



July 12, 2019

RE: Request for Unsealed Proposals No. 071219 for the ARCHES Project under the Memorial Ave. Bridge

To Whom It May Concern:

The City of Roanoke is seeking artists to design and fabricate public art under the Memorial Ave Bridge in the City of Roanoke. There is no guarantee of any minimum amount of services that may be requested by the City, and no services may be requested, all in the sole discretion of the City.

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.

The City will review each proposal and may elect to issue separate awards to multiple Offerors for such goods/services.

Background Information:

The Roanoke Arts Commission's "Arches Project" seeks to engage four Roanoke neighborhoods (Norwich, Raleigh Court, Wasena, Mountain View) through a professionally guided public art project on the greenway under the Memorial Avenue Bridge. We also hope to engage the residents of the Roanoke Terrace Apartments. *Total Action for Progress*, a local community action agency and our facilitative partner in this vision has agreed to assist in this process since Memorial Bridge marks their closest access point to the greenway.

Three public forums have been held with residents and artists and all the information from those sessions can be located at artinroanoke.org. The top three goals established by the forum participants are listed below:

1. **Bring Diversity to Traffic on the Greenway** (Cultural, Economic, International recent immigrants, Racial, from different neighborhoods, assessable to all abilities.)
2. **Engage Participants in the process of art** (creation, appreciation, interaction with art, kinetic? can viewers add to it?)
3. **Create a Gathering space** (group activities, personal reflection, taking selfies for social media, dogs, bikes)

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

Scope of Services:

A description and/or listing of the services and/or items that the Successful Offeror will be required to provide to the City under this RFUP are those that are set forth in this RFUP below.

Artist Responsibilities:

1. The Successful Offeror shall be responsible for furnishing all equipment, materials, goods, labor and services necessary to design, fabricate and install public art under the Memorial Ave Bridge.
2. The Successful Offeror shall sign and date their work in the bottom left corner.
3. The Successful Offeror shall be responsible for any liability insurance the City deems necessary for this project. The City is not liable under any circumstances.
4. The Successful Offeror shall complete the project in a timely manner.

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 all marketing and PR 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.

Proposed Timeline: Subject to Change

- Responses due by July 29, 2019
- Roanoke Arts Commission votes on proposals on August 20, 2019
- Artists notified by August 21 2019
- Successful Offeror(s) shall complete work by November 15, 2019

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 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 proposals. One or several proposals may be accepted with the total of all projects not to exceed \$20,000. **Projects over \$10,000 require a signed contract.**

Each Offeror is asked to submit the following materials **electronically to susan.jennings@roanokeva.gov**

1. 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.
2. Contact information for two professional references for which the Offeror has done design or art work in the last five years.
3. 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.
4. A current resume with contact information, including a web site if applicable.
5. A budget to include the following costs: artist design and project management fee, fabrication and installation costs.

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 RFUP is subject to negotiations with the successful Offeror(s), and final approval by the City.

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.

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

Enclosed with the RFUP is a copy of the Sample Contract, Attachment A to the RFUP. Please review the documents carefully.

All responses to this Request for Unsealed Proposals shall be electronically submitted on or before 2:00 p.m. on July 29 to the email address listed below with ARCHES Project in the subject line:

susan.jennings@roanokeva.gov

Proposals received after the specified date and time may not be accepted.

The City reserves the right to reject any or all proposals, to cancel this RFUP, 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.

Offerors will be evaluated for selection on the basis of those most qualified to meet the requirements of this RFUP. 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.

1. 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.
2. The Offeror's responsiveness and compliance with the RFUP requirements and conditions.
3. Determination that the selected Offeror has no contractual relationships which would result in a conflict of interest with City's Terms and Conditions.
4. The Offeror's ability, capacity and skill to fully and satisfactorily provide the services or items required in this RFUP.
5. The quality of Offeror's performance in comparable and/or similar projects.
6. Whether the Offeror can provide the services and/or items in a prompt and timely fashion.

