



CITY OF BURLINGTON

Call to Artists

City of Burlington, Vermont

Issued: August 30, 2021

Qualifications Due: September 28, 2021

I. PROJECT BACKGROUND:

The City of Burlington has placed great emphasis on the declaration of racism as a public health emergency. To further underscore its commitment to racial equity, inclusion and belonging, the City is commissioning a new public artwork.

The goal of the project is to be a catalyst in Burlington's shift to be an inclusive community—a community where BIPOC members feel like they belong, not as an assimilated version of themselves, but as their authentic selves with all of the power and uniqueness that brings.

The artwork will represent the broad range of identities that exist within the City, standing as a message of visibility to those commonly forgotten.

The vision for this artwork is that it will become a Burlington landmark and cultural destination, build on the sense of community and pride within the neighborhood, make excellent artwork accessible to all residents, and benefit the immediate neighborhood economy. The outcome will be a beautiful artwork engages local residents, celebrates the cultures, traditions and people of Burlington, and represents community belonging and inclusion.

This Call to Artists requests materials for qualifications. Five (5) finalist submissions will be awarded \$1,000 to develop detailed proposals in response to the prompt outlined in §V.

Location:

The artwork will be integrated into Dewey Park in the Old North End of Burlington.

In the late 1800s and early 1900s, the Old North End was originally home to neighborhoods of immigrant workers who were attracted to the job opportunities in the growing lumber industry,

woolen mills, and waterfront. In present day, the Old North End features a variety of ethnic markets and restaurants, reflecting the broad range of residents who have settled in the neighborhood over the years. The local schools have educators that speak up to nine different languages to accommodate the immigrant and refugee population.

Dewey Park is located directly in front of the Integrated Arts Academy, one of Burlington's public elementary schools, and is named after John Dewey, a Burlington, Vermont native and UVM Alum. Dewey graduated UVM in 1879 eventually becoming a philosopher, psychologist and educational reformer. He maintained his deep belief in democracy as he advocated for racial and gender-equity across politics and education. This Park was repurposed in 2014 as a site for community recreation. Walnut Street was closed on a pilot basis to reduce traffic, and has hosted a street mural by Abby Manock. Dewey Park is home to a weekly farmer's market and small gardens that are maintained by members of the community. This park is driven and walked by consistently by students, teachers, neighbors and other members of the community; it is a location of heightened community involvement.

II. PROJECT BUDGET

The budget for the project is \$155,000, to include \$5000 for five \$1000 stipends and \$150,000 for the final selected artwork.

III. SCOPE OF WORK:

The artist will design and construct a permanent artwork to be owned by the City of Burlington that symbolizes a culture of inclusion and belonging.

The final selected artist(s) will be responsible for designing, engineering, fabricating, transporting, and installing the work on location, and all associated costs, including but not limited to professional fees, supplies, transportation and travel, and insurance. Though City staff will help facilitate any required permitting, street closures, and utility connections, fees for such costs must be included in the artwork budget.

A plaque describing the work will be installed by the City, with content written collaboratively between the artist and the REIB department.

IV. TIMELINE:

1. August 30 – RFQ released
2. September 28 – Artist Qualifications due
3. October 5 – Selection of 5 finalists (estimated), each to receive \$1000 stipend
4. October 15 – Distribution of any additional proposal requirements to finalists
5. November 24 – Proposals due from 5 finalists
6. November 29 - December 3 – Artist interviews scheduled, finalist selected (estimated)
7. December 10 – Contract executed, design finalized, project implementation begins (estimated)
8. October 2022 – Installation (estimated)

V. RESPONSE FORMAT:

- 1) The City’s REIB department has developed the following prompts to guide Artist Response:
 - a) This artwork will be a Vermont landmark that evidently symbolizes racial equity, inclusion, and belonging as it pertains to the Vermont community. Explain, in detail how you plan to communicate this message through your artwork. Describe the processes you use to develop your concepts, and what role the community plays in informing your work. Describe how your submission acknowledges the significance of the location, expresses an understanding of the neighborhood today, and the history of the Old North End, Burlington, and Vermont as a whole.
 - b) Indicate your chosen materials and your reasoning.
 - c) Indicate any other factors that make your proposal an ideal choice for us.
 - d) Describe the lasting impact that your art piece would have on Burlington and how it would improve the surrounding community.

- 2) **Materials Requested, Qualifications Round, Due September 28, 2021**
 - a) Artist Application (online form).
 - b) Letter of interest outlining potential approaches to project, which may include conceptual direction, material preferences, artwork location (5000 characters max).
 - c) Outline of artist(s) background and experience with past art/sculpture and experience or involvement in racial equity (narrative format, 3000 characters or on page CV upload accepted).
 - d) Link to digital portfolio or up to 8 images of past projects and description of the work, including concept, materials used, and project budget (1000 characters max each image).

