lobbying, as defined in relevant statutes, regulations, and OMB Circulars, within a federally-supported grant project. The Grantee is also prohibited from using federal funds for lobbying specifically to obtain grants. Lobbying includes conduct intended to influence the outcome of elections or to influence elected officials regarding pending legislation, either directly or through specific lobbying appeals to the public.

7.7 **Notices:** Any notice required, permitted to be given, or made under this Agreement shall be in writing to the appropriate primary contact. Such notice shall be deemed to be duly given or made when it shall have been delivered by hand, mail, facsimile or electronic mail to the party to which it is required to be given or made, at such party's address specified below or at such other address as the party shall have specified in writing to the party giving such notice, or making such request.

For Council:

Karen Mittelman
 Vermont Arts Council
 136 State Street
 Montpelier, VT 05633

For Grantee:

«Grant_Contact_Name»

«Applicant_Address_1_Street_1»

«Applicant_Address_1_City»,

«Applicant_Address_1_State_Province»

«Applicant_Address_1_ZIP_Postal_Code»

7.8 **Severability and Non-waiver:** If any term or provision of this Agreement shall be held to be invalid or unenforceable, the remaining terms and provisions of this Agreement shall be valid and enforceable to the fullest extent permitted by law. The failure of either party to enforce any one or more of the provisions of this Agreement shall not be construed to be a waiver thereof, nor shall such failure affect the validity of the Agreement, Grantee’s obligations hereunder or the right of the Council to enforce any provision of the Agreement.

7.9 **Entire Agreement:** This Agreement, including any appendices and the grant application, constitutes the entire agreement between the Council and the Grantee and supersedes all prior communications, representations, agreements and understandings whether oral or written made by either of them concerning the subject hereof. This Contract may not be modified or amended except by written instrument duly executed by an authorized employee of the party to be bound.

7.10 **Governing Law:** The interpretation of the terms and conditions of this Agreement shall be governed by the laws of the State of Vermont.

7.11 **Relationship of the Parties:** Nothing in this Agreement shall be deemed to constitute either party a

partner, agent or legal representative of the other party or to create any fiduciary relationship between the parties. Grantee shall remain an independent contractor in the performance of this Agreement, maintaining complete control of its personnel, workers, subcontractors and operations required for performance of the Work.

- 7.12 **Assignment and Third Party Beneficiary:** This Agreement shall not be assigned by Grantee without the written consent of the Council. Such consent will be at the Council's complete discretion. NEA shall be considered a third party beneficiary under this Agreement, and it shall have the right to seeking enforcement of the Council's rights and to obtain compliance with Grantee's duties and obligations under this Agreement.
- 7.13 **Miscellaneous:** By signing this Agreement, the Parties agree to cooperate and acknowledge and agree to execute all other documents reasonably necessary to effectuate the intent of this Agreement. Both parties have had the ability to review and negotiate the terms of this Contract. Therefore, the presumption against the drafter shall not apply to the construction of this Contract. This Agreement shall bind and inure to the benefit of the Parties of this Agreement and any success or assigns acquiring an interest hereunder.

SAMPLE

ACKNOWLEDGEMENT OF ARBITRATION

I understand that this Agreement between The Vermont Arts Council and «Applicant» contains an agreement to arbitrate. After signing this document, it is understood that neither party will be able to bring a lawsuit concerning any dispute that may arise which is covered by the arbitration agreement, unless it involves a question of constitutional or civil rights. Instead, we agree to submit any such dispute to an impartial arbitrator.

In witness thereof the Council and the Grantee have executed this as of the date first written above.

FOR VERMONT ARTS COUNCIL:



Karen Mittelman, Executive Director
136 State Street
Montpelier, VT. 05633

3/4/2020

Date

FOR GRANTEE:

I certify that I have read and understand the conditions set forth herein, and will comply with these conditions.

Signature of Grantee or Authorizing Representative

Date

Printed or Typed Name of Grantee or Authorizing Representative

«Applicant_Address_1_Street_1»

«Applicant_Address_1_City», «Applicant_Address_1_State_Province»

«Applicant_Address_1_ZIP_Postal_Code»