All proposals submitted in response to this RFUP 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 all responsive proposals, conduct the negotiations, and make recommendations 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 Susan Jennings, Arts and Culture Coordinator at 540-853-5652 or susan.jennings@roanokeva.gov.

**ATTACHMENT A TO
RFUP# 071219
ARCHES PROJECT UNDER THE MEMORIAL AVENUE BRIDGE**

SAMPLE CONTRACT

This Contract # _____ is dated ____, 2019, between the City of Roanoke, Virginia, a Virginia municipal corporation, hereinafter referred to as the "City" or "Owner", and _____, hereinafter referred to as the "Contractor" or "Artist."

WITNESSETH:

WHEREAS, Contractor has been awarded this nonexclusive Contract by the City for furnishing all equipment, materials, goods, labor, and services necessary for design and fabrication of public art under the Memorial Avenue Bridge and associated work in accordance with this Contract and the documents referred to herein, all such items or services also being referred to hereinafter as the Work or Project.

NOW, THEREFORE, THE CITY AND THE CONTRACTOR AGREE AS FOLLOWS:

SECTION 1. GENERAL DESCRIPTION OF WORK TO BE PERFORMED AND DOCUMENTS.

For and in consideration of the money hereinafter specified to be paid by the City to the Artist for the Work provided for in this Contract to be performed by the Artist, the Artist hereby covenants and agrees with the City to fully perform the services, provide any materials called for, and complete the Work called for by this Contract in a good and workmanlike manner in accordance with this Contract and the documents referred to herein in order to fully and properly complete this Contract within the time stipulated, time being made of the essence for this Contract.

It is also agreed by the parties hereto that the documents to this Contract consist of this Contract and the following documents listed below (Contract Documents), all of which are and constitute a part of this Contract as if attached hereto or set out in full herein, viz:

1. Insurance Requirements (Exhibit 1)
2. Design Drawings and Specifications (Exhibit 2)
3. Special Terms & Conditions (Exhibit 3)
4. Request for Unsealed Proposal No. 071219, which is incorporated herein by reference

Contractor agrees and acknowledges Contractor has received and reviewed the items listed above, and will comply with all such items.

The Contractor specifically agrees to strictly comply with all of the Contract Documents and to properly and timely provide the services as provided for in this Contract. Furthermore, if there should be any discrepancies in any of the Contract Documents,

Contractor shall immediately notify the City's Arts and Culture Coordinator for directions on how to proceed, but unless directed otherwise, Contractor shall comply with the more stringent terms.

The parties agree that if there are any differences between the provisions of the above referenced documents and the provisions of the City documents, this Contract will govern over any Contractor supplied documents or information.

SECTION 2. OBLIGATIONS OF THE ARTIST.

In connection with this Contract, the Artist agrees to provide or do the following:

- A. The Artist shall provide to the City the artistic design, fabrication, and installation of Art, and the design of such Art shall be unique and shall be subject to the prior written approval of the City Manager.
- B. The Artist agrees that such Art shall be substantially similar to the design drawings and specifications prepared by the Artist, and as approved by City Council, and as shown in Exhibit 2 attached hereto and made a part hereof ("Art"). There shall not be any substantive changes or modifications to the design without the prior written approval of the City Manager.
- C. Representatives of the City may inspect and/or review any part of the Work at any time while it is in progress. Such inspection will be during normal working hours after providing reasonable notice to the Artist of such inspection.
- D. The Artist shall present to the City representatives a time schedule indicating when the various parts of the Work will be completed and that will provide that the Art at the Site will be completed and installed no later than November 15, 2019.
- E. The Artist shall be responsible for providing and furnishing all labor and materials, supplies, and any other items and/or services, whether specifically set forth herein or not, that will be needed or called for in order to provide one (1) properly completed and installed Art so that the City will have one (1) properly installed Art within the time period set forth above. The Art shall be in compliance with and meet all applicable building, zoning, and other codes, rules, and regulations and requirements and all other applicable federal, state, and local laws, rules, and regulations.
- F. The artistic design for such Art shall be an original work of art.
- G. The Artist shall be responsible for coordinating and cooperating with representatives of the City in order to coordinate and schedule all items of the Work in order to meet the time frame for completion of the Art within the time period set forth above.