NOTE: Artists may choose to include a sketch of their artwork concept in the qualifications materials but it is **not required**. Five (5) finalist submissions will be awarded \$1,000 for detailed proposals that will include drawings.

3) Materials Requested, Finalist Round, Due November 24

The following materials may be submitted as part of a single PDF presentation to be used during artist interviews.

- a) Written proposal describing concept, per prompt described at the top of this section.
- b) To-scale drawing(s) or 3-dimensional rendering of proposed artwork.
- c) Proposed artwork located on a 2-dimensional site plan.
- d) Proposed artwork rendered into perspective drawings including surroundings from multiple vantage points.
- e) Detailed project timeline included projected date when the artwork will be completed.
- f) Description of installation plan, including plans for engineering concept and developing construction drawings.
- g) Detailed Budget.

VI. ARTIST SELECTION AND CRITERIA FOR SELECTION

Selection for this project will take place in two steps: a qualifications round will select up to five finalists to submit detailed proposals. Finalists will receive a \$1000 stipend to develop detailed, engineerable concept proposals.

While there are several factors that come into play in the evaluation process, the City is open to submissions from all prospective artists working in permanent media. Submissions will be reviewed and evaluated by a panel of 8, including members from the Racial Equity, Inclusion, and Belonging team.

Criteria, Qualifications Round:

1. Demonstrated Project Understanding.....(35 pts)
 - a. Knowledge of Burlington and the range of diverse cultures in the city
 - b. Deep understanding of systemic racism in the United States
2. Experience & Qualifications.....(35 pts)
 - a. Areas of expertise may include:
 - i. College degree, non-traditional experience, or formal experience related to art
 - ii. Experience completing public art projects
 - iii. Artistic excellence of art portfolio
3. Quality, Clarity, & Completeness of Materials.....(30 pts)

Criteria, Finalist Round:

Submissions should successfully demonstrate the artist’s/artist team’s unique perception of the undertaking.

All proposals will be evaluated on the following criteria:

1. Unique and Comprehensive Interpretation of Prompt..... (25 pts)
2. Inherent Artistic Quality: The assessed aesthetic merit of the piece as a work of art, independent of other considerations. (25 pts)
3. Context: Compatibility of work in scale, material, form and content with surroundings. (15 pts)
4. Durability and Maintenance: Due consideration shall be given to the structural and surface soundness, inherent resistance to theft, vandalism and weathering and amount of ongoing maintenance and/or repair anticipated (15 pts)
5. Public Safety and Accessibility: Work must not present a hazard to public safety and comply with all applicable building codes and accessibility requirements. (15 pts)
6. Quality, Clarity, & Completeness of Proposal..... (15 pts)

VII. SUBMISSIONS

Proposals must be submitted by logging in or creating an account online at <https://burlingtoncityarts.awardsplatform.com> . Please contact skatz@burlingtoncityarts.org with technical questions or for accommodations.

Other questions may be submitted via email to:

Tyeastia Green,

Director

Racial Equity, Inclusion and Belonging

Tgreen@burlingtonvt.gov

Additional submission requirements are as follows:

- Responses to this Call to Artists must be received per the schedule outlined on Page 1 to be considered.
- Applicants are solely responsible for ensuring that proposals arrive on time.
- Each applicant MUST provide their submittal electronically.
- Please ensure that attachments are in an 8.5x11 or 11x17 format.
- Applicants will receive a confirmation email once their proposal is received.
- Faxed proposals WILL NOT be accepted.
- Late replies WILL NOT be considered.

VIII. ELIGIBILITY

1. American Artists based in the United States over the age of 18 years old are eligible to submit.
2. Artists must be able to travel to Burlington as necessary to complete the work.
3. BCA Board of Advisors and BCA and REIB Regular staff members are not eligible to apply.

IX. LIMITATION OF LIABILITY

The City assumes no responsibility or liability for the response to this Call to Artists.

X. COSTS ASSOCIATED WITH SUBMISSION

Any costs incurred by any person or entity in preparing, submitting, or presenting materials in response to this Call to Artists are the sole responsibility of that person or entity, including any requests for additional information or interviews. The City will not reimburse any person or entity for any costs incurred prior to the issuance of the Agreement, with the exception of \$1000 stipends that will be paid to selected finalists to create proposals.

XI. INDEMNIFICATION

Any party responding to this Call to Artists or subsequent Request for Proposals is acting in an independent capacity and not as an officer or employee of the City. Any party responding to this Call to Artists will be required to indemnify, defend, and hold harmless the City, its officers, and employees from all liability and any claims, suits, expenses, losses, judgments, and damages arising as a result of the responding party's acts and/or omissions in or related to the response.

