

**Call to Artists**  
**Request For Qualifications**

**Issued: March 17, 2022**  
**Deadline: April 7, 2022 11:59pm**

**I. PROJECT BACKGROUND**

Burlington City Arts (BCA) and the Office of Racial Equity, Inclusion, and Belonging (REIB) are partnering on a call to artists for a public mural project.

The City of Burlington will hold its second Annual Juneteenth Celebration, an event for all to celebrate Black liberation in the United States. From its Galveston, Texas origin in 1865, the observance of June 19 as the African American Emancipation Day has spread across the United States and beyond. Today, Juneteenth commemorates African American freedom and emphasizes education and achievement. It is a day, a week, and in some areas a month – marked with celebrations, guest speakers, picnics, and family gatherings. It is a time for reflection and rejoicing, a time for assessment, self-improvement, and planning for the future. Juneteenth’s growing popularity signifies a level of recognition and dignity in America that is long overdue. In cities across the country, people of all races, nationalities, and religions are joining hands to truthfully acknowledge a period in our history that shaped and continues to influence our society today. When we are sensitized to the conditions and experiences of others, only then can we make significant and lasting improvements in our society.

The goal of this project is to complement Burlington’s Juneteenth festivities by commissioning murals that create space for reflection and rejoicing in the history, culture, and resiliency of Black Americans, and that innovatively address the mural format as a tool for community learning. The theme of Juneteenth 2022 is “A Love Story.”

Though previous mural experience is not required, applicants are encouraged to include a mural artist, technical professionals and others on a team who infuse non-visual arts media into the project, and/or bring knowledge about Black history and connection to the artistic content.

In an effort to increase arts resources within the following communities, BCA strongly encourages applications from those who identify as people of color, as LGBTQ, or with disabilities, and those who are veterans, immigrants, or low-income citizens.

**II. SCOPE OF WORK**

This project will result in the installation of up to two murals painted on a substrate surface and installed in Burlington, to be owned by the City of Burlington. Proposed locations currently include Fletcher Free Library and the Boys and Girls Club of Burlington. Specifications for sites will be provided for finalists to develop full proposals.

The Artist/Artist Team will provide all materials and labor to complete the scope of work. Substrate will be required to be treated and sealed for outdoor use, removable, and cause no irreversible harm to the surface installed upon. Installation must be completed by the Artist or a contractor capable of meeting the City of Burlington’s minimum insurance requirements. The

deadline for installation is no later than June 18, 2022. Murals are anticipated to remain on public display for a minimum period of 1 year.

### **III. BUDGET**

Each mural location will have a budget of up to \$8,000, including time, materials, professional services, equipment rentals, insurance, travel and any other items necessary to complete the scope of work. **Each Artist/Artist Team still in consideration after the first selection phase as described below in §V1 will receive a \$300 honorarium to develop a final proposal.**

### **IV. TIMELINE**

March 17: Call to Artists released

April 7, 11:59 pm: Deadline for submission for Qualifications

April 15: Up to 6 artists selected to develop proposals (estimated)

May 8: Proposals Due

May 15: Finalists selected

June 18: Murals complete on site for Juneteenth

### **V. SUBMISSIONS**

Submissions for qualifications in response to the Call to Artists:

- a. Artist/Team bio(s) and description of past artistic activities
- b. Brief narrative (300 words max) describing interest in the project and Juneteenth
- c. Digital portfolio or up to 8 images of past work and associated scale and budget

To submit, login or create an account at [burlingtoncityarts.awardsplatform.com](http://burlingtoncityarts.awardsplatform.com) and select *Juneteenth Murals 2022* category. If access to technology or other barriers for submission arise, please contact [skatz@burlingtoncityarts.org](mailto:skatz@burlingtoncityarts.org) or 802-865-5356.

Submissions for Proposals will require:

- a. Artist/Team bio(s) and description of past artistic activities
- b. Description of the concept behind the proposed submission
- c. Budget (including time, materials, professional services, equipment rentals, insurance, travel and any other necessary items for completing the project)
- d. Rendering of proposed concept (jpg or PDF upload)
- e. Perspective rendering of proposed concept in preferred location

### **VI. SELECTION PROCESS**

A two-stage selection process will be used to select artists and develop proposals. Submissions and proposals will be reviewed and selected by a Public Art Review Panel (PARP) comprised of community members, artists, and arts professionals who will bring multiple perspectives to the selection process, including from a range of races, gender identities, socio-economic backgrounds, ages, and abilities. Up to 6 Artist/Artist Teams will be selected to submit final proposals for two sites.

### **Criteria for Qualifications Stage**

- Artist/Team exhibits strong artistic excellence 30%
- Artist/Team exhibits strong technical qualifications needed to complete the scope of work 30%
- Artist/Team exhibits understanding of Juneteenth and its significance in American history 40%

### **Criteria for Proposal Stage**

- Concept proposed connects to the themes and or content of the Festival, and reflects and rejoices in the history, culture, and resiliency of Black Americans 35%
- Concept is artistically strong and integrates well with the location 35%
- Clarity and professionalism of submission materials 30%

The Public Art Review Panel reserves the right to reject any proposals that do not meet the goals of the project.

### **Eligibility**

- Artists 18 years old and over are eligible to submit. Artists under the age of 18 may be included on an artist team with at least one artist who is 18 years old or older.
- Artists must be able to deliver to and install work in Burlington by due date.
- Concepts will not be eligible that incorporate hate speech, hate symbols or profanity.
- BCA Board of Advisors, BCA Regular staff, and any other person employed by the City as regular employees are not eligible for selection.

The selected artist(s) will be required to execute a contract with the City on the terms and conditions required by the City, including but not limited to those in the Burlington Contract Conditions (Attachment B) and the Draft Agreement (Attachment A).

For questions, contact Sara Katz at [skatz@burlingtoncityarts.org](mailto:skatz@burlingtoncityarts.org)

## **VII. LIMITATION OF LIABILITY**

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

## **VIII. COSTS ASSOCIATED WITH PROPOSAL**

Any costs incurred by any person or entity in preparing, submitting, or presenting a proposal notwithstanding the \$300 honorarium for notified finalists as outlined in **§III**, 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.

