February 18, 2016

RE: Request for Proposal No. 16-08-07 for West End Gateway Sculpture

To Whom It May Concern:

The City of Roanoke is seeking a permanent sculpture to serve as a gateway piece to the West End Neighborhood. Sealed proposals are solicited to establish a contract with a qualified Artist to provide the sculpture. 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 an Artist or Artist Team to fabricate and install a permanent sculpture on an already existing pad which is 6' by 6' located at on the point of land at the convergence of Campbell and Patterson Ave. SW (adjacent to parcel # 1112822), also known as the Campbell/Patterson Pocket park located on the City of Roanoke right of way at the corner of Campbell Ave. and Patterson Ave., SW, Roanoke, Virginia, 24016 in Roanoke, Virginia. Already created work will also be considered, but should reflect the character of the neighborhood and serve as a welcome beacon.

Background

The City has recently utilized Community Development Block Grant funds to create infrastructure improvements in the West End Target Area which encompasses portions of five neighborhoods. Historically the neighborhoods adjoining downtown Roanoke to the west were referred to collectively as the *West End,* but four of the City's planning areas - West End, Hurt Park, Old Southwest and Mountain View – constitute most of the area. Recently, the Downtown West Neighborhood Association formed and overlaps a small portion of the area. At least three neighborhood organizations were involved in planning and implementation of the improvements.

West End has become deteriorated and is dealing with years of disinvestment, yet at the same time it was selected as a focal point to use the City's HUD funds due to numerous recent improvements from the public and private sectors. The City's goal was to use targeted public investment to spur further revitalization of the entire neighborhood that will "prime the pump" for private investment. Like many urban neighborhoods, the West End community continues to deal with the consequences of several decades of suburban growth that fostered an exodus of homeowners.
The empty lot adjacent to the site for the sculpture was recently purchased by the Roanoke Community Garden Association and will be developed for a community garden in the future. The area in front of the sculpture pad hosts a bus stop where many people congregate. The proposed sculpture does not have to be confined to the pad if the Artist develops a method to incorporate the bus stop.

**Photos of the site can be found at www.roanokeva.gov/artsandculture**

Services/Deliverables:

Please submit your Proposal, **one (1) original and seven (7) copies**, of the following materials appropriately signed by the artist.

1. A signed cover sheet to include two references (Attachment B)

2. If creating a new work – A statement of interest, which describes your vision for this project, relative experience, and how your design will highlight the history or identity of the West End Area and serve as a welcome to the neighborhood.

3. A sketch of your proposed design(s) in the colors you plan to use with all dimensions included. You may submit up to three designs.

4. A description of materials to be used (or included in a completed work) and information about the durability of such materials in an outdoor environment.

5. A current resume.

6. Visual Images as follows:

Up to 10 images of prior work executed within the last seven years, submitted as digital images and sent on one flash drive or PC Compatible CD-ROM in JPEG format maximum pixel dimensions (per image) – 800 X 600. Label CD or flash drive with artist's name. Slides will not be accepted. The images should be numbered to match the image list.
Or if submitting an already completed sculpture up to four images of the work from all sides. You may submit up to three completed works.

7. An image list that corresponds to the CD and lists all dimensions and weight of the works

8. A budget or price list for completed works.

Schedule of Work:
Responses to this RFP are due by 2:00 PM on March 25, 2016
Chosen artist will be notified by April 1, 2016
The work should be completed and installed no later than June 30, 2016.

Budget
The budget threshold for the project is $15,000.00.

Enclosed with the RFP is a copy of the Sample Contract, Attachment A to RFP 16-08-07. The Successful Offeror selected for this project will be required to sign, subject to any changes that may be authorized by mutual agreement of the parties. Please review the document carefully. The insurance requirements provided for in the Contract must be provided by the Successful Offeror before any work is performed.

**All responses to this request for proposal shall be submitted on or before 2:00 p.m. on March 25, 2016 to the address listed below:**

City of Roanoke
Noel C. Taylor Municipal Building
Purchasing Division, Room 202
215 Church Ave. S.W., Roanoke, VA 24011
Ref: RFP # 16-08-07 West End Gateway Sculpture
Attn: Simone Knowles, Purchasing Manager

Each proposal, one (1) **original, marked as such** and seven (7) **copies, marked as such**, must be appropriately signed by an authorized representative of the Offeror, and must be submitted in a sealed envelope or package. A removable media storage device containing two (2) digital copies of the proposal, one as submitted, and one **redacted to remove all confidential and proprietary material**, must be included in the proposal packet. The notation "West End Gateway Sculpture", RFP # 16-08-07 and the opening time and date must be clearly marked on the front of that sealed envelope or package. Proposals received after the specified date and time will not be accepted. If the Noel C. Taylor Municipal Building is closed for business at the time scheduled for the proposal opening, the sealed proposal will be accepted and opened on the next business day of the City, at the originally scheduled hour.