- H. The Artist shall be responsible for obtaining and maintaining, at the sole cost of the Artist, any and all required licenses, such as a City business license, any required contractor's license, or any other licenses or permits, including Encroachment Permits and/or Right-of-Way Excavation Permits, that may be needed or required for any part of the Work.
- I. The Artist shall be solely responsible for all costs, charges, expenses, or any other expenses of any type necessary to provide such Art and properly and fully complete the Work as called for by this Contract.
- J. The Artist may provide any of the Artist's obligations through other properly qualified persons or entities, which shall be provided solely at the cost of the Artist. The Artist shall be fully responsible for any of the acts, actions, or omissions of any such persons or entities. However, prior to having any of the Work done by other persons or entities, the Artist shall first obtain the prior written approval of the representatives of the City, which approval shall not be unreasonably withheld.
- K. The Artist further warrants all of the Work that the Artist performs under this Contract to be free from any defects in material, workmanship, and design for a period of one (1) year from the date of the final completion of the Art and the acceptance of the Art by the City. Any repairs due to the faulty materials, workmanship, or design shall be the sole responsibility to be repaired or replaced by the Artist for one year from the acceptance of the Art by the City. The City will have seven (7) business days to either accept the Art, or provide to the Artist written reasons why they do not accept the Art. The City will not unreasonably withhold any such acceptance.

SECTION 3. OBLIGATIONS OF THE CITY.

In connection with this Contract, the City agrees to provide or do the following:

- A. The City will provide a representative or representatives to consult with the Artist in order to provide the Artist with information that the Artist may request concerning City procedures and/or requirements in connection with the Work.
- B. The City will provide the total amount of _____ (\$_____) as payment to the Artist for the Artist's full, proper, and complete provision of the Work called for by this Contract.
- C. After the proper and complete design, fabrication, and installation of such Art by the Artist, and after approval by the City and proper certification and/or approval by the appropriate building officials that such Art meets all applicable codes and other requirements, the City will take ownership and responsibility for such Art. From the time that the City takes ownership and responsibility of such Art, the City will thereafter be responsible for the maintenance and upkeep of such Art, including any repairs that may be necessary, other than repairs due to faulty

workmanship or otherwise due to the fault of the Artist or the Artist's subcontractors or sub consultants. Any such repairs for faulty workmanship, materials, or design shall be the sole responsibility to be repaired or replaced by the Artist within the one year warranty period.

SECTION 4. FEE AMOUNT AND PAYMENT TO THE ARTIST.

- 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 _____ (\$_____) to be paid to the Artist shall be paid in three (3) equal installments, after receipt of an invoice from Artist, as follows:
- (1) _____ within ten (10) business days after full execution of this Contract and upon receiving an invoice from the artist.
 - (2) _____ upon proper and timely fabrication of the artwork, which shall be evidenced to the City's Project Manager with photographs. Payment of such amount will be due Artist within ten (10) business days after the City's Project Manager confirms fabrication of the art work and upon receiving an invoice from the artist.
 - (3) _____ after 30 days following the completion of (1) upon proper and timely completion of the installation of the art work, (2) acceptance of the art by the City; and (3) the proper completion of a final report setting forth the details and methods for maintaining the art and materials needed for such maintenance. Payment of such amount will be due Artist within ten (10) business days after the City's Project Manager confirms completion of all of the items set forth in the prior sentence.
- 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 4 (B) above will be made as set forth therein.

SECTION 5. TIME OF PERFORMANCE.

The Artist shall provide a written schedule for the various phases or stages of the Work to be done on such Art. 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 Art shall be completed, installed, approved, and accepted by the City on or before November 15, 2019. 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 failure to provide timely responses to questions from the Artist will not be the responsibility of the Artist.