## **IX. INDEMNIFICATION**

Any party responding to this Call to Artists 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.

## **X. 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 in no way obligates the City to award a contract.

## **XI. OWNERSHIP OF DOCUMENTS**

Any materials submitted to the City in response to this Call to Artists 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.

## **XII. 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.

## **XIII. 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.

#### **XIV. ATTACHMENTS**

Attachment A: Artist Agreement

Attachment B: Burlington Standard Contract Conditions

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**ATTACHMENT A:  
ARTIST AGREEMENT  
Art in Public Places  
City of Burlington**

**THIS AGREEMENT** is made and entered into this date by and between the City of Burlington, through the [REDACTED] (“the “City”) and [REDACTED] (“the Artist,”), with a physical address in the State of Vermont located at [REDACTED], (together, “the Parties”). Now, therefore, the City and the Artist, for the consideration hereinafter named, agree as follows:

**1. 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.
- C. Purpose.** [describe briefly] as further detailed in Exhibit A.

**2. EFFECTIVE DATE AND TERM**

- A. Effective Date.** This Agreement shall not be valid or enforceable until the Effective Date. The City shall not be bound by any provision of this Agreement before the Effective Date and shall have no obligation to pay Artist for any performance or expense incurred before the Effective Date or after the expiration or termination of this Agreement.
- B. Term.** This Agreement and the Parties respective performance shall commence on the Effective Date and except for those provisions that endure, shall end when the Work set out below is completed, installed, and accepted by the City.

**3. DEFINITIONS**

- A. “Effective Date”** means the date on which this Agreement is approved and signed by the City, as shown on the signature page of this Agreement.
- B. “Party”** means the City or Artist and “Parties” means the City and Artist.
- C. “The Services” or “the Work”** means the services or artwork set forth in **Section 6** of this Agreement and described more fully in the Specifications of Work in Exhibit A.

#### **4. AGREEMENT DOCUMENTS AND ORDER OF PRECEDENT**

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.

The following documents, in combination with this Artist Agreement, constitute the Agreement Documents:

Exhibit A: Call to Artists Request for Proposals

Exhibit B: Artist Response to Request for Proposals/Scope of Work

Exhibit C: Burlington Standard Contract Conditions

Exhibit D: Artist's or installation Contractor's Certificate of Insurance

To the extent a conflict or inconsistency exists between the Contract Documents, or provisions therein, then the Contract takes precedent. Any Invitation for Bids, Additional Contract Provisions, and the City Ordinance Certifications shall prevail over any inconsistency with the Artist's Scope of Work and Cost Proposal.

#### **5. SECTION & ATTACHMENT HEADINGS**

The article and attachment headings throughout this Contract are for the convenience of City and Consultant and are not intended nor shall they be used to construe the intent of this Contract or any part hereof, or to modify, amplify, or aid in the interpretation or construction of any of the provisions hereof.

#### **6. SCOPE OF WORK**

The Artist agrees to create and oversee the installation of the artwork for the City as set forth in this Agreement and the Call to Artists Requests for Proposals (Exhibit A) and Artist Response (Exhibit B).

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

#### **7. CONFORMANCE TO SPECIFICATIONS**

The Artist shall execute the work of art (hereinafter referred to as the "Work") in accordance with the attached Artist Response (Exhibit B). 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. The City shall determine whether the change is significant within five business days of receipt.

#### **8. WARRANTY OF ORIGINALITY**

The Artist represents and warrants that the Work is the original product of the Artist's 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.

By signing this Agreement the Artist certifies that the Work is not subject to any copyright held by or in violation of any intellectual property rights of any other party. The Artist shall indemnify, defend, and hold harmless the City and its officers and employees from liability and any claims, suits, expenses, losses, judgments, and damages arising out of any third party's claim of copyright infringement or violation of intellectual property rights concerning the Work.

## 9. PAYMENTS FOR SERVICE

- A. The City agrees to pay the Artist as compensation for the creation and installation of the artwork a firm fixed price of \$[REDACTED]. This amount includes the complete cost of conceiving, designing, fabricating, and overseeing the installation of the work, and all materials, labor and travel associated with the fabrication and oversight of installation of the work as described in the Specifications of Work.
- B. It is understood that the City has no obligations regarding and will not pay any sales commissions, nor shall the City be responsible for any agreements with galleries or agents with whom the Artist may have contracted.
- C. Payments shall be made at the agreed upon intervals, in proportion to services performed, as follows:

Within fourteen (14) days of signing of contract: \$ [REDACTED]

Within fourteen (14) days of City acceptance of the Work,  
following final installation: \$ [REDACTED]

- D. Consultant shall submit one copy of each invoice, including rates and a detailed breakdown by task for each individual providing services, and backup documentation for any equipment or other expenses to the following:

[Name, address, phone, email]

The City reserves the right to request supplemental information prior to payment. Consultant shall not be entitled to payment under this Contract without providing sufficient backup documentation satisfactory to the City.

- E. 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 Artist's Proposal.

## 10. TIME FOR PERFORMANCE OF THE WORK

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



### **11. 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.

### **12. INDEPENDENT ARTIST STATUS OF THE ARTIST**

The Artist acknowledges that they are an independent Artist 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.

### **13. 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, and Artist shall immediately return to the City any payment that has already been made.

### **13. TERMINATION**

The services to be performed under this Agreement may be terminated as provided in this section, provided that attempts to reconcile the reason for termination have been undertaken but failed. The notice shall specify the reason for the termination.

#### A. Termination for Convenience of the City

The City may terminate this Agreement at its convenience by providing the Artist with written notice of the termination. The Artist shall promptly provide to the City an accounting of funds spent to date and shall estimate what percentage of the Specifications of the Work has been completed. The Artist shall be entitled to retain an amount of the total fee equivalent to the percentage of Work completed and shall refund the City any additional funds that have already been paid. All materials purchased for the Work shall become the property of the City upon termination. The City shall have the right at its discretion to possession and transfer of title to the sketches, designs and models already prepared and submitted or prepared for submission to the City by the Artist under this Agreement prior to the date of termination, provided that no right to fabricate or execute the Work shall pass to the City.