XII. REJECTION OF PROPOSALS

The City reserves the right to reject any or all proposals, or to award the contract to the proposals that the City deems will meet its best interests. The City reserves the right to re-advertise for additional proposals and to extend the deadline for submission of the proposals. This Call to Artists or subsequent Request for Proposals in no way obligates the City to award a contract.

XIII. OWNERSHIP OF DOCUMENTS

Any materials submitted to the City in response to this Call to Artists or subsequent Request for Proposals shall become the property of the City unless another arrangement is made by written agreement between the City and the responding party. The responding party may retain copies of the original documents.

XIV. PUBLIC RECORDS

Any and all records submitted to the City, whether electronic, paper, or otherwise recorded, are subject to the Vermont Public Records Act. The determination of how those records must be handled is solely within the purview of City. All records the responding party considers to be trade secrets, as that term is defined by subsection 317(c)(9) of the Vermont Public Records Act, or that the responding party otherwise seeks to have the City consider as exempt must be identified clearly and specifically at the time of submission. It is not sufficient to merely state generally that a proposal is proprietary, contains a trade secret, or is otherwise exempt. Particular records, pages, and sections which are believed to be exempt must be specifically identified as such and must be separated from other records with a convincing explanation and rationale sufficient to justify each exemption from release consistent with Section 317 of Title 1 of the Vermont Statutes Annotated.

XV. PUBLIC HEALTH EMERGENCIES

Bidders are advised that public health emergencies, as declared by the City, the State of Vermont, or the Federal Government, including the current pandemic of Novel Coronavirus (COVID-19), may introduce significant uncertainty into the project, including disruption of timelines or revised practices. Artists shall consider public health emergencies as they develop project schedules and advance the work.

The City will retain the right to inspect all work to ensure compliance with health and safety standards, and may at any time require the Artist to stop work because of the emergency.

If a public health emergency is declared, the City will not be responsible for any delays related to the sequence of operations or any expenses or losses incurred as a result of any delays. Any delays related to public emergencies, including the current pandemic of Novel Coronavirus (COVID-19), will be excusable, but will not be compensable.

XVI. ATTACHMENTS

1. Attachment A: Example Artist Agreement
Selected artists will be required to sign an agreement with the City of Burlington (Attachment A to this Request for Proposals).

Attachment A

ARTIST AGREEMENT City of Burlington

THIS AGREEMENT is entered into by and between the City of Burlington, hereinafter referred to as the “City,” and _____, an individual with a principal address at _____, hereinafter referred to as “the Artist.” The Artist and the City agree to the terms and conditions of this Agreement.

RECITALS

- A. Authority.** Authority to enter into this Agreement exists in the City Charter. Required approvals, clearance, and coordination have been accomplished from and within each Party.
- B. Consideration.** The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Agreement.

EFFECTIVE DATE AND TERM

- A. Effective Date.** This Contract shall not be valid or enforceable until the Effective Date. The City shall not be bound by any provision of this Contract before the Effective Date, and shall have no obligation to pay Contractor for any performance or expense incurred before the Effective Date or after the expiration or termination of this Contract.
- B. Term.** This Contract and the Parties respective performance shall commence on the Effective Date and expire on upon return of Acceptance of the Work by the City.

DEFINITIONS

- A. “Effective Date”** means the date on which this Contract is approved and signed by the City, as shown on the signature page of this Contract.
- B. “Party”** means the City or Artist and “Parties” means both the City and Artist.
- C. “The Work”** means the services described in §4 below.

SCOPE OF WORK

The Artist agrees to perform and to furnish artistic services for the City as hereinafter set forth in this Agreement, and as reflected in the Specifications of Work and attached hereto as Exhibit A and incorporated herein.

The Artist shall provide all labor and materials necessary to perform the work as set forth in the Specifications of Work.

1. CONFORMANCE TO SPECIFICATIONS

The Artist shall execute the work of art (hereinafter referred to as the “Work”) in accordance with the attached Specifications of Work. Any changes in the proposed agreement shall be described by the Artist in writing and the City shall determine whether the change is significant within 5 days. Any significant changes in the scope, design, or materials of the proposed Work shall be made in writing and shall require review and prior approval by the City.

2. WARRANTY OF ORIGINALITY

The Artist represents and warrants that the Work is the original product of his/her own creative effort. The Artist also represents and warrants that the Work is original, that it is an edition of one (1), that the Work has not been accepted for sale elsewhere, and that the Artist shall not sell or reproduce the Work without the prior written consent of the City.

