

## Memorandum

To: Burlington City Council  
From: Eileen M. Blackwood, City Attorney  
Re: Licensing of Robert James Campbell Photos  
Date: Oct. 10, 2013

### Action Requested

This office is seeking your approval and authorization for the Mayor to enter into the attached License Agreement with Jessica Ferber, d/b/a Soupy Photo, LLC, to allow her to produce and market a book of the photos of Robert James Campbell, also known as “Soupy” or “Bob” Campbell.

### Background

Robert “Bob” Campbell died intestate on January 18, 2002, and was residing at COTS at the time of his death. He had been a professional photographer and left a collection of wonderful photographs at COTS when he died. No heirs were found, so Mr. Campbell’s estate escheated to the municipality in which he resided. Under Vermont law, that property is then to be used for the schools:

Such estate shall be for the use of schools in the towns respectively and shall be managed and disposed of like other property appropriated to the use of the town school districts. Any property decreed to a town by virtue of this chapter or subsequently conveyed to an incorporated school district within such town for the use of its schools may be sold without restriction, provided the proceeds shall be expended for the use of the schools of the town.

14 V.S.A. §683.

Jessica Ferber was initially hired by COTS as an intern to review and catalog Mr. Campbell’s photographs. After she left that position, she and COTS became embroiled in a dispute about the work, and an estate proceeding was filed in Chittenden Probate Court. A special administrator was appointed to try to resolve Mr. Campbell’s interests. In 2003, the City passed a resolution waiving its escheat rights, but the probate court eventually determined that it could not accept that waiver, and it ordered that the estate escheat to the City for the benefit of the Burlington Schools. After all expenses were paid, the estate was able to distribute to the City several boxes of photographs and negatives of Mr. Campbell’s work, which have been sitting in the City Attorney’s vault.

In December 2003, Chris Bohjalian wrote an article about Mr. Campbell in the Burlington Free Press and included with some of his pictures. The special administrator then entered into a license with Mr. Bohjalian to use 12 reprints of Mr. Campbell’s photos in his novel The Double Bind in 2005. In 2007, an exhibit of Mr. Campbell’s photographs was held at the Firehouse Gallery in connection with the release of that story.

At the same time, Ms. Ferber continued to express interest in creating a book of Mr. Campbell’s photographs. In August 2007, the City authorized her to market the photos for

publication, but when she stepped away from the project in 2009 after not finding sufficient funding, that authorization was withdrawn. In November 2009, COTS wrote to the City requesting the City to turn the photos over to COTS (for no consideration), but that was not done. Then, in February 2012, Ms. Ferber contacted the City with renewed interest, and Art in America was granted the right to use one photo (of jazz artist Bud Powell) in an article.

In July 2012, Ms. Ferber requested permission to try to obtain a Kickstarter grant to fund the publication, and that permission was granted effective August 27, 2012, until March 1, 2013. In March Ms. Ferber met with City Attorney Blackwood and Terry Bailey and reported that her Kickstarter efforts were successful, and she was able to obtain sufficient funding to move forward with publication. As part of the Kickstarter effort, she created a calendar and a t-shirt, which she has been distributing to Kickstarter donors. She and her attorney then prepared a draft License Agreement, which has been reviewed and revised by City Attorney Blackwood, and is now being presented to the School Board for approval.

### **Terms of the License Agreement**

This License would allow Ms. Ferber, through her limited liability company, to use certain photographs during the term of the Agreement. Ms. Ferber has chosen a selective set of images, many of them of jazz musicians such as Count Basie and others. There are probably hundreds of other images that she is not using.

This license is considerably broader than the prior licenses mentioned, as it would be exclusive for the term. This license would expire on December 31, 2016, unless renewed. In addition, the Agreement may terminate before that if she fails to meet certain quite aggressive sales goals.

Ms. Ferber would provide us with a copy or sample of every publication in which she uses the photos and to provide us with progress reports on the use.

If she is successful, Ms. Ferber will pay the City royalties of 5% of the gross sales proceeds each calendar quarter. Her current projected publication date is July 1, 2014.

### **School Board Approval**

The School Board authorized this License Agreement at its meeting on October 8, 2013, and City Council approval is sought under charter section 55.