SECTION 6. 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 Art by the City.

SECTION 7. 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, 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, 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 7. The Artist acknowledges that the Fee provisions in Section 4 of this Contract include compensation to the Artist for the matters set forth in this Section 7.

- 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 and the City 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 8. WARRANTY OF MATERIAL AND WORKMANSHIP.

Contractor agrees that all items provided to the City will be new, or if an item is refurbished or remanufactured, such item will meet the industry standards for such item and the item shall be clearly labeled as refurbished or remanufactured, and that all such items include such warranties as may be provided by Virginia law together with any warranties provided by the manufacturer of the item. Contractor shall use reasonable commercial efforts to assist the City in processing warranty claims against a manufacturer. Contractor also agrees that the services provided under this Contract shall be completed in a professional, good and workmanlike manner, with the degree of skill and care that is required by like contractors in Virginia. Further, Contractor warrants that such services shall be completed in accordance with the applicable requirements of this Contract and shall be correct and appropriate for the purposes contemplated in this Contract. Contractor agrees that Contractor shall repair or replace, at Contractor's sole expense, and to the satisfaction of the City, any items, material, equipment, or part of the item that is found by the City to be defective or not in accordance with the terms of this Contract.

SECTION 9. PAYMENTS TO OTHERS BY CONTRACTOR.

The Contractor agrees that Contractor will comply with the requirements of Section 2.2-4354 of the Virginia Code regarding Contractor's payment to other entities and the Contractor will take one of the two actions permitted therein within 7 days after receipt of amounts paid to Contractor by the City. Contractor further agrees that the Contractor shall indemnify and hold the City harmless for any lawful claims resulting from the failure

of the Contractor to make prompt payments to all persons supplying the Contractor 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 Contractor, 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.

Contractor shall indemnify and hold harmless the City and its 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 Contractor's or its employees, agents, or subcontractors actions, activities, or omissions, negligent or otherwise, on or near City's property or arising in any way out of or resulting from any of the work or items to be provided under this 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. Contractor 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 AND REGULATIONS, AND IMMIGRATION LAW.

Contractor agrees to and will comply with all applicable federal, state, and local laws, ordinances, and regulations, including, but not limited to all applicable licensing requirements, environmental regulations, and OSHA regulations. Contractor further agrees that Contractor does not and shall not during the performance of its Contract; knowingly employ an unauthorized alien as defined in the Federal Immigration Reform & Control Act of 1986.

SECTION 12. INDEPENDENT CONTRACTOR.

The relationship between Contractor and the City is a contractual relationship. It is not intended in any way to create a legal agency or employment relationship. Contractor 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. Contractor shall be responsible for causing all required insurance, workers' compensation (regardless of number of employees) and unemployment insurance to be provided for all of its employees and subcontractors. Contractor will be responsible for all actions of any of its subcontractors, and that they are properly licensed.

SECTION 13. REPORTS, RECORDS, AND AUDIT.

Contractor agrees to maintain all books, records, electronic data, 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, its authorized employees, agents, representatives, and/or state auditors shall have full access to and the right to request, examine, copy, and/or audit any such materials during the term of the Contract and such retention period, upon prior written notice to Contractor. This includes the City's right to audit and/or examine any of the Contractor's documents and/or data as the City deems appropriate to protect the City's interests.

SECTION 14. INSURANCE REQUIREMENTS.

Contractor and any of its subcontractors involved in this Contract shall maintain the insurance coverage's set forth in Exhibit 1 to this Contract and provide the proof of such insurance coverage as called for in Exhibit 1, including workers' compensation coverage regardless of the number of Contractor's employees. Such insurance coverage shall be obtained at the Contractor'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 Contractor 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 Contractor 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 Contractor, 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 Contractor shall be liable for any damages to the City resulting from Contractor's default. The City further reserves the right to immediately obtain such work or services from other entities in the event of Contractor's default.