3. PAYMENTS FOR SERVICE

A. The City agrees to pay the Artist as compensation for such services a firm fixed price of \$_____. This amount includes the complete cost of designing and creating the work, artist travel, managing foundry execution of, and installation of the Work.

B. It is understood that the City has no obligations regarding sales commissions, or to any agreements with galleries or agents with whom the Artist may have contracted.

C. Payments on account of the Artist’s services shall be made at the agreed upon intervals, in proportion to services performed, as follows:

Upon signing of contract:	\$
Upon Completion	\$
Upon Final Installation and acceptance of work no later than _____:	\$

D. The Artist shall be entirely responsible for cost control. No extra payments will be allowed as a result of cost overruns related to creation of the Work outlined in the Specifications of Work.

4. AGREEMENT DOCUMENTS

The Agreement Documents are hereby adopted, incorporated by reference, and made part of this Agreement. The intention of the Agreement Documents is to establish the necessary terms, conditions, labor, materials, equipment, and other items necessary for the proper execution and completion of the Work to ensure the intended results.

- Exhibit A** – Specifications of Work
- Exhibit B** – Call to Artists and Artist Response to Request for Proposals
- Exhibit C** – Burlington Standard Contract Conditions
- Exhibit D** – City of Burlington Livable Wage Form
- Exhibit E** – City of Burlington Union Deterrence Form
- Exhibit F** – City of Burlington Outsourcing

5. TIME FOR PERFORMANCE OF THE WORK

The Artist agrees that time is an essential and important element of this contract and further agrees to perform the Work in accordance with the schedule as agreed to and set forth in the Specifications of Work.

6. EXTENSION OF TIME FOR COMPLETION OF WORK

If the Artist is delayed by the City in the performance of the Work, through no fault of the Artist, an appropriate time extension for completion shall be granted by mutual agreement.

7. INDEPENDENT CONTRACTOR STATUS OF THE ARTIST

The Artist acknowledges that he/she is an independent contractor and not an employee or agent of the City. The Artist shall make no representations to any third party on behalf of the City, and shall have no power to bind the City to any representation or agreement the Artist may make.

8. ASSIGNMENT OF CREATIVE WORK PROHIBITED

The Artist agrees that an essential element of this Agreement is the skill and creativeness of the Artist. The Artist therefore shall not assign or subcontract the creative or artistic portions of the Work to another party for the production of the Work without the consent of the City. Failure to conform to this provision shall automatically render this Agreement null and void.

9. INSPECTION OF THE WORK

All work constructed or supervised by the Artist shall be subject to inspection and approval by the City for the purpose of confirming that the Work has been performed as required by this contract and the specifications provided in the bid documents and is in conformance with the Specifications of Work or approved changes. The Artist shall provide the City all information concerning the Work and provide free access at all reasonable times to the facilities where the Work is being constructed. Inspection does not constitute a waiver of responsibility of the Artist.

10. RISK OF LOSS OR DAMAGE

The risk of loss or damage to the Work shall be borne by the Artist until final acceptance, and the Artist shall take such measures as necessary to protect the Work from loss or damage until final acceptance of the Work.

11. LIABILITY FOR INJURY AND DAMAGE

The Artist shall protect the project, adjacent property, and the public until final acceptance of the Work. The Artist shall be responsible for damage, loss, or injury due to the Artist's, (or Artist's subcontractors', agents', servants', employees', invitees', visitors' or guests', or other person's in, upon, or about the Work) act, omission, or neglect, and shall save the City harmless in respect thereto. The Artist (and or his subcontractors, agents, servants, employees, invitees, visitors or guests, or other persons in, upon, or about the Work) shall indemnify, defend, and hold harmless the City from any and all liability, loss, cost, damage, or expense sustained by reason of the injury or death of any person, and/or damage to or destruction of any property caused by any act, omission, or neglect of the Artist or his subcontractors, agents, servants, employees, invitees, visitors or guests, or other person in, upon, or about the Work,

including reasonable attorney's fees and other litigation expenses. The City may specifically require certain certificate(s) of insurance in a customary and usual amount as a condition of this Agreement.

12. INSURANCE

Prior to beginning any work the Artist shall obtain the following insurance coverage from an insurance company registered and licensed to do business in the State of Vermont and having an A.M. Best insurance rating of at least A-, financial size category VII or greater (www.ambest.com). The certificate of insurance coverage shall be documented on forms acceptable to the City. Compliance with minimum limits and coverage, evidenced by a certificate of insurance showing policies and carriers that are acceptable to the City, must be received prior to the effective date of the Agreement. The insurance policies shall provide that insurance coverage cannot be canceled or revised without thirty (30) days prior notice to the City for cancellation. In the event that this Contract extends to greater than one year, evidence of continuing coverage must be submitted to the City on an annual basis. Certified copies of any insurance policies may be required. Each policy (with the exception of professional liability and workers compensation) shall name the City as an additional insured for the possible liabilities resulting from Contractor's actions or omissions. It is agreed that the liability insurance furnished by the Artist is primary and non-contributory for all the additional insured. The Parties, for themselves, their insurers, and their officers, employees and agents, do hereby mutually waive all rights of subrogation on any claims of general liability, auto liability, and worker's compensation.