The City reserves the right to reject or cancel any or all proposals, to waive any informalities in any proposal, to award any whole or part of a proposal, and to award to the Offeror 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 RFP. The City of Roanoke does not use a numerical or weighted scoring system when evaluating selection criteria. Major criteria to be considered in the evaluation may include, but shall not necessarily be limited to, the items referred to above and those set forth below.

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. Reasonable/competitiveness of proposed fee and/or benefits to the City, although the City is not bound to select the Offeror who proposes the lowest fees or most benefits for services. The City reserves the right to negotiate fees and/or benefits to the City with selected Offeror.

3. The Offeror's responsiveness and compliance with the RFP requirements and conditions.

4. Determination that the selected Offeror has no contractual relationships which would result in a conflict of interest with City's contract.

5. The Offeror's ability, capacity and skill to fully and satisfactorily provide the services or items required in this RFP.

6. The quality of Offeror's performance in comparable and/or similar projects.

7. Whether the Offeror can provide the services and/or items in a prompt and timely fashion.

8. Offeror's willingness to accept the City's sample contract.

9. How well the proposal or completed work addresses the character of the neighborhood and serves as a welcoming beacon to the area.

**If you download this RFP from the City website and intend to submit a proposal, you should notify Purchasing that you have done so. However, each Offeror is solely responsible for ensuring that such Offeror has the current, complete version of the RFP documents, including any addenda, before submitting a proposal. The City is not responsible for any RFP obtained from any source other than the City. Contact Purchasing by phone at 540-853-2871, by fax at 540-853-1513, or by email at simone.knowles@roanokeva.gov.**

Proposal evaluation and award will be accomplished in accordance with this Request for Proposal 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 RFP may be directed to Simone Knowles, Purchasing Manager, simone.knowles@roanokeva.gov. All questions must be submitted before 5:00 p.m., March 11, 2016. If necessary, an addendum will be issued and posted to the City Vendor Self Service website at https://VSS.roanokeva.gov and to the Current Bids/RFP Requests tab on City website at www.roanokeva.gov/purchasing.

Sincerely,

Simone Knowles
Purchasing Manager

**Attachment A to**
**RFP # 16-07-08**

**West End Gateway Sculpture**

**Sample Contract**

# SUBGRANT CONTRACT FOR PROVIDING FOR THE ARTISTIC DESIGN, FABRICATION, AND INSTALLATION OF A SCULPTURE AT WEST END GATEWAY

This Subgrant Contract, dated _____, 2016, is for providing for the artistic design, fabrication, and installation of a permanent sculpture at the West End Gateway located at the corner of Campbell Ave. and Patterson Ave., SW, Roanoke, Virginia, 24016, which is located in the City of Roanoke, Virginia, ("Contract"). This Contract is between the City of Roanoke, Virginia, a Virginia municipal corporation ("City"), and _____, an individual ("Artist", "Contractor", or "Subgrantee").

## RECITALS:

WHEREAS, by Resolution number 40231-051115, adopted on May 11, 2015, the Council of the City of Roanoke ("Council") accepted a Community Development Block Grant (CDBG) in the amount of Fifteen Thousand Dollars ($15,000.00) to provide comprehensive services related to the selection and placement of a permanent display on the point of land at the convergence of Campbell and Patterson Ave. SW, also known as the Campbell/Patterson Pocket park located on the City of Roanoke right of way at the corner of Campbell Ave. and Patterson Ave., SW, Roanoke, Virginia, 24016, (hereinafter referred to as the "Site");

WHEREAS, the City has selected the Artist to provide for the artistic design, fabrication, and installation of Art (hereinafter referred to as the "Work") to be located at the Site;

WHEREAS, the parties wish to reduce to writing the understanding of the parties concerning this matter.

NOW, THEREFORE, the City and Artist, in consideration of the promises and obligations as contained herein and in the above Recitals, which Recitals are incorporated herein and made a part of this Contract, mutually 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. Design Drawings and Specifications (Exhibit A)
2. Special Terms & Conditions (Exhibit B)
3. Insurance Requirements (Exhibit C)
4. Community Development Block Grant Contract Provisions (Exhibit D)
5. Federal Contract Provisions (Exhibit E)

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 applicable terms and regulations of the Community Development Block Grant Contract Provisions and the Federal Contract Provisions referenced above. If there should be any conflict between any such terms or regulations and any other terms of this Contract, the more stringent terms shall apply unless otherwise provided by federal law or regulation.