#### B. Termination for Cause by the City

If the Artist fails to complete the Work or otherwise defaults under this Agreement, the City may terminate this Agreement for cause by providing the Artist with written notice of termination that includes an explanation of the cause. The Artist shall refund to the City all funds already paid by the City, less any amounts already spent or committed to be spent on materials that are included in the Specification of Work, provided that the funds and materials are delivered to Burlington City Arts within five business days of receipt of the notice of termination. The Artist will be entitled to no further compensation.

### C. Inability or Other Failure to Complete

If either the City or the Artist determines at any point that the Artist is unable to complete the fabrication and installation of the Work to the satisfaction of both the Artist and the City, due to disability, death, or other reason beyond the Artist's control, the Parties (or their duly authorized representatives) agree to meet and attempt to reach a mutually acceptable arrangement on appropriate payment (or refund of prior payments), ownership of the Work, completion, and/or installation. If, after meeting, the Parties are unable to reach agreement, the City may elect to terminate the Agreement for cause as provided above.

### D. Failure to Make Payment.

If the City fails to make the initial payment as provided in Section 8, the Artist may terminate this Agreement by providing the City with written notice and giving the City a reasonable period of time not to exceed 30 days to cure.

## **14. INSPECTION OF THE WORK**

The City shall, at all times, have access to the Artist's work for the purposes of inspection, accounting, and auditing, and the Artist shall provide whatever access is considered necessary to accomplish such inspections. The actual performance of Work and superintendence shall be performed by the Artist, and the City may inspect the Work at its discretion to ensure that it is being performed as required by this Agreement and 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. The Artist remains responsible to ensure that all Work is done in compliance with this Agreement.

## **15. RISK OF LOSS OR DAMAGE**

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

## **16. INSTALLATION OF WORK**

Installation of the Work shall be carried out by the Artist in coordination with the City. The Artist is responsible for being present during installation and ensuring that the installation of the Work is consistent with the Specifications of Work, the final approved and submitted design and to the satisfaction of both the Artist and the City.

## **17. 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 fabricated and installed, and a written set of instructions for the permanent maintenance and care of the Work.

## **18. FINAL ACCEPTANCE AND RELEASE OF CLAIMS**

- A. The Artist agrees to deliver the Work to the City and install it 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., including those of any approved subArtist, have been paid and that no liens have been filed against the Work or that any and all liens or attachments related to the Work or 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.
- C. 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 the Artist's sureties from any obligations under the Agreement Documents or any performance or payment bond.

## **19. 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. The Artist agrees that the ownership of all drawings, tracings, estimates, specifications, proposals, diagrams, calculations, electronic data media and other material prepared or collected by the Artist, hereafter referred to as "instruments of professional service," shall become the property of the City as they are prepared and/or developed in the course of the Agreement. The Artist agrees to allow the City access to all "instruments of professional service" at any time.

## **20. 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 otherwise addressed in this Agreement.

- A. 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.
- B. 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.

- C. 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.
- D. The Artist shall provide written notice to the Executive Director of City Arts of all intellectual property registrations of the Work (copyright, trademark, etc.). 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.

## **21. ARTIST'S RIGHTS AND THE VISUAL ARTISTS RIGHTS ACT**

### **A. Waiver**

The Work may be considered to be a "work of visual art" subject to the provisions of the federal Visual Artists Rights Act of 1990 ("VARA"), codified at 17 U.S.C. §106A(a), which grants certain authors with rights to attribution and integrity. As the Author of the Work, by signing this Agreement the Artist hereby waives the following rights, including those conferred by VARA:

- a. All rights to the display of the Work, removal from display, exhibition, installation, conservation, storage, study, alteration, and any other activities conducted by the City of Burlington, its officers, employees, agents, Artists, licensees, successors, and assigns for whatever uses of the Work that the City deems appropriate in its sole discretion;
- b. The right to prevent any improvement, distortion, mutilation, modification, destruction, or restoration of the Work by the City of Burlington, its officers, employees, agents, Artists, licensees, successors, and assigns for whatever purpose;
- c. The right to initiate, commence, or maintain any claims against the City of Burlington, its officers, employees, agents, Artists, licensees, successors, and assigns that may arise under VARA or any other current or future local, state, foreign, or international law that conveys the same or similar rights with respect to the Work.

The intent of this section is to document the Artist's waiver so that the City of Burlington may move, sell, destroy, display, store, modify, or otherwise act with respect to the Work. Additionally this section is intended to clarify that the Artist retains other rights, such as the right to claim authorship or to prevent the use of the Artist's name, if the Artist believes that the City has taken an action that would distort, mutilate, or modify the Work in a way that would prejudice the Artist's honor or reputation.

**B. Release**

By signing this Agreement the Artist hereby releases the City of Burlington, its officers, employees, agents, Artists, licensees, successors, and assigns from all liability related to the Work under VARA or any other current or future local, state, foreign, or international law. By signing this Agreement the Artist hereby agrees that the City of Burlington has the absolute right to change, modify, destroy, remove, relocate, move, replace, transport, repair, or restore the Work, in whole or in part, in the City's sole discretion.

**C. Reservation**

The waiver and release in subsections A and B above shall not extend to the rights of attribution conferred by 17 U.S.C. § 106A(a)(1) or 17 U.S.C. § 106A(a)(2). If the City of Burlington modifies the Work without the consent of the Artist in a manner prejudicial to the Artist's reputation, the Artist shall retain the right to disclaim authorship of the Work in accordance with 17 U.S.C. § 106A(a)(2).

**18. ENTIRE AGREEMENT**

This writing, and its Attachments, 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.

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

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Artist Date

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Doreen Kraft, Executive Director Date

**ATTACHMENT C:  
BURLINGTON STANDARD CONTRACT CONDITIONS  
FOR ARTISTS**

1. **REGISTRATION:** The Artist agrees to be registered with the Vermont Secretary of State's office as a business entity doing business in the State of Vermont at all times this Contract is effective. This registration must be complete prior to Contract execution.
  