No warranty is made that the coverage and limits listed herein are adequate to cover and protect the interests of the Artist for the Artist's operations. These are solely minimums that have been developed and must be met to protect the interests of the City of Burlington.

The Artist is responsible to verify and confirm in writing to the City that:

- (a) All sub-contractors, agents or workers meet the minimum coverage and limits plus maintain current certificates of coverage for all sub-contractors, agents or workers. Sub-contractors must comply with the same insurance requirements as the Artist.
- (b) All work activities related to the agreement shall meet minimum coverage and limits.
- (c) The Artist is responsible for any and all deductibles.
- (d) The Artist agrees to carry the following insurance during the term of this Agreement:
 - i. Comprehensive General Liability Insurance including Products Completed, Contractual, Property, and Personal Injury coverage with combined single limits of \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
 - ii. Automobile Liability Insurance covering all motor vehicles, including owned, non-owned and hired, used in connection with the agreement each policy providing coverage with a combined single limit of not less than \$1,000,000 per occurrence.
 - iii. WORKERS' COMPENSATION: With respect to all operations performed, the Artist shall carry workers compensation insurance in accordance with the laws of the State of Vermont and ensure that all SUB-CONTRACTORS and SUBCONTRACTORS carry the same workers' compensation insurance for all work performed by them under this contract. Minimum limits for Employer's Liability:

(*)	Bodily Injury by Accident:	\$500,000 each accident
(**)	Bodily Injury by Disease:	\$500,000 policy limit, \$500,000 each employee

13. INSTALLATION OF WORK

Installation and fabrication of work shall be coordinated with the City and carried out by the Artist and other necessary subcontractors as determined by the City and the Artist.

14. INSTALLATION DRAWINGS AND MAINTENANCE INSTRUCTIONS

The Artist shall furnish the City, along with the written notification of completion of the Work, an “as built” diagram detailing how the Work has been installed, and a written set of instructions for the permanent maintenance and care of the Work.

15. FINAL ACCEPTANCE AND RELEASE OF CLAIMS

- A. The Artist agrees to deliver the Work to the City free and clear of any liens and claims, arising from any source whatsoever. The City shall withhold final acceptance until the Artist furnishes the City with a signed and sworn statement stating that all bills, wages, claims, etc. have been paid and that any and all liens or attachments related to the Work filed in the Land Records of the City of Burlington against the real property on which the Work is installed are discharged.
- B. Upon completion of, and installation of the Work, the City shall provide the Artist with written notice of acceptance, stating that the Work has become property of the City, and relieving the Artists of all liability for damage to the Work pursuant to Article 11 of the Agreement.

16. OWNERSHIP

The City shall be the sole owner of the Work. Title shall vest in the City upon completion of installation and final acceptance of the Work by the City.

ARBITRATION

- A. All disputes or controversies that may arise between the parties with respect to the performance, obligations, or rights of the parties under this Agreement, including disputes as to the physical acceptability of the Work or any alleged breach thereof, shall be settled by arbitration; however, consideration of artistic merit being a matter for the exclusive determination of the Artist, no dispute or controversy may arise with respect thereto.
- B. The dispute shall be referred to a panel of three arbitrators, one to be selected by the Artist, one to be selected by the City, and the third to be selected by the first two arbitrators.
- C. The decision and award of the arbitrators, or that of any two of them, shall be final and binding on the parties, and judgment may be entered upon it in any court having jurisdiction thereof.

REPRODUCTION RIGHTS

Upon Final Acceptance and transfer of ownership from the artist to the City, The Artist shall retain all rights under federal copyright law and all other rights in and to the Work except ownership and possession, and except such rights as are limited by this Agreement. In view of the intention that the Work in its final dimension shall be unique, the Artist shall not make any exact duplicate reproductions of the Work, nor shall the Artist grant permission to others to do so except with the written permission of the City.

The Artist grants to the City and its assigns an irrevocable license to make two- dimensional reproductions of the Work for use in any and all media, means, methods or processes, now known or hereafter devised for non-commercial purposes, including, but not limited to, reproductions used in advertising, brochures, stationary, media publicity, and catalogues or other similar publications. The Artist further grants to the City the right to photograph, reprint, use, post or display the Artwork, in whole or in part, on any City owned internet website in any format and by any means or medium including, but not limited to, posting, displaying, publishing and/or reprinting on the internet from the beginning of the world to the date of this Agreement.