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 A 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 June 30, 2016.

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, which will also serve as functional 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 Fifteen Thousand Dollars ($15,000.00) 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 Fifteen Thousand Dollars ($15,000.00). 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 Fifteen Thousand Dollars ($15,000.00) to be paid to the Artist shall be paid in two (2) equal installments, after receipt of an invoice from Artist, as follows:

(1) $7,500.00 within ten (10) business days after full execution of this Contract.

(2) $7,500.00 upon proper and timely completion of the installation of the art work, acceptance of the art by the City, and 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 June 30, 2016. 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. PAYMENTS TO OTHERS BY ARTIST.

The Artist agrees that Artist will comply with the requirements of Section 2.2-4354 of the Code of Virginia (1950), as amended, regarding Artist's payment to other entities and the Artist will take one of the two actions permitted therein within seven (7) days after receipt of amounts paid to Artist by the City. Artist further agrees that the Artist shall indemnify and hold the City harmless for any lawful claims resulting from the failure of the Artist to make prompt payments to all persons supplying the Artist equipment, labor, tools, or material in connection with the work provided for in the Contract. In the event of such claims, the City may, in the City's sole discretion, after providing written notice to the Artist, withhold from any payment request or final payment the unpaid sum of money deemed sufficient to pay all appropriate claims and associated costs in connection with the Contract and make such payment, if the City determines it to be appropriate to do so.

## SECTION 9. HOLD HARMLESS AND INDEMNITY.

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

## SECTION 10. COMPLIANCE WITH LAWS, REGULATIONS, AND IMMIGRATION LAW.

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

## SECTION 11. INDEPENDENT CONTRACTOR.

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

## SECTION 12. REPORTS, RECORDS, AND AUDIT.

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

## SECTION 13. INSURANCE REQUIREMENTS.

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

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

## SECTION 14. DEFAULT.

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

## SECTION 15. NONWAIVER.

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

## SECTION 16. 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 17. 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 18. NONDISCRIMINATION.

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

(i) Artist will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Artist. Artist agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

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

(iii) Notices, advertisements and solicitations placed in accordance with federal law, rule, or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

B. Artist will include the provisions of the foregoing Section A (i, ii, and iii) in every subcontract or purchase order of over $10,000, so that the provisions will be binding upon each subcontractor or vendor.

## SECTION 19. DRUG-FREE WORKPLACE.

A. During the performance of this Contract, Artist agrees to (i) provide a drug-free workplace for Artist's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of Artist that Artist maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over $10,000, so that the provisions will be binding upon each subcontractor or vendor.

B. For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to an Artist, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession, or use of any controlled substance or marijuana during the performance of the contract.

## SECTION 20. 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 21. ASSIGNMENT.

Artist may not assign or transfer this Contract in whole or in part except with the prior written consent of the City, which consent shall not be unreasonably withheld. If consent

to assign is given, no such assignment shall in any way release or relieve the Artist from any of the covenants or undertakings contained in this Contract and the Artist shall remain liable for the Contract during the entire term thereof.

## SECTION 22. CONTRACTUAL DISPUTES.

Contractual claims, whether for money or for other relief, shall be submitted, in writing, no later than sixty (60) days after the earlier of the final payment or termination of the Contract or notice from the City to the Artist that the City disputes the amount of Artist's request for final payment. However, written notice of the Artist's intention to file such claim must be given at the time of the occurrence or beginning of the work upon which the claim is based. Such notice is a condition precedent to the assertion of any such claim by the Artist. A written decision upon any such claims will be made by the City Manager or the City Manager's designee (hereafter City Manager) within thirty (30) days after submittal of the claim and any practically available additional supporting evidence required by the City Manager. The Artist may not institute legal action prior to receipt of the City's decision on the claim unless the City Manager fails to render such decision within 120 days from submittal of Artist's claim. The decision of the City Manager shall be final and conclusive unless the Artist within six (6) months of the date of the final decision on a claim or from expiration of the 120 day time limit, whichever occurs first, initiates legal action as provided in Section 2.2 - 4364, of the Va. Code. Failure of the City to render a decision within said 120 days shall not result in the Artist being awarded the relief claimed nor shall it result in any other relief or penalty. The sole result of the City's failure to render a decision within said 120 days shall be Artist's right to immediately institute legal action. No administrative appeals procedure pursuant to Section 2.2 - 4365 of the Va. Code has been established for contractual claims under this Contract.