2. **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 Contract. The insurance policies shall provide that insurance coverage cannot be canceled or revised without thirty (30) days prior notice to the City. If this Contract extends to more than one year, evidence of continuing coverage must be submitted to the City on an annual basis. Copies of any insurance policies may be required. Each policy (with the exception of professional liability and worker's compensation) shall name the City as an additional insured for the possible liabilities resulting from the Artist's actions or omissions. The liability insurance furnished by the Artist is primary and non-contributory for all the additional insured.

The Artist is responsible to verify and confirm in writing to the City that: (i) all subcontractors must comply with the same insurance requirements as the Artist; (ii) all coverage shall include adequate protection for activities involving hazardous materials; and (iii) all work activities related to the Contract shall meet minimum coverage and limits.

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.

**A. General Liability And Property Damage:** With respect to all operations performed by the Artist, subcontractors, agents or workers, it is the Artist's responsibility to ensure that general liability insurance coverage, on an occurrence form, provides all major divisions of coverage including, but not limited to:

1. Contractual Liability
2. Independent Artists'/Artists' Protective
3. Products and Completed Operations
4. Personal Injury Liability
5. Property Liability

Coverage limits shall not be less than:

1.	General Aggregate	\$2,000,000
2.	Products-Completed/Operations	\$2,000,000
3.	Each Occurrence	\$1,000,000

**B. 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 subcontractors carry the same workers' compensation insurance for all work performed by them under this Contract. Minimum limits for Employer's Liability:

1. Bodily Injury by Accident: \$500,000 each accident
2. Bodily Injury by Disease: \$500,000 policy limit,  
\$500,000 each employee

**C. Risk Installation:** Artist shall carry insurance which covers physical damage to or destruction of the Artwork. If the Artwork is to be installed by a person or entity other than the Artist, the insurance coverage must cover that person or entity. The minimum limit shall be the total amount of compensation paid to the Artist through the date of the beginning of the installation of the Artwork under §9 of the main agreement.

**D. Transportation/Cartage:** Coverage must include loading, transportation and unloading of the Artwork. If the Artwork is to be loaded, transported or unloaded by a person or entity other than the Artist, the insurance coverage must cover that person or entity. The minimum limit shall be the total amount of compensation paid to Artist through the date of loading under §9 of the main agreement.

**E. Automobile Liability:** The Artist shall carry commercial automobile liability insurance covering all motor vehicles, including owned, non-owned and hired, used in connection with the Contract. Each policy shall provide coverage with a limit not less than: \$1,000,000 Combined Single Limit for each occurrence.

**3. 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.

**4. PLANS, RECORDS, AND AVAILABLE DATA:** The City agrees to make available, at no charge, for the Artist's use all available data related to the Contract including any preliminary plans, maps, drawings, photographs, reports, traffic data, calculations, EDM, valuable papers, topographic survey, utility location plats, or any other pertinent public records.

**5. PERSONNEL REQUIREMENTS AND CONDITIONS:** The Artist shall employ only qualified personnel with appropriate and valid licensure, to the extent a license is required for the work performed. The City shall have the right to approve or disapprove key personnel

assigned to administer activities related to the Contract.

Except with the approval of the City, during the life of the Contract, the Artist shall not employ:

1. Any City employees who are directly involved with the awarding, administration, monitoring, or performance of the Contract or any project(s) that are the subjects of the Contract.
2. Any person so involved within one (1) year of termination of employment with the City.

The Artist warrants that no company or person has been employed or retained, other than a bona fide employee working solely for the Artist, to solicit or secure this Contract, and that no company or person has been paid or has a contract with the Artist to be paid, other than a bona fide employee working solely for the Artist, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of the Contract. For breach or violation of this warranty, the City shall have the right to annul the Contract, without liability to the City, and to regain all costs incurred by the City in the performance of the Contract.

The City reserves the right to require removal of any person employed by a Artist, from work related to the Contract, for misconduct, incompetence, or negligence as determined by the City, in the due and proper performance of Artist's duties, or for neglecting or refusing to comply with the requirements of the Contract.

6. **PERFORMANCE:** Artist warrants that performance of Work will conform to the requirements of this Contract. Artist shall use that degree of ordinary care and reasonable diligence that an experienced and qualified provider of similar services would use acting in like circumstances and experience in such matters and in accordance with the standards, practices and procedures established by Artist for its own business.
7. **DESIGN STANDARDS:** Unless otherwise specifically provided for in the Contract, or directed in writing, Artist services, studies or designs, that include or make reference to plans, specifications, special provisions, computations, estimates, or other data shall be in conformance with applicable City, state, and federal specifications, manuals, codes or regulations, including supplements to or revisions thereof, adopted prior to or during the duration of this Contract. In case of any conflict with the guidelines referenced, the Artist is responsible to identify and follow any course of direction provided by the City.
8. **RESPONSIBILITY FOR SUPERVISION:** The Artist shall assume primary responsibility for general supervision of Artist employees and their subcontractors for all work performed under the Contract and shall be solely responsible for all procedures, methods of analysis, interpretation, conclusions and contents of work performed under the Contract. The Artist shall be responsible to the City for all acts or omissions of its subcontractors and any other person performing work under this Contract.



- 9. UTILITIES & ACCESS:** Whenever a facility or component of a private, public, or cooperatively-owned utility will be affected by any proposed construction, the Artist will counsel with the City and will enter into any necessary contacts and discussions with the affected owners regarding any requirement necessary for revisions of facilities or existing installations, both above and below ground. Any such installations must be completely and accurately exhibited on any detail sheets or plans. The Artist shall inform the City, in writing, of any such contacts and the results thereof.

The City shall provide the land and/or construction easements for the land upon which the Work under this Contract is to be done, and will, so far as is convenient, permit the Artist to use as much of the land as is required for the erection of temporary construction facilities and storage of materials, together with the right of access to same, but beyond this, the Artist shall provide at the Artist's cost and expense any additional land required.