Artist shall provide written notice to the Director of Racial Equity, Inclusion and Belonging of all intellectual property registrations of the Work (copyright, trademark, etcetera). If the Artist has copyrighted the Work, all reproductions by the City shall contain a credit to the Artist and a copyright notice substantially in the following form: Copyright, Artist's name, all rights reserved, date, in such manner and location as shall comply with the U.S. Copyright laws. The Artist agrees to give a credit substantially in the following form: "Original owned by the City of Burlington, Burlington, Vermont" in any public showing of reproductions of the Work. Responsibility for registration with the United States Register of Copyrights shall rest with the Artist.

IDENTIFICATION OF THE ARTWORK

A plaque identifying the Artist, the title of the Work, if any, and the year of completion may be displayed in the immediate location of the installed Work. The plaque may also contain other information associated with the Work or project.

ALTERATION OF THE SITE

- A.** The City shall notify the Artist of proposed and or existing significant alteration of the site that would affect or has affected the intended character and appearance of the Work, such as removal, rearranging, or damage of the Work, and may, at its discretion, consult with the Artist in the planning and execution of any alteration and shall make a reasonable effort to protect the integrity of the Work.
- B.** If significant alteration should occur to the Work, either intentionally or unintentionally, the Artist may request, in written form, that the Work will no longer be represented as his. The City agrees to reasonably assure that the Work is properly maintained and protected. This does not preclude the City's right to move the Work or to remove it from public display.
- C.** All repairs and restorations which are made during the lifetime of the Artist shall have the mutual agreement of the City and the Artist. If the City and the Artist cannot agree regarding repairs and/or restorations, then the City may accomplish such repairs as it deems necessary. In that event, the City agrees to no longer represent the Work as that of the Artist, upon receipt of a written request to that effect from the Artist.

- D. The Artist shall be given reasonable opportunity to make repairs and restorations at a reasonable fee. A reasonable fee would be a fee within the range that comparable artists would charge to perform the same work.
- E. Nothing in this section shall preclude the right of the City to remove from public display, sell, or destroy the Work.
- F. The Artist agrees to notify the City of changes to personal address, and failure to do so shall be deemed a waiver of the Artist's rights in Paragraph A, B, C and D above.

AMENDMENTS AND CHANGE ORDERS

Any increases or decreases in the scope and fixed price of the project, extensions of completion dates, substantial alterations of the proposal and/or the finished Work, with or without a change in price, and amendments or modifications to other items of this Agreement or to the Work, can only be accomplished by Change Order. The City will initiate the Change Order, supported by written requests and documentation from any party of the Agreement, and it will be signed by all these parties to be executed and made a part of this Agreement.

ENTIRE AGREEMENT

This writing, the attached Specifications of Work, and the attached agreement and bid documents between the City and, embody the entire agreement and understanding between the parties hereto, and there are no other agreements or understandings, oral or written with reference to subject matter hereof that are not merged and superseded hereby.

ACKNOWLEDGEMENT OF ARBITRATION

The Artist understands that this Agreement contains an agreement to arbitrate. After signing this document, the Artist understands that he will not be able to bring a lawsuit containing any dispute that may arise which is covered by the arbitration agreement, unless it involves a question of constitutional or civil rights. Instead, the Artist agrees to submit any such dispute to an impartial arbitrator.

In witness whereof, the undersigned parties have caused this Agreement to be executed.

Artist, Date

Tyeastia Green, Director of Racial Equity, Inclusion and Belonging

EXHIBIT A

SPECIFICATIONS OF WORK

1. Design and description of Work

2. Dimensions and colors:

3. Location and final placement of work

C.

D. **Location:** Attach plans and maps as necessary.

4. Materials and Finishes

The following is a complete list of the materials and finishes that will be used to fabricate the artwork:

A.

5. Schedule for completion of work

The following schedule shall be generally adhered to for the construction and installation of the Work.

A.

6. Schedule for maintenance

The following schedule and maintenance activities are recommended.

EXHIBIT B
CALL TO ARTISTS AND ARTIST RESPONSE TO REQUEST FOR PROPOSALS

EXHIBIT C

BURLINGTON STANDARD CONTRACT CONDITIONS

1. COMPLIANCE WITH LAWS

The Parties, and any subcontractors approved under this Agreement, shall comply with all applicable laws, statutes, ordinances, rules, regulations, and/or requirements of federal, state, and local governments and agencies thereof. Provisions of the Agreement shall be interpreted and implemented in a manner consistent with each other and using procedures that will achieve the intent of both Parties. If, for any reason, a provision in the Agreement is unenforceable or invalid, that provision shall be deemed severed from the Agreement, and the remaining provisions shall be carried out with the same force and effect as if the severed provisions had never been a part of the Agreement.