## SECTION 23. 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 24. 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 25. 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 26. 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 27. NOTICES.

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

To City: City of Roanoke
Attn: City Manager
364 Noel C. Taylor Municipal Building
215 Church Avenue, S.W.
Roanoke, Virginia 24011
Facsimile: (540) 853-1138

Copy to: City of Roanoke
Purchasing Division
Attn: Purchasing Manager
202 Noel C. Taylor Municipal Building
215 Church Avenue, S.W.
Roanoke, Virginia 24011
Facsimile: (540) 853-1513
Telephone (540) 853-2871
E-mail purchasing.contracts@roanokeva.gov

To Artist: _____
_____
_____
Telephone: _____
E-mail: _____

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

## SECTION 28. PROTECTING PERSONS AND PROPERTY.

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

to concrete curbs, gutters, sidewalks, or any existing facility, whether owned by the City, or others that may occur during the Work shall be repaired or replaced by the Artist, at Artist's sole expense, as directed by and to the satisfaction of the City.

## SECTION 29. WARRANTY OF MATERIAL AND WORKMANSHIP.

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

## SECTION 30. SUSPENSION OR TERMINATION OF CONTRACT BY CITY.

A. The City, at any time, may order Artist to immediately stop work on this Contract, and/or by seven days written notice may terminate this Contract, with or without cause, in whole or in part, at any time. Upon receipt of such notice, the Artist shall immediately discontinue all services affected (unless the notice directs otherwise), and deliver to the City all data (including electronic data), drawings, specifications, reports, project deliverables, estimates, summaries, and such other information and materials as may have been accumulated by the Artist in performing this Contract whether completed or in process (unless otherwise directed by the notice).

(1) If the termination or stop work order is due to the failure of the Artist to fulfill any of its Contract obligations, the City may take over the Work and prosecute the same to completion by contract or otherwise. In such case, the Artist shall be liable to the City for any damages allowed by law, and upon demand of City shall promptly pay the same to City.

(2) Should this Contract be terminated or work is stopped not due in any way to the fault of the Artist, the Artist shall only be entitled to compensation for services actually performed and materials actually supplied prior to notice of termination or to stop work and which are approved by the City and any applicable federal or state approving agency. No profit, overhead, or any other costs of any type are allowed after the date of such notice of termination or stop work order.

(3) The rights and remedies of the City provided in this Section are in addition to any other rights and remedies provided by law or under this Contract and City may pursue any and all such rights and remedies against Artist as it deems appropriate.

## SECTION 31. 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 32. CONTRACT SUBJECT TO FUNDING.

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

## SECTION 33. ENTIRE CONTRACT.

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

**SIGNATURE PAGE TO FOLLOW.**

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

WITNESS: (**Full Legal Name of Artist**)

_____ By_____

_____ _____
Printed Name and Title 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 #_____
CT # _____

Approved as to Execution:

_____
City Attorney

**EXHIBIT A**

**TO SUBGRANT CONTRACT FOR PROVIDING FOR THE ARTISTIC DESIGN, FABRICATION, AND INSTALLATION OF A SCULPTURE AT WEST END GATEWAY**

**BETWEEN THE CITY OF ROANOKE, VIRGINIA, AND _____**

**DESIGN DRAWINGS AND SPECIFICATIONS**

(To be provided by Awarded Artist)

**EXHIBIT B**

**TO SUBGRANT CONTRACT FOR PROVIDING FOR THE ARTISTIC DESIGN, FABRICATION, AND INSTALLATION OF A SCULPTURE AT WEST END GATEWAY**

**BETWEEN THE CITY OF ROANOKE, VIRGINIA, AND _____**

## 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 B.**

**EXHIBIT C**
**TO SUBGRANT CONTRACT FOR PROVIDING FOR THE ARTISTIC DESIGN, FABRICATION, AND INSTALLATION OF A SCULPTURE AT WEST END GATEWAY**

**BETWEEN THE CITY OF ROANOKE, VIRGINIA,**
**AND _____**

## CONTRACTOR'S 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 Manager of any changes, modifications, and/or termination of any insurance coverages and/or policies required by this Contract. The Contractor shall provide the City Manager with an Acord certificate of insurance which states in the description of operations section one of the two paragraphs below:

(1) The City, and its officers, employees, agents, assigns, and volunteers are additional insureds as coverage under this policy includes 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. 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.

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 with applicable endorsement to cover waste cargo.