SECTION 16. NONWAIVER.

Contractor 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 Contractor 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 Contractor and does not bar the City from requiring the Contractor 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 Contractor under this Contract or by law.

SECTION 17. FORUM SELECTION AND CHOICE OF LAW.

This Contract shall be governed by, and construed in accordance with, the laws of the Commonwealth of Virginia, without application of Virginia's conflict of law provisions. Venue for any litigation, suits, and claims arising from or connected with this Contract shall only be proper in the Roanoke City Circuit Court, or in the Roanoke City General District Court if the amount in controversy is within the jurisdictional limit of such court, and all parties to this Contract voluntarily submit themselves to the jurisdiction and venue of such courts, regardless of the actual location of such parties. The provisions of this Contract shall not be construed in favor of or against either party, but shall be construed according to their fair meaning as if both parties jointly prepared this Contract.

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, Contractor agrees as follows:
- i. Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - ii. Contractor in all solicitations or advertisements for employees placed by or on behalf of Contractor will state that Contractor 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. Contractor 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, Contractor agrees to (i) provide a drug-free workplace for Contractor'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 Contractor that Contractor 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 a contractor, 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 does not discriminate against faith-based organizations.

SECTION 22. ASSIGNMENT.

Contractor 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 Contractor from any of the covenants or undertakings contained in this Contract and the Contractor 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 Contractor that the City disputes the amount of Contractor's request for final payment. However, written notice of the Contractor'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 Contractor. 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 Contractor 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 Contractor's claim. The decision of the City Manager shall be final and conclusive unless the Contractor 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 Contractor 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 Contractor'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 Arts & Culture Attn: Susan Jennings, Arts and Culture Coordinator 117 Church Avenue, SW Roanoke, Virginia 24011
Facsimile:	(540) 853-1213

Copy to: City of Roanoke
Purchasing Division
Attn: Purchasing Manager
Noel C. Taylor Municipal Building, Room 202
215 Church Avenue, SW
Roanoke, Virginia 24011

Facsimile: (540) 853-1513

If to Contractor: _____
Attn: _____, President/CEO

Email Address: _____
Phone: _____

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

SECTION 29. PROTECTING PERSONS AND PROPERTY.

The Contractor expressly undertakes both directly and through its subcontractors, 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 Contractor's operation in connection with the Work. The Contractor will maintain adequate protection of all Contractor'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 to protect adjacent property to prevent any damage to it or loss of use and enjoyment by its owners. Contractor 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 in the vicinity or adjacent to the Work. All damage with respect to the Work caused by vandalism, weather, or any other cause, other than resulting from the sole negligence of the City shall be the responsibility of the Contractor. Contractor shall also be responsible for any inventory shortages and discrepancies of any type.

SECTION 30. CONTRACT SUBJECT TO FUNDING.

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

SECTION 31. SUSPENSION OR TERMINATION OF CONTRACT BY CITY.

The City, at any time, may order Contractor to immediately stop work on this Contract, and/or by seven days (7) written notice may terminate this Contract, with or without cause, in whole or in part, at any time. Upon receipt of such notice, the Contractor 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 Contractor 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 Contractor 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 Contractor 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 the Contract be terminated or work is stopped not due in any way to the fault of the Contractor, the Contractor 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 Contractor 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. COMPLIANCE WITH STATE LAW; FOREIGN AND DOMESTIC BUSINESSES AUTHORIZED TO TRANSACT BUSINESS IN THE COMMONWEALTH OF VIRGINIA.

Contractor shall comply with the provisions of Virginia Code Section 2.2-4311.2, as amended, which provides that a contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 or as otherwise required by law. Contractor shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the

term of the Contract. The City may void the Contract if the Contractor fails to remain in compliance with the provisions of this section.

SECTION 34. OWNERSHIP OF REPORTS AND DOCUMENTS.