2. INDEMNIFICATION

- A. Except for the active negligence or willful misconduct of the **City**, or any of its boards, officers, agents, employees, assigns and successors in interest, **Artist** undertakes and agrees to defend, indemnify and hold harmless the **City** and any of its boards, officers, agents, employees, assigns, and successors in interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the **City**, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, for death or injury to any person, including Consultant's employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of the negligent acts, errors, omissions or willful misconduct incident to the performance of this Contract by the Artist or their subcontractors of any tier.
- B. Under no conditions shall the City be obligated to indemnify the Artist or any third party, nor shall the City be otherwise liable for expenses or reimbursement including attorney's fees, collection costs, or other costs of the Artist or any third party.

3. AGREEMENT ADMINISTRATOR

The Agreement Administrator for this Agreement shall be the Director of Racial Equity, Inclusion and Belonging or the Director's designee. Whenever this Agreement requires any notice to be given to the City, or any action or determination to be made by the City, the Director or representative shall represent and act for the City.

4. BINDING EFFECT AND CONTINUITY

This Agreement shall be binding upon and shall inure to the benefit of the Parties, their respective heirs, successors, representatives, and assigns. If a dispute arises between the Parties, each Party will continue to perform its obligations under this Agreement during the resolution of the dispute, until the Agreement is terminated in accordance with its terms.

5. SEVERABILITY

The invalidity or unenforceability of any provision of this Agreement or the Agreement Documents shall not affect the validity or enforceability of any other provision, which shall remain in full force and effect,

provided that the Parties can continue to perform their obligations under this Agreement in accordance with the intent of this Agreement

6. TERMINATION

Termination for Cause:

In the event of default by the Artist, or should the Artist fail to complete the Work, the City may terminate this Agreement for cause, and the Artist shall not be compensated for work completed prior to termination.

In the event of default by the City, the City shall promptly compensate the Artist for all services performed by the Artist prior to termination. The Artist shall retain ownership of the Work or any portions thereof, and shall retain all rights attendant to that ownership.

Notwithstanding the previous sentence, the Artist shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Artist, and payment to the Artist may be reasonably withheld until such time as the exact amount of such damages due the City from the Artist is determined.

7. NO THIRD PARTY BENEFICIARIES

This Agreement does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Agreement are incidental to this Agreement, and do not create any rights for such third parties.

8. ASSIGNMENT

The Artist shall not sublet or assign this Work, or any part of it, without the written consent of the City. If any subcontractor is approved, the Artist shall be responsible and liable for all acts or omissions of that subcontractor for any Work performed. If any subcontractor is approved, the Artist shall be responsible to ensure that the subcontractor is paid as agreed and that no lien is placed on any City property.

9. WAIVER

A Party's failure or delay in exercising any right, power, or privilege under this Agreement, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege.

10. FORCE MAJEURE

Neither Party to this Agreement shall be liable to the other for any failure or delay of performance of any obligation under this Agreement to the extent the failure or delay is caused by acts or events beyond its reasonable control that render performance illegal or impossible ("Force Majeure"). To assert Force Majeure, the nonperforming party must prove that a) it made all reasonable efforts to remove, eliminate, or minimize the cause of delay or damage, b) diligently pursued performance of its obligations, c) substantially fulfilled all obligations that could be fulfilled, and d) timely notified the other part of the likelihood or actual occurrence of a Force Majeure event.

11. PUBLIC HEALTH EMERGENCIES

The Artist is advised that public health emergencies, as declared by the City, the State of Vermont, or the Federal Government, including the current pandemic of Novel Coronavirus (COVID-19), may introduce significant uncertainty into the project, including disruption of timelines or revised practices. Artists shall consider public health emergencies as they develop project schedules and advance the work.

The City will retain the right to inspect all work to ensure compliance with health and safety standards, and may at any time require the Artist to stop work because of the emergency.

If a public health emergency is declared, the City will not be responsible for any delays related to the sequence of operations or any expenses or losses incurred as a result of any delays. Any delays related to public emergencies, including the current pandemic of Novel Coronavirus (COVID-19), will be excusable, but will not be compensable.

12. CHOICE OF LAW

Vermont law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Agreement. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision rendered null and void by operation of this provision shall not invalidate the remainder of this Agreement to the extent capable of execution.

13. JURISDICTION

All suits or actions related to this Agreement shall be filed and proceedings held in the State of Vermont.

14. ARM'S LENGTH

This Agreement has been negotiated at arm's length, and any ambiguity in any of its terms or provisions shall be interpreted in accordance with the intent of the Parties and not against or in favor of either the City or the Artist.