**10. PROTECTION OF PROPERTY:**

- A. In General:** Artist shall avoid damage, as a result of its operations, to trees, plant life, existing sidewalks, curbs, streets, alleys, pavements, utilities, adjoining property, the work of other Artists, and the property of the City and others. Artist shall, at its own expense, repair any damage to any property caused by Artist's operations.
- B. Underpinning and Shoring:** Artist shall become familiar with the requirements of local and state laws applicable to underpinning, shoring and other work affecting adjoining property, and wherever required by law Artist shall shore up, brace, underpin, secure and protect as may be necessary all foundations and other parts of existing structures adjacent to, adjoining, and in the vicinity of the site, which may be affected in any way by the excavations or other operations connected with the work to be performed under this Contract.
- C. Damage to Utilities:** Artist shall be responsible for all damage to any utility equipment or structures caused by its acts or omissions to act, whether negligent or otherwise, and shall leave the utility equipment or structures in as good condition as they were in prior to the commencement of operations under this contract. However, any utility equipment or structures damaged as a result of any act, or omission to act, of the Artist may, at the option of the city department, utility company, or other party owning or operating the utility equipment or structures damaged, be repaired by the city department, utility company, or other party, and in that event, the cost of repairs shall be borne by Artist.

- 11. INSPECTION OF WORK:** The City shall, at all times, have access to the Artist's work for the purposes of inspection, accounting, and auditing, and the Artist shall provide whatever access is considered necessary to accomplish such inspections. At any time, the Artist shall permit the City or representative for the City the opportunity to inspect any plans, drawings, estimates, specifications, or other materials prepared or undertaken by the Artist pursuant to the Contract,

as well as any preparatory work, work-in-progress, or completed work at a field site, where applicable.

Conferences, visits to a site, or an inspection of the work, may be held at the request of any involved party or by representatives of the City.

**12. REVIEWS AND ACCEPTANCES:** All preliminary and detailed designs, plans, specifications, estimates or other documents prepared by the Artist, shall be subject to review and endorsement by the City.

Approval for any inspections or sequences of progress of work shall be documented by letters, memoranda or other appropriate written means.

A frequency for formal reviews shall be set forth in the Contract. Informal reviews, conducted by the City will be performed as deemed necessary. The Artist shall respond to all official comments regardless of their source. The Artist shall supply the City with written copies of all correspondence relating to formal and informal reviews.

No acceptance shall relieve a Artist of their professional obligation to correct any defects or errors in their work at their own expense.

**13. PUBLIC RELATIONS:** Whenever it is necessary to perform work in the field, particularly with respect to reconnaissance, the Artist will endeavor to maintain good relations with the public and any affected property owners. Personnel employed by or representing the Artist shall conduct themselves with propriety. The Artist agrees to inform property owners and/or tenants, in a timely manner, if there is need for entering upon private property as an agent of the City, in accordance with 19 V.S.A. § 35 and §.503, to accomplish the work under the Contract. The Artist agrees that any work will be done with minimum damage to the land and disturbance to the owner. Upon request of the Artist, the City shall furnish a letter of introduction to property owners soliciting their cooperation and explaining that the Artist is acting as an agent of the City.

**14. ACKNOWLEDGEMENTS:** Acknowledgment of the City's support must be included in any and all publications, renderings and project publicity, including audio/visual materials developed under this Contract.

**15. APPEARANCES:**

**A. Hearings and Conferences:** The Artist shall provide services required by the City and necessary for furtherance of any work covered under the Contract. These services shall include appropriate representation at design conferences, public gatherings and hearings, and appearances before any legislative body, commission, board, or court, to justify, explain and defend its contractual services covered under the Contract.

The Artist shall perform any liaison that the City deems necessary for the furtherance of the work and participate in conferences with the City, at any reasonable time, concerning interpretation and evaluation of all aspects covered under the Contract.

The Artist further agrees to participate in meetings with the City and any other interested or affected participant, for the purpose of review or resolution of any conflicts pertaining to the Contract.

The Artist shall be equitably paid for such services and for any reasonable expenses incurred in relation thereto in accordance with the Contract.

- B. Appearance as Witness:** If and when required by the City, the Artist, or an appropriate representative, shall prepare and appear for any litigation concerning any relevant project or related contract, on behalf of the City. The Artist shall be equitably paid, to the extent permitted by law, for such services and for any reasonable expenses incurred in relation thereto, in accordance with the Contract.

**16. RESPONSIBILITY OF COST:** The Artist shall furnish and pay the cost, including taxes (except tax-exempt entities) and all applicable fees, of all the necessary materials and shall furnish and pay for full time on-site superintendence during any construction activity, labor, tools, equipment, and transportation. The Artist shall perform all the Work required for the construction of all items listed and itemized under Attachment A (Request for Proposals) and Attachment B (Artist's Response to Request for Proposals) and in strict accordance with the Contract Documents and any amendments thereto and any approved supplemental plans and specifications. The Artist agrees to pay all claims for labor, materials, services and supplies and agrees to allow no such charge, including no mechanic's lien, to be fixed on the property of the City.

**17. PAYMENT PROCEDURES:** The City shall pay, or cause to be paid, to the Artist or the Artist's legal representative payments in accordance with the Contract. All payments will be made in reliance upon the accuracy of all representations made by the Artist, whether in invoices, progress reports, emails, or other proof of work. When applicable, for the type of payment specified in the Contract, the progress report shall summarize actual costs and any earned portion of fixed fee.

All invoices and correspondence shall indicate the applicable project name, project number and the Contract number. When relevant, the invoice shall further be broken down in detail between projects.

When applicable, for the type of payment specified in the Contract, expenses for meals and travel shall be limited to the current approved in-state rates, as determined by the State of Vermont's labor contract, and need not be receipted. All other expenses are subject to approval by the City and must be accompanied with documentation to substantiate their charges.

No approval given or payment made under the Contract, shall be conclusive evidence of the performance of the Contract, either wholly or in part thereof, and no payment shall be construed to be acceptance of defective work or improper materials.

The City agrees to pay the Artist and the Artist agrees to accept, as full compensation, for performance of all services rendered and expenses incurred, the fee specified in the Contract.

Upon completion of all services covered under the Contract and payment of the agreed upon fee, the Contract with its mutual obligations shall end.

**18. DUTY TO INFORM CITY OF CONTRACT DOCUMENT ERRORS:** If Artist knows, or has reasonable cause to believe, that a clearly identifiable error or omission exists in the Contract Documents, including but not limited to unit prices and rate calculations, Artist shall immediately give the City written notice thereof. Artist shall not cause or permit any Work to be conducted which may relate to the error or omission without first receiving written notice by the City that City representatives understand the possible error or omission and have approved of modifications to the Contract Documents or that Artist may proceed without any modification being made to Contract Documents.