Contractor agrees that all reports and any other documents (including electronic data) prepared for, obtained in connection with, and/or required to be produced in connection with this Contract shall be delivered by the Contractor to the City and all such items shall become the sole property of the City. The Contractor agrees that the City shall own all rights of any type in and to all such items, including but not limited to copyrights and trademarks, and the City may reproduce, copy, and use all such items as the City deems appropriate, without any restriction or limitation on their use and without any cost or charges to the City from Contractor. Contractor hereby transfers and assigns all such rights and items to the City. Contractor further agrees Contractor will take any action and execute any documents necessary to accomplish the provisions of this Section. The Contractor also warrants that Contractor has good title to all materials, equipment, documents, and supplies which it uses in the Work or for which it accepts payment in whole or in part.

SECTION 35. ENTIRE CONTRACT.

This Contract, including any attachments, exhibits, and referenced documents, 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.

WITNESS:

ARTIST NAME

By _____

Printed Name and Title

CITY OF ROANOKE, VIRGINIA

WITNESS:

By _____
City Manager or Authorized City Representative

Printed Name and Title

Printed Name and Title

Approved as to form:

Appropriation and Funds Required
for this Contract Certified:

City Attorney

Director of Finance

Account # _____

Approved as to Execution:

CT# _____

City Attorney

**EXHIBIT 1
TO CONTRACT
BETWEEN CITY OF ROANOKE AND _____
ARCHES PROJECT UNDER THE MEMORIAL AVENUE BRIDGE**

REFERENCE: RFUP# 071219

INSURANCE REQUIREMENTS SECTION

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

- A. Neither the Contractor nor any subcontractor shall commence work under this Contract until the Contractor has obtained and provided proof of the required insurance coverages to the City, and such proof has been approved by the City. The Contractor confirms to the City that all subcontractors have provided Contractor with proof of such insurance, or will do so prior to commencing any work under this Contract.
- B. Contractor, including all subcontractors, 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 Contractor 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 Contractor 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, Contractor 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 Contractor and any subcontractors under this Contract).
- OR
- (2) ISO endorsement CG 20 10 will be issued, prior to the beginning of any work or other performance by Contractor 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 Contractor and any subcontractors 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 Contractor, including its subcontractors, 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

(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.

(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, Contractor's and its subcontractors' insurance company shall waive rights of subrogation against the City and its officers, employees, agents, assigns, and volunteers.
- (6) Should any required insurance coverage be canceled or materially altered before the expiration term of the contract, it is the responsibility of the contractor to notify the City of such within thirty (30) days of the effective date of the change.

D. Proof of Insurance Coverage:

- (1) Contractor 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 Contractor's insurance policies and/or coverages shall not contain any exclusions for the Contractor's subcontractors.

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 Contractor for default.

H. Nothing contained in the insurance requirements is to be construed as limiting the liability of the Contractor, and/or its subcontractors, 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 Contractor's interest or liabilities, but are merely minimums. The obligation of the Contractor, and its subcontractors,

to purchase insurance shall not in any way limit the obligations of the Contractor 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 Contractor's insurance company before seeking recovery directly from the Contractor.

END

**EXHIBIT 2
TO CONTRACT
BETWEEN CITY OF ROANOKE AND _____
ARCHES PROJECT UNDER THE MEMORIAL AVENUE BRIDGE REFERENCE:
RFUP# 071219**

Design Drawings and Specifications

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

THE FINAL DESIGN DRAWINGS AND SPECIFICATIONS WILL BE NEGOTIATED WITH THE SUCCESSFUL OFFEROR

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**EXHIBIT 3
TO CONTRACT
BETWEEN CITY OF ROANOKE AND _____
FOR
ARCHES PROJECT UNDER THE MEMORIAL AVENUE BRIDGE REFERENCE:
RFUP# 071219**

SPECIAL TERMS AND CONDITIONS

The following Special Terms and Conditions are part of the above Contract:

SECTION 1. JOBSITE APPEARANCE.