15. SECTION HEADINGS

The section heading of this Agreement, including its Attachments, are for convenience of reference only and do not modify or restrict the terms of the Agreement.

16. PUBLIC RECORDS

The Artist understands that any and all records related to and acquired by the City, whether electronic, paper, or otherwise recorded, are subject to the Vermont Public Records Act and that the determination of how those records must be handled is solely within the purview of City. The Artist shall identify all records that it considers to be trade secrets as that term is defined by subsection 317(c)(9) of the Vermont Public Records Act and shall also identify all other records it considers to be exempt under the Act. It is not sufficient to merely state generally that the record is proprietary or a trade secret or is otherwise exempt. Particular records, pages or section which are believed to be exempt must be specifically identified as such and must be separated from other records with a convincing explanation and rationale

sufficient to justify each exemption from release consistent with Section 317 of Title 1 of the Vermont Statutes Annotated.

17. CONFLICT OF INTEREST

The Artist shall disclose in writing to the City any actual or potential conflicts of interest or any appearance of a conflict of interest by the Artist, its employees or agents, or its subcontractors, if any.

18. NO GIFTS OR GRATUITIES:

The Artist shall not make any payment or gift or donation of substantial value to any elected official, officer, employee, or agent of the City during the term of this Agreement.

19. AUDIT AND ACCESS TO RECORDS:

For all negotiated Agreements, the City, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Artist, which are pertinent to the Agreement, for the purpose of making audits, examinations, excerpts and transcriptions. The Artist shall maintain all required records for three years after final payment is made and all other pending matters are closed.

20. RELEASE

The acceptance by the Artist of final payment shall be a release to the City of all claims and all liability for all things done or furnished in connection with this Work and for every act and neglect of the City and others relating to or arising out of this Work. Any payment, however, final or otherwise, shall not release the Artist or their sureties from any obligations under the Agreement or any performance or payment bond.

EXHIBIT D

Certification of Compliance with the City of Burlington’s Livable Wage Ordinance

I, _____, on behalf of _____ (“the Contractor”) in connection with a contract for _____ services that we provide to the City, hereby certify under

oath that the Contractor (and any subcontractors under this contract) is and will remain in compliance with the City of Burlington’s Livable Wage Ordinance, B.C.O. 21-80 et seq., and that

(1) as a condition of entering into this contract or grant, we confirm that all covered employees as defined by Burlington’s Livable Wage Ordinance (including the covered employees of subcontractors) shall be paid a livable wage (as determined, or adjusted, annually by the City of Burlington’s chief administrative officer) and provided appropriate time off for the term of the contract;

(2) a notice regarding the applicability of the Livable Wage Ordinance shall be posted in the workplace(s) or other location(s) where covered employees work;

(3) we will provide verification of an employee’s compensation, produce payroll or health insurance enrollment records or provide other relevant documentation (including that of any subcontractor), as deemed necessary by the chief administrative officer, within ten (10) business days from receipt of a request by the City;

(4) we will cooperate in any investigation conducted by the City of Burlington’s City Attorney’s office pursuant to this ordinance; and

(5) we will not retaliate (nor allow any subcontractor to retaliate) against an employee or other person because an employee has exercised rights or the person has cooperated in an investigation conducted pursuant to this ordinance.

Date _____

By:

Contractor

Subscribed and sworn to before me:

Date _____

Notary

Exhibit E

**Certification of Compliance with the City of Burlington’s
Union Deterrence Ordinance**

I, _____, on behalf of _____
(Contractor) and in connection with _____ (City
contract/project/grant), hereby certify under oath that _____
(Contractor) has not advised the conduct of any illegal activity, and it does not currently, nor
will it over the life of the contract advertise or provide union deterrence services in violation of
the City's union deterrence ordinance.

Dated at _____, Vermont this _____ day of _____, 20__.

By: _____ Duly Authorized
Agent

Exhibit F

Certification of Compliance with the City of Burlington's Outsourcing Ordinance

I, _____, on behalf of

_____ (Contractor) and in connection with the

_____ [project], hereby certify under oath that (1) Contractor shall comply with the City of Burlington's Outsourcing Ordinance (Ordinance §§ 21-90 – 21-93); (2) as a condition of entering into this contract or grant, Contractor confirms that the services provided under the above-referenced contract will be performed in the United States or Canada.

Dated at _____, Vermont this ____ day of _____, 20

.

By: _____ Duly Authorized

Agent

Subscribed and sworn to before me: _____

Notary



ARCHIBALD

WALNUT

ELIMWOOD

SPRING

25 12.5 0 25 50 75 100 Feet

1 inch equals 50 feet

N

Dewey Park