**(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 their officers, employees, agents, assigns, and volunteers.

(6) Contractor shall provide such other insurance policies and/or coverages that may be required by other parts of this Contract

D. Proof of Insurance Coverage:

(1) Contractor shall furnish the City Manager 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 Manager, 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 OF EXHIBIT C.**

**EXHIBIT D**
**TO SUBGRANT CONTRACT FOR PROVIDING FOR THE ARTISTIC DESIGN, FABRICATION, AND INSTALLATION OF A SCULPTURE AT WEST END GATEWAY BETWEEN THE CITY OF ROANOKE, VIRGINIA, AND _____**

**COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM**
**CONTRACT PROVISIONS**

**A. Section 109 (a):**

"No person in the United States shall on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title."

**B. Equal Opportunity Clause - 130.15 (b):**

Incorporates Section 202 of Executive Order 11246

During the performance of this contract, the contractor agrees as follows:

1. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of any or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

3. The contractor will send to each labor union or representative of workers with which he/she has a collective bargaining agreement or other contract of understanding, a notice to be provided by the Contract Compliance Office advising the said labor union or worker's representatives of the contractor's commitment under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

5. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Department and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

6. In the event of the contractor's non-compliance with the non-discrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

7. The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of the Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Department may direct as a means of enforcing such provisions, including sanctions for non-compliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Department, the contractor may request the United States to enter into such litigation to protect the interest of the United States.

## C. <u>Section 3 Clause - 135.20 A-E</u>:

A. The work to be performed under this contract is project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible, opportunities for training and employment be given lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owner in substantial part, by persons residing in the area of the project.

B. The parties to this contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR 135, and all applicable rules

and orders of the Department issued thereunder prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.

C. The contractor will send to each labor organization or representative of workers with which he/she has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or worker's representative of his/her commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment and training.

D. The contractor will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR 135. The contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR 135 and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

E. Compliance with the provision of Section 3, the regulations set forth in 24 CFR 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of the contract, shall be a condition of the Federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors, and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors, and assigns to those sanctions specified by the grant or loan agreement or contract through which Federal assistance is provided, and to such sanctions as are specified by 24 CFR 135.

**D. <u>Air and Water Acts</u>:**

1. The contractor and subcontractors will not utilize any facility in the performance of any nonexempt contract or subcontract listed on the List of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 CFR 15.20.

2. The contractor agrees to comply with all of the requirements of section 114 of the Clean Air Act, as amended (42 U.S.C. 1857 C-8) and section 308 of the Federal Water Pollution Control Act, as amended, (33 U.S.C. 1318) relating to the inspection, monitoring, entry, reports, and information, as well as all other requirements specified in said section 114 and section 308, and all regulations and guidelines issued thereunder.

3. As a condition for the award of the contract, prompt notice will be given of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized or to be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.

4. The contractor agrees to include or cause to be included in the criteria and requirements in paragraph (1) through (4) of this section in every nonexempt subcontract. The contractor agrees to take such action as the Government may direct as a means of enforcing such provisions.

**E. Interest of Certain Federal Officials:**

No member of or Delegate to the Congress of the Unites States, and no Resident Commissioner, shall be admitted to any share or part of this agreement or to any benefit to arise from the same.

**F. Interest of Members, Officers, or Employees of Grantee (City of Roanoke), Members of Local Governing Body or Other Public Officials:**

No member, officer, or employee of the Grantee (City of Roanoke), or its designees or agents, no member of the governing body of the locality in which the program is situated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the program during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the program. This provision shall be incorporated in all subcontracts.

**G. Required Provisions Deemed Inserted:**

Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon application of either party, the contract shall forthwith be physically amended to make such insertion or correction.

**END.**

**EXHIBIT E**
**TO SUBGRANT CONTRACT FOR PROVIDING FOR THE ARTISTIC DESIGN, FABRICATION, AND INSTALLATION OF A SCULPTURE AT WEST END GATEWAY**

**BETWEEN THE CITY OF ROANOKE, VIRGINIA,**
**AND _____**

## FEDERAL CONTRACT PROVISIONS

The Subgrantee agrees to comply with any federal regulation issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination against the disabled in any federally-assisted program.