The Artist expressly undertakes, either directly or through its subcontractor(s), to clean up frequently all refuse, rubbish, scrap material, and debris caused by its operations, to the end that at all times the jobsite shall present a neat, orderly, and workmanlike appearance. No such refuse, rubbish, scrap material, and debris shall be left within the completed Work nor buried on site, but shall be properly protected and removed from the site and properly disposed of in a licensed landfill or otherwise as required by law or otherwise required by the Contract.

SECTION 2. FINAL CLEANING.

The Artist expressly undertakes, either directly or through its subcontractor(s), before final payment, to remove all surplus material, false work, temporary structures, and debris of every nature resulting from its operations and to put the site in a neat, orderly condition. If Artist fails to clean up at the completion of the Project, the City may do so and charge all costs thereof to the Artist.

SECTION 3. PROTECTION ON SITE.

The Artist expressly undertakes, both directly and through its subcontractor, to take every reasonable precaution at all times for the protection of all persons and property, which may come on the jobsite or be affected by the Artist's operation in connection with the Work.

SECTION 4. SAFETY AND HEALTH PRECAUTIONS.

The Artist shall be solely responsible for initiating, maintaining, and supervising all safety and health precautions and programs in connection with the Work, including but not limited to provision of appropriate sanitation facilities, if applicable.

SECTION 5. PROTECTING THE PUBLIC.

The Artist shall in all cases protect the public and the Work, during its execution, by posting and maintaining, at its expense, appropriate signs, barricades, barriers, lights,

flagmen, and other safety devices in accordance with the most current version of the "Virginia Work Area Protection Manual," published by Virginia Department of Transportation.

SECTION 6. PROTECTING THE WORK AND ADJACENT PROPERTY.

The Artist shall continuously maintain adequate protection of all its work from damage and shall protect the City's property and the property where the Work is being done from injury or loss arising in connection with this Contract. During the installation of the Art, the Artist shall adequately protect adjacent property to prevent any damage to it or its loss of use. Artist shall provide and maintain all passageways, guard fences, lights, and other facilities for protection required by any public authority, local conditions, any of the Contract Documents, or erected for the fulfillment of its obligations for the protection of persons and property.

SECTION 7. DAMAGE TO THE WORK.

The Artist shall have charge of and be solely responsible for the entire Work and be liable for all damages to the Work including, but not limited to any property in the vicinity of the Work, until Artist completes the Work and it is approved and accepted by the City and approval of the Work by the appropriate building officials.

SECTION 8. DAMAGE TO OTHER WORK OR UTILITIES.

The Artist shall take into account all other work which shall be done by other parties on the jobsite, either now known or which may become necessary during the progress of the Work, and shall be responsible for any damage done to the other work. Should any utilities require adjustment during the Work, it shall be the Artist's responsibility to have such utilities relocated as a part of the Work and to contact and cooperate with the respective Utility Company in performance of such operations. The respective Utility Company shall be given a minimum of forty-eight (48) hours' notice prior to the adjustment, and the Artist shall comply with the provisions of the Virginia Underground Utilities Damage Prevention Act, Section 56-265.14 et seq., of the Va. Code. Damages that may occur to the utilities during the Work shall be the sole responsibility of the Artist.

SECTION 9. DAMAGE TO EXISTING STRUCTURES.

Damage caused by Artist or its subcontractors to concrete curbs, gutters, sidewalks, or any existing facility, structure, or building that may occur during the Work shall be repaired or replaced by the Artist, at its sole expense, as directed by and to the satisfaction of the City.

SECTION 10. DEFECTIVE WORK.

For a period of one year after acceptance of the Art by the City, the Artist agrees it shall repair or replace, at Artist's sole expense, and to the satisfaction of the City, any work, material, equipment, or part that is found, by the City, to be defective.

SECTION 11. CORRECTION OF DEFECTS.

If the Artist, after notice, fails to proceed promptly to correct any defects or defective Work, the City may have the defects corrected by the City or another entity and the Artist shall be liable for all costs and expenses incurred in doing so.

END OF EXHIBIT 3.