**19. NON-APPROPRIATION:** The obligations of the City under this Contract are subject to annual appropriation by the Burlington City Council. If no funds or insufficient funds are appropriated or budgeted to support continuation of payments due under this Contract, the Contract shall terminate automatically on the first day of the fiscal year for which funds have not been appropriated. The Parties understand and agree that the obligations of the City to make payments under this Contract shall constitute a current expense of the City and shall not be construed to be a debt or a pledge of the credit of the City. The decision whether or not to budget and appropriate funds during each fiscal year of the City is within the discretion of the Mayor and City Council of the City. The City shall deliver written notice to Artist as soon as practicable of any non-appropriation, and Contract Artist shall not be entitled to any payment or compensation of any kind for work performed after the City has delivered written notice of non-appropriation.

**20. CHANGES AND AMENDMENTS:** No changes or amendments to the Work of the Contract shall be effective unless documented in writing and signed by authorized representatives of the City and the Artist.

**21. EXTENSION OF TIME:** The Artist agrees to prosecute the work continuously and diligently, and no charges or claims for damages shall be made by the Artist for delays or hindrances, from any cause whatsoever, during the progress of any portion of services specified in the Contract. The Artist may request an extension of time for such delays or hindrances, if any.

Time extensions may be granted by amendment only for excusable delays, such as delays beyond the control of the Artist and without the fault or negligence of the Artist.

The City may suspend the work or any portion thereof for a period of not more than ninety (90) days at its discretion or such further time as agreed by the Artist. The Artist will be allowed an extension of contract time directly attributable to any suspension.

**22. PUBLIC HEALTH EMERGENCY:**

**A. Compliance with Mandates and Guidance:** The Artist is advised that public health emergencies—meaning public health emergencies, as declared by the City, the State of

Vermont, or the Federal Government—may introduce significant uncertainty into the project. The Artist must comply with all local, state, federal orders, directives, regulations, guidance, advisories during a public health emergency. Artist shall adhere to the below provisions and consider public health emergencies as it develops project schedules and advances the Work.

**B. Creation of Public Health Emergency Plan:** For any work performed on-site at a City location, the Artist shall create a public health emergency plan acceptable to the City. The Artist shall be responsible for following this plan and ensuring that the project or site is stable and in a safe and maintainable condition.

- a. Public Health Emergency Plan: The Public Health Emergency Plan will contain:
  - i. Measures to manage risk and mitigate potential impacts to the health and safety of the public, the City and Artist’s workers;
  - ii. Explicit reference to any health and safety performance standards and mandates provided by the City, the State of Vermont, the Federal government, or other relevant governmental entities;
  - iii. A schedule for possible updates to the plan as standards and mandates change; and
  - iv. Means to adjust the schedule and sequence of work should the emergency change in nature or duration.
- b. Review and Acceptance of Plan:
  - i. Artist must provide the plan to the City by the Effective Date of this Contract or by one (1) week prior to the commencement of on-site activities, whichever is later.
  - ii. The City shall have sole discretion to require changes to the plan.
  - iii. The City may revisit the plan at any time to verify compliance with obligations that arise under a state of emergency.

**C. Enforcement & Stoppage of Work:** Artist fails to comply with either 1) the approved public health emergency plan, or 2) any local, state, federal orders, directives, regulations, guidance, or advisories during a public health emergency, the City may stop Work under the Contract until such failure is corrected. Such failure to comply shall constitute a breach of the Contract.

Upon stoppage of work, the City may allow Work to resume, at a time determined by the City, under this Contract if such failure to comply is adequately corrected. The City shall have sole discretion in determining if Artist has adequately corrected its failure to comply with the above.

If Artist’s breach of Contract has not been cured within seven (7) days after notice to stop Work from the City, then City may terminate this Contract, at its discretion.

**D. City Liability Relating to Potential Delays:** 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 a public health emergency will be excusable, but will not be compensable.

**23. FORCE MAJEURE:** Neither Party to this Contract shall be liable to the other for any failure or delay of performance of any obligation under this Contract to the extent the failure or delay is caused by acts of God, public health emergencies, epidemics, acts of the public enemy, acts of superior governmental authority, weather conditions, riots, rebellion, sabotage, or any other circumstances for which it is not responsible or which is not under its control (“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. If any such causes for delay are of such magnitude as to prevent the complete performance of the Contract within two (2) years of the originally scheduled completion date, either Party may by written notice request to amend or terminate the Contract. The suspension of any obligations under this section shall not cause the term of this Contract to be extended and shall not affect any rights accrued under this Contract prior to the occurrence of the Force Majeure. The Party giving notice of the Force Majeure shall also give notice of its cessation.

**24. PAYMENT FOR EXTRA WORK, ADDITIONAL SERVICES OR CHANGES:** The City may, in writing, and without invalidating the Contract, require changes resulting from revision or abandonment of work already performed by the Artist or changes in the scope of work.

The value of such changes, to the extent not reflected in other payments to the Artist, shall be incorporated in an amendment and be determined by mutual agreement. Any adjustments of this nature shall be executed under the appropriate fee established in the Contract, based on the adjusted quantity of work.

No changes for which additional fee payment is claimed shall be made unless pursuant to a written order from the City, and no claim for payment shall be valid unless so ordered.

The Artist agrees to maintain complete and accurate records, in a form satisfactory to the City for all time devoted directly to same by Artist employees. The City reserves the right to audit the records of the Artist related to any extra work or additional services. Any such services rendered shall be subject, in all other respects, to the terms of the Contract. When changes are so ordered, no additional work shall be performed by the Artist until a Contract amendment has been fully executed, unless written notice to proceed is issued by the City. Any claim for extension of time that may be necessitated as a result of extra work or additional services and changes shall be given consideration and evaluated insofar as it directly relates to the change.

**25. RETURN OF MATERIALS:** Artist agrees that at the expiration or termination of this Contract, it shall return to City all materials provided to it during its engagement on behalf of City.