1. **OTHER PROGRAM/PROJECT REQUIREMENTS:**

In addition to other requirements set forth herein, the Subgrantee shall likewise comply with the applicable provisions of Subpart K of 24 CFR 570, in accordance with the type of project assisted. Such other requirements include, but are not necessarily limited to, the following.

a. Lead-based paint -- All assistance to housing under this Agreement shall be conducted in a manner consistent with HUD's lead-based paint requirements in 24 CFR 570.608 and HUD lead-based paint guidelines. Lead-based paint testing must be conducted if painted surfaces are to be disturbed as part of the work of this project if the home was constructed prior to 1978. As applicable, this includes, but is not limited to, documenting that: (1) the homeowner has been provided appropriate notifications such as the EPA lead-based paint booklet, lead-based paint evaluation, lead-hazard reduction, and clearance; (2) volunteers have received an orientation as to the safe work practices necessary to protect themselves and the unit from lead-based paint hazards; and (3) individuals possessing proper qualifications have performed duties for which such qualifications are required. Subgrantee shall adhere to U.S. Environmental Protection Agency Renovation, Repair and Painting (RRP) Rule. RRP certified personnel shall be on site at all times during construction involving lead-based paint. In no case shall lead-based paint be used in the repair of any properties assisted under this Agreement.

b. Section 109 – In accordance with Section 109 of the Housing and Community Development Act of 1974 (42 U.S.C. 3535(d)), no person in the United States shall on grounds of race, color, religion, sex or national origin be excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity funded in whole or in part with funds available under this Agreement.

c. Conditions for religious organizations – The Subgrantee shall not grant or loan any CDBG funds to primarily religious organizations for any activity which has as its primary function proselytization. In addition, funds may not be used to rehabilitate or construct housing owned by primarily

religious organizations or to assist primarily religious organizations in acquiring housing. In particular, there shall be no religious or membership criteria for tenants or buyers of any CDBG-assisted properties.

d. Labor standards – As presently structured, the programs included under this Agreement are not considered subject to federal Labor Standards, including prevailing (Davis-Bacon) wage rates for non-volunteer labor. Such standards will become applicable in the event CDBG funds are used for infrastructure improvements. Such standards will also become applicable for any single project in which more than 7 housing units are assisted with CDBG funds.

e. Environmental standards – In accordance with 24 CFR 85.36 and 570.604, the activities under this Agreement are subject to environmental review requirements. Such requirements include, but are not necessarily limited to, historic significance and floodplain. The Grantee has performed the tiered review necessary to initiate the preliminary program activities; however, no CDBG funds shall be disbursed by the Grantee for a given property prior to the Subgrantee complying with the Grantee's environmental procedures, including the Subgrantee's completion of the required tier-2 environmental checklists and any required remedial actions. All such actions shall be carried out by the Subgrantee using qualified persons or entities. All specifications for proposed housing rehabilitation under this Agreement shall be submitted to the Grantee's Department of Planning, Building and Development for review as to compliance with Section 106 of the National Historic Preservation Act. These specifications shall also be reviewed by the Grantee's Environmental Administrator to determine whether the potential for disturbing lead and other hazardous materials, such as asbestos, has been adequately taken into account. The Subgrantee agrees to adjust work specifications or activities in such manner as may be requested by the Grantee to ensure compliance with environmental requirements. The results of the historic and other environmental review activities shall be reflected in the Subgrantee's environmental checklist for the unit and/or project site(s).

f. Displacement and relocation – In accordance with 24 CFR 570.606, the Subgrantee shall take all reasonable steps to minimize displacement as a result of the activities described in Section 1 of this Agreement. Furthermore, Section 1 of this Agreement prohibits acquisition of any property which is occupied or would be occupied by legal tenants after the initial acquisition contact with the owner. Notwithstanding this prohibition, any persons displaced as a result of the activities under this Agreement shall be provided relocation assistance to the extent permitted and required under applicable regulations. Costs of relocation shall be factored into the Project budget limits. No additional funds shall be provided by the Grantee for relocation purposes.

g. Employment and contracting opportunities – In accordance with 24 CFR 570.607, the activities under this Agreement are subject to the

requirements of Executive Order 11246, as amended, and Section 3 of the Housing and Urban Development Act of 1968. The former prohibits discrimination on federally-assisted construction contracts and requires contractors to take affirmative action regarding employment actions. The latter provides that, to the greatest extent feasible and consistent with federal, state and local laws, employment and other economic opportunities arising from housing rehabilitation, housing construction and public construction projects shall be made available to low- and very-low-income residents and businesses of the area. In particular, for any contract awarded by the Subgrantee, funded in whole or in part with CDBG or HOME funds, the contractor shall evidence good faith efforts to hire such low- and very-low-income residents for training and employment opportunities, if any, that become available with respect to the contract activities.