- 26. ACCEPTANCE OF FINAL PAYMENT; RELEASE:** Artist's acceptance of the final payment shall be a release in full of all claims against the City or its agents arising out of or by reason of the Work. Any payment, however, final or otherwise, shall not release the Artist or their sureties from any obligations under the Contract Documents or any performance or payment bond.
- 27. OWNERSHIP OF THE WORK:** The Artist agrees that the ownership of all studies, data sheets, survey notes, subsoil information, drawings, tracings, estimates, specifications, proposals, diagrams, calculations, EDM and other material prepared or collected by the Artist, hereafter referred to as "instruments of professional service", shall become the property of the City as they are prepared and/or developed during execution of the Contract. The Artist agrees to allow the City access to all "instruments of professional service" at any time. The Artist shall not copyright any material originating under the Contract without prior written approval of the City. No publications or publicity of the work, in part or in total, shall be made without the express written agreement of the City, except that Artist may in general terms use previously developed instruments of professional service to describe its abilities for a project in promotional materials.
- 28. PROPRIETARY RIGHTS:** The Parties under the Contract hereby mutually agree that, if patentable discoveries or inventions should result from work performed by the Artists under the Contract, all rights accruing from such discoveries or inventions shall be the sole property of the Artist. The Artist, however, agrees to and does hereby grant to the City an irrevocable, nonexclusive, non-transferable, and royalty-free license to the manufacture, use, and disposition of any discovery or invention that may be developed as a part of the Work under the Contract.
- 29. 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.
- 30. RECORDS RETENTION AND ACCESS:** The Artist agrees to retain, in its files, and to produce to the City—within the time periods requested—all books, documents, Electronic Data Media (EDM), accounting records, and other records produced or acquired by the Artist in the performance of this Contract which are related to the City, at any time during this Contract and for a period of at least three (3) years after its completion or termination. In addition, if any audit, claim, or litigation is commenced before the expiration of that three (3) year period, the records shall be retained until all related audits, claims, or litigation are resolved. The Artist further agrees that the City shall have access to all the above information

for the purpose of review and audit during the Contract period and anytime within the aforementioned retention period. Copies of all of the above referenced information shall be provided to the City, if requested, in the format in which the records were obtained, created, or maintained, such that their original use and purpose can be achieved. Artist, sub-Artists, or their representatives performing work related to the Contract, are responsible to ensure that all data and information created or stored on EDM is secure and can be duplicated and used if the EDM mechanism is subjected to power outage, obsolescence, or damage.

**31. CONTRACT DISPUTES:** In the event of a dispute between the parties to this Contract each party will continue to perform its obligations unless the Contract is terminated in accordance with these terms.

**32. SETTLEMENTS OF MISUNDERSTANDINGS:** To avoid misunderstandings and litigation, it is mutually agreed by all Parties that the [Head of Department] shall act as referee on all questions arising under the terms of the Contract and that the decision of the [Head of Department] in such cases shall be binding upon both Parties.

**33. CITY'S OPTION TO TERMINATE:** The Contract may be terminated in accordance with the following provisions, which are not exclusive:

**A. Termination for Convenience:** At any time prior to completion of services specified under the Contract, the City may terminate the Contract for any reason by submitting written notice via certified or registered mail to the Artist, not less than fifteen (15) days prior to the termination date, of its intention to do so. If the termination is for the City's convenience, payment to the Artist will be made promptly for the amount of any fees earned to the date of the notice of termination and costs of materials obtained in preparation for Work but not yet installed or delivered, less any payments previously made. However, if a notice of termination is given to a Artist prior to completion of twenty (20) percent of the estimated services, as set forth in the approved Work Schedule and Progress Report, the Artist will be reimbursed for that portion of any reasonable and necessary expenses incurred to date of the notice of termination that are in excess of the amount earned under its approved fee to the date of said termination. Such requests for reimbursement shall be supported with factual data and shall be subject to the City's approval. The Artist shall make no claim for additional compensation against the City by reason of such termination.

**B. Termination for Cause:**

i. **Breach:** Artist shall be in default if Artist fails in any manner to fully perform and carry out each and all conditions of this Contract, including, but not limited to, Artist's failure to begin or to prosecute the Work in a timely manner or to make progress as to endanger performance of this Contract; failure to supply a sufficient number of properly skilled employees or a sufficient quantity of materials of proper quality; failure to perform the Work unsatisfactorily as determined by the City; failure to neglect or refuse to remove materials; or in the event of a breach of warranty with respect to any materials, workmanship, or performance guaranty. Artist will not be in default for any excusable delays as provided in Sections 19-21.



The City may give Artist written notice of such default. If Artist does not cure such default or provide a plan to cure such default which is acceptable to the City within the time permitted by the City, then the City may terminate this contract for cause.

- ii. Proceedings for Relief of Debtors: If a federal or state proceeding for relief of debtors is undertaken by or against Artist, or if Artist makes an assignment for the benefit of creditors, then the City may immediately terminate this contract.
- iii. Dishonest Conduct: If Artist engages in any dishonest conduct related to the performance or administration of this Contract then the City may immediately terminate this contract.
- iv. Cover: In the event the City terminates this contract as provided in this section, the City may procure, upon such terms and in such manner as the City may deem appropriate, services similar in scope and level of effort to those so terminated, and Artist shall be liable to the City for all of its costs and damages, including, but not limited to, any excess costs for such services, interest, or other charges the City incurs to cover.
- v. Rights and Remedies Not Exclusive: The rights and remedies of the City provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

**34. GENERAL COMPLIANCE WITH LAWS:** The Artist and any subArtist approved under this Contract shall comply with all applicable Federal, State and local laws, including but not limited to the Burlington Livable Wage Ordinance, the Non-Outsourcing Ordinance, and the Union-Deterrence Ordinance and shall provide the required certifications attesting to compliance with these ordinances (see attached ordinances and certifications).

Provisions of the Contract 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 Contract is unenforceable or invalid, that provision shall be deemed severed from the Contract, 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 Contract.

**35. CIVIL RIGHTS AND EQUAL EMPLOYMENT OPPORTUNITY:** During performance of the Contract, the Artist will not discriminate against any employee or applicant for employment because of religious affiliation, race, color, national origin, place of birth, ancestry, age, sex, sexual orientation, gender identity, marital status, veteran status, disability, HIV positive status, crime victim status, or genetic information. Artist, and any subcontractors, shall comply with any Federal, State, or local law, statute, regulation, Executive Order, or rule that applies to it or the services to be provided under this contract concerning equal employment, fair employment practices, affirmative action, or prohibitions on discrimination or harassment in employment.

**36. CHILD SUPPORT PAYMENTS:** By signing the Contract, the Artist certifies, as of the date

of signing the Contract, that the Artist (a) is not under an obligation to pay child support; or (b) is under such an obligation and is in good standing with respect to that obligation; or (c) has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan. If the Artist is a sole proprietorship, the Artist's statement applies only to the proprietor. If the Artist is a partnership, the Artist's statement applies to all general partners with a permanent residence in Vermont. If the Artist is a corporation, this provision does not apply.

**37. TAX REQUIREMENTS:** By signing the Contract, the Artist certifies, as required by law under 32 VSA, Section 3113, that under the pains and penalties of perjury, that the Artist is in good standing with respect to payment, or in full compliance with a plan to pay, any and all taxes due the State of Vermont as of the date of signature on the Contract.

**38. INDEMNIFICATION:**

- A. Indemnification by Artist: 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 Artists), damages or liability of any nature whatsoever, for death or injury to any person, including Artist'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 Artist or its subcontractors of any tier.
- B. Notice of Claims & City's Right to Participate: If the City, its officers, agents, or employees are notified of any claims asserted against it to which this indemnification provision may apply, the City shall immediately thereafter notify the Artist in writing that a claim to which the indemnification provision may apply has been filed. Artist shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit. The City retains the right to participate, at its own expense, in the defense of any claim, and to approve all proposed settlements of claims to which this provision applies.
- C. City's Rights and Remedies: Rights and remedies available to the City under this provision are cumulative of those provided for elsewhere in this Contract and those allowed under the laws of the United States and the State of Vermont.
- D. No Indemnification by City: 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.

- 39. 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 Contract.
- 40. ASSIGNMENT:** Artist shall not sublet or assign this Work, or any part of it, without the written consent of the City. If any subArtist is approved, Artist shall be responsible and liable for all acts or omissions of that subArtist for any Work performed. If any subArtist is approved, Artist shall be responsible to ensure that the subArtist is paid as agreed and that no lien is placed on any City property.
- 41. TRANSFERS, SUBLETTING, ETC:** The Artist shall not assign, sublet, or transfer any interest in the work, covered by this Contract, without prior written consent of the City, and further, if any subArtist participates in any work involving additional services, the estimated extent and cost of the contemplated work must receive prior written consent of the City. The approval or consent to assign or sublet any portion of the work, shall in no way relieve the Artist of responsibility for the performance of that portion of the work so transferred. The form of the subArtist's contract shall be as developed by the Artist and approved by the City. The Artist shall ensure that insurance coverage exists for any operations to be performed by any subArtist as specified in the insurance requirements section of this Contract.

The services of the Artist, to be performed under the Contract, shall not be transferred without written authorization of the City. Any authorized sub-contracts shall contain all of the same provisions contained in and attached to the original Contract with the City.

- 42. CONTINUING OBLIGATIONS:** The Artist agrees that if because of death, disability, or other occurrences, it becomes impossible to effectively perform its services in compliance with the Contract, neither the Artist nor its surviving members shall be relieved of their obligations to complete the Contract unless the City agrees to terminate the Contract because it determines that the Artist is unable to satisfactorily execute the Contract.
- 43. INTERPRETATION & IMPLEMENTATION:** Provisions of the Contract shall be interpreted and implemented in a manner consistent with each other and using procedures that will achieve the intent of both Parties.
- 44. ARM'S LENGTH:** This Contract 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 Artist.
- 45. RELATIONSHIP:** The Artist is an independent Artist and shall act in an independent capacity and not as officers or employees of the City. To that end, the Artist shall determine the method, details, and means of performing the work, but will comply with all legal requirements in doing so. The Artist shall provide its own tools, materials, or equipment. The Parties agree that neither the Artist nor its principal(s) or employees are entitled to any employee benefits from the City. Artist understands and agrees that it and its principal(s) or employees have no right to claim any benefits under the Burlington Employee Retirement System, the City's worker's compensation benefits, health insurance, dental insurance, life insurance, or any other employee benefit plan

offered by the City. The Artist agrees to execute any certifications or other documents and provide any certificates of insurance required by the City and understands that this Contract is conditioned on its doing so, if requested.

The Artist understands and agrees that it is responsible for the payment of all taxes on the above sums and that the City will not withhold or pay for Social Security, Medicare, or other taxes or benefits or be responsible for any unemployment benefits.

- 46. CHOICE OF LAW:** Vermont law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. 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 Contract to the extent capable of execution.
- 47. JURISDICTION:** All suits or actions related to this Contract shall be filed and proceedings held in the State of Vermont.
- 48. BINDING EFFECT AND CONTINUITY:** This Contract 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 Contract during the resolution of the dispute, until the Contract is terminated in accordance with its terms.
- 49. SEVERABILITY:** The invalidity or unenforceability of any provision of this Contract, 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 Contract in accordance with the intent of this Contract.
- 50. ENTIRE CONTRACT & AGREEMENT:** This Contract constitutes the entire Contract, agreement, and understanding of the Parties with respect to the subject matter of this Contract. Prior or contemporaneous additions, deletions, or other changes to this Contract shall not have any force or effect whatsoever, unless embodied herein.
- 51. APPENDICES:** The City may attach to these conditions appendices containing various forms and typical sample sheets for guidance and assistance to the Artist in the performance of the work. It is understood, however, that such forms and samples may be modified, altered, and augmented from time to time by the City as occasions may require. It is the responsibility of the Artist to ensure that they have the latest versions applicable to the Contract.
- 52. NO THIRD PARTY BENEFICIARIES:** This Contract does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Contract 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 Contract are incidental to this Contract, and do not create any rights for such third parties.

**53. WAIVER:** A Party's failure or delay in exercising any right, power, or privilege under this Contract, 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.