h. Debarment and suspension – In accordance with 24 CFR 24, the Subgrantee shall not employ or otherwise engage any debarred, suspended, or ineligible contractors or subcontractors to conduct any activities under this Agreement. The Subgrantee will consult appropriate references, including, but not limited to, the Excluded Parties Listing Service website at *http://www.sam.gov*, to ascertain the status of any third parties prior to engaging their services. The Subgrantee will submit to the Grantee's Department of Planning, Building, and Development the names of contractors and subcontractors selected under this Agreement, including a certification by the Subgrantee that it has determined that none of these entities are presently debarred, suspended, or ineligible along with a copy of the printout showing such from the *sam.gov* website.

i. Uniform administrative requirements – The Subgrantee shall comply with the requirements and standards set forth in 24 CFR 570.502, and all applicable CDBG and other federal regulations pertaining to the activities performed under this Agreement.

j. Conflict of interest – In accordance with 24 CFR 570.611, no covered individual who exercises any functions or responsibilities with respect to the program during his tenure, or for one (1) year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the program assisted under this Agreement. The Subgrantee shall incorporate, or cause to be incorporated, in any contracts or subcontracts pursuant to this Agreement a provision prohibiting such interest pursuant to the purposes of this section.

## 2. UNIFORM ADMINISTRATIVE REQUIREMENTS:

The Subgrantee shall comply with the requirements and standards of OMB Circular No. A-122, "Costs Principals for Non Profit Organizations" and with OMB Circular A-110, “Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations”, which are incorporated into this Agreement by reference.

3. **INSURANCE REQUIREMENTS:**

The Subgrantee involved in this Agreement shall maintain the insurance coverages set forth in Attachment B to this Agreement, which is attached hereto and incorporated by reference, and provide the proof of such insurance coverage as called for in Attachment B. Such insurance coverage shall be obtained at the Subgrantee's sole expense, approved by the City's Risk Manager, maintained during the life of the Agreement and shall be effective prior to the beginning of any work or other performance by the Subgrantee under this Agreement. Additional insured endorsements, if required, must be received by the City within 30 days of the execution of this Agreement or as otherwise required by the City's Risk Manager.

4. **PROGRAM INCOME:**

"Program income" means gross income received by the Grantee or Subgrantee directly generated from the use of CDBG funds. Program income from any and all sources shall be submitted to the city within five (5) days of its receipt by the Subgrantee. Program income does not include proceeds from fund raising activities carried out by the Subgrantee. No program income is expected.

5. **RECORDS AND REPORTS:**

All records pertaining to this Agreement and the services performed pursuant to it, shall be retained for a period of five (5) years after the expiration date of this Agreement or its amendments. Appropriate City and/or HUD personnel shall have free access to those records during the Agreement duration and the following five-year time period. The Subgrantee shall submit monthly reports utilizing the attached form (Attachment C), which is attached hereto and made a part of this Agreement), to the Department of Planning, Building and Development. The monthly reports shall accompany the reimbursement request. The Subgrantee shall maintain the following records pursuant to this contract:

A. HOME MODIFICATION ACTIVITIES:

1. Documentation that the income of the household meets CDBG low- or moderate-income guidelines.
2. Documentation that the recipient is disabled.
3. Documentation of how the device benefited the recipient.

The Subgrantee shall also submit semi-annual reports as to accomplishments towards those objectives listed in section 1.b. Such reports will be due January 15, 2016, for the first six months, and July 15, 2016 for a

cumulative yearend report.

6. **CLIENT ELIGIBILITY:**

To be eligible for CDBG assistance, clients must live in the City of Roanoke Corporate Limits with incomes that do not exceed the low- and moderate-income limits (less than 80% of the Area Median Income as defined annually by HUD) of the CDBG program. Proof of residency in the City of Roanoke corporate limits must be kept on file for each household, in the form of a driver's license or utility statement showing current address and a printout from the City of Roanoke GIS website. A copy of all third party verifications or source documentation for income as well as a fully completed application with all necessary information on it must be maintained in the file and updated no less frequently than annually. Income shall be calculated based on the Section 8 Part 5 income definition and the HUD Income Calculator shall be completed for each application on file. The HUD Income Calculator can be found at https://www.onecpd.info/incomecalculator/.

7. **MONITORING:**

The Subgrantee shall monitor the progress of the project(s) covered by this Agreement, and shall submit appropriate monthly reports to the Grantee's Department of Planning, Building and Development. In addition, during the period of this Agreement, the Grantee shall monitor the Subgrantee's performance and financial and programmatic compliance as part of disbursement processing and other desk reviews, on-site reviews and/or other means, as appropriate.

8. **ANNUAL AUDIT:**

Pursuant to Council policy adopted under Resolution No. 37281-010306, nonprofit entities existing for at least two years and with an annual budget exceeding $50,000 are required to perform an annual independent audit. As such, the Subgrantee is subject to this audit requirement. However, as an entity expending less than $500,000 in federal funding in a fiscal year, the Subgrantee is not required to undergo an annual independent audit of the expenditures under this Agreement for federal purposes. Therefore, expenditures, including any for an audit undertaken by the Subgrantee to comply with the local City Council policy are not chargeable to the funds under this Agreement. Required audits are due within 30 days of receipt from the auditor, or 9 months after the end of the fiscal year, whichever occurs earlier.

9. **CONFLICT OF INTEREST:**

No employee, agent, consultant, officer or appointed official of the Subgrantee, who is in a position to participate in a decision-making process or gain inside information with regard to any CDBG activity, may obtain a personal or financial interest in any contract, subcontract or agreement with respect thereto, or in the proceeds thereunder, either for themselves, their family or business associates, during their tenure or for one (1) year thereafter.

10. **REVERSION OF ASSETS:**

Upon expiration of the Agreement the Subgrantee shall transfer to the city any CDBG funds or program income on hand at the time of expiration and any accounts receivable attributable to the use of CDBG funds.

11. **THIRD-PARTY CONTRACTS:**

The Grantee shall not be obligated or liable hereunder to any party other than the Subgrantee.

12. **ANTI-LOBBYING:**

To the best of the Subgrantee's knowledge and belief, no federal appropriated funds have been paid or will be paid, by or on behalf of it, to any persons for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an office or employee of Congress, or an employee of a Member of congress in connections with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. If any funds other than Federal funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this agreement, the Subgrantee will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying, " in accordance with its instructions which is incorporated by reference.

13. **FAITH-BASED ORGANIZATIONS**

Pursuant to §2.2-4343.1 of the Code of Virginia (1950), as amended, the City of Roanoke does not discriminate against faith-based organizations.

14. **COMPLIANCE WITH IMMIGRATION LAW**

Pursuant to § 2.2-4311.1 of the Code of Virginia, the Subgrantee does not, and shall not during the performance of this Agreement in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

15. **EQUAL EMPLOYMENT OPPORTUNITY**

Non-Discrimination: During the performance of this Agreement, the Subgrantee agrees as follows:

(a) The Subgrantee 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 Subgrantee. The Subgrantee agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

(b) The Subgrantee, in all solicitations or advertisements for employees placed by or on behalf of the Subgrantee, will state that such Subgrantee is an equal opportunity employer.

(c) Notices, advertisement 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.

(d) The Subgrantee will include the provisions of the foregoing subsections (a), (b) and (c) in every contract or purchase order of over ten thousand dollars and no cents ($10,000.00), so that the provisions will be binding upon each contractor or vendor.

16. **DRUG-FREE WORKPLACE**

The Subgrantee will: (i) provide a drug-free workplace for the Subgrantee'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 Subgrantee's 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 the Subgrantee that the Subgrantee maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over ten thousand dollars and no cents ($10,000.00), so that the provisions will be binding upon each subcontractor or vendor. For the purpose of this subsection, "drug-free workplace" means a site for the performance of work done in connections with this contract.

17. **SUSPENSION AND TERMINATION:**

Suspension or termination of this Agreement may occur if the Subgrantee materially fails to comply with any term of this award as determined by Grantee, and the award may be terminated for convenience by the Grantee or Subgrantee upon written notification to the awarding agency (HUD), setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. No payment will be made for expenses incurred after Subgrantee's receipt of notice of termination, except those expenses incurred prior to the date of notice that are necessary to curtailment of operations under this Agreement.

Community Development Block Grant funding to be made available by the City of Roanoke under this Agreement is contingent upon necessary appropriations by the U.S. Congress. In the event that sufficient funds are not appropriated, at the sole discretion of the City of Roanoke, this Agreement may be terminated in whole or in part.

**Attachment B to**
**RFP # 16-07-08**

**West End Gateway Sculpture**

**<u>Cover Sheet</u>**

City of Roanoke VA Public Art Program
West End Gateway Sculpture

Name
_____

Business Name if Different _____

Address _____
City State Zip

Email _____Web Site_____

Phone _____

Two References I have worked with in the past five years

1. Name _____

   Title

   Address _____

   Phone _____Email _____

2. Name _____

   Title

   Address _____

   Phone _____Email _____

I affirm that neither myself or any owners, officers, employees, or agents, or my immediate family members, is currently, or has been in the past year, an employee of the City of Roanoke or has any responsibility or authority with the City that might affect the procurement transaction or any claim resulting there from. Please state the complete name and address of each such person as applies above and their connection to the City of Roanoke on the back of this form.

_____
Applicant's Signature