



CITY OF BURLINGTON

Call to Artists

Request for Qualifications: BTV Hallway Project

City of Burlington, Vermont

Issued: August 1, 2023

Qualifications Due: September 22, 2023

I. PROJECT BACKGROUND:

Artists and Artist Teams are invited to submit their portfolios and qualifications for the design and installation of a public artwork in the Burlington International Airport (BTV) in Burlington, Vermont, with a maximum budget of \$50,000. BTV is dedicated to providing an exceptional passenger experience through thoughtful design and a commitment to innovation. As part of our ongoing efforts to create an inviting and memorable atmosphere, BTV is delighted to call artists and artist teams to participate in the opportunity to contribute to the airport by creating a work located in a central connective hallway. Artists are encouraged to incorporate themes that include the vibrant culture, commitment to innovation, diverse community, environmental sustainability, and the stunning natural beauty that defines Burlington and Vermont. Artists may wish to infuse their work with elements that embody these themes and foster a sense of connection between travelers, the airport, and the surrounding environment. This installation will not only enliven a relatively enclosed space but also reflect the airport's vision of being a vibrant and welcoming gateway to the city of Burlington, Vermont.

Burlington International Airport (BTV) has consistently presented a vision and commitment to exceptional passenger experience through thoughtful design, integration of public art, and a program of rotating art exhibition spaces in partnership with Burlington City Arts (BCA).

Celebrating its 101 years in operation this summer, BTV welcomes roughly 700,000 passengers each year, a number that is expected to grow with the completion of multiple new terminal integration projects. This public art project will be located in a main transit hallway bridging the North and South terminals of the airport.

This Call to Artists requests materials for qualifications. Five (5) finalist submissions will be awarded \$500 to develop detailed proposals in response to the prompt outlined in §IV.

II. PROJECT BUDGET

The budget for the project is \$52,500, including \$2,500 for five \$500 stipends and \$50,000 for the final selected artwork.

III. SCOPE OF WORK:

The Artist(s) will design and construct a permanent artwork on a substrate to be owned by the City of Burlington and installed in the Burlington International Airport that will be on display for a minimum of 10 years from the date of installation. The artwork may be displayed for longer than 10 years. If BTV desires to remove the display before the expiration of 10 years, the process described in Attachment B Section 21 below shall be followed.

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. City staff will help facilitate required permitting, inspection, and utility connections in collaboration with the artist(s). BTV staff will be able to assist in electrical and minor site preparation in collaboration with the artist(s).

The project wall is roughly 100 feet long and situated in a hallway that is 12 to 14 feet wide until it opens into a small room with windows that is roughly 20 to 25 feet wide; there is a bank of windows at an acute angle to the direction of the hallway. The largest continuous wall is roughly 70 feet long. There are two columns in the center of the hallway that cannot be moved but can be incorporated into a proposed design if desired. The artist(s) can utilize any or all of the highlighted wall into their designs (marked in red on the designs below).

The opposite wall of the hallway is not permanent and is subject to removal in a future Airport terminal project. Therefore, it is not a feasible location for artwork installation. However, any future projects will not impact the proposed artwork location. The space will be opened up and viewed in a future gate waiting area as part of the aforementioned Airport project.

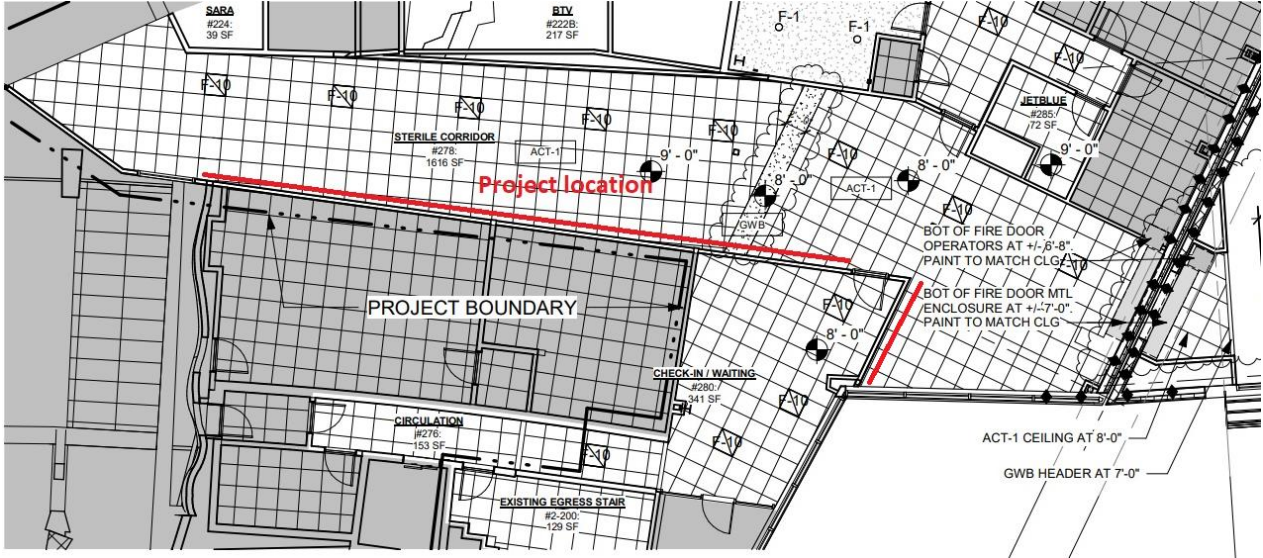


Image 1: Project wall is on the left-hand side of the image



Image 2: Highlights project wall in teal



See more plans and detail images in Attachment 1.

PROPOSED SCHEDULE

1. Aug 1: RFQ opens
2. Sept 22: Qualifications due
3. Sept 29: Five (5) selected finalists announced for Phase 2
4. Oct 31: Final proposals due from 5 finalist artists (estimated)
5. Nov 7 – 10: Artist Interviews (estimated)
6. Nov 15: Final Selected Artist notified (estimated)
7. Feb 1: Final artwork design completed and submitted (estimated)
8. 60 days prior to installation: Site preparation requirements for the BTV scope of work submitted (if applicable)
9. TBD Spring 2024: Installation of new work (estimated, dependent on material requirements of selected work)

1) Materials Requested, Qualifications Round, Due Sept 22, 2023

- a) Artist Application (through online portal).
- b) Optional demographic questionnaire
- c) Letter of interest outlining potential approaches to project, which may include conceptual direction, material preferences, artwork location (5,000 characters max).

- d) Outline of artist(s) background and experience with relevant past art/installation work (narrative format, 3,000 characters **or** 1-page CV upload accepted).
- e) Link to digital portfolio **or** up to 8 images of past projects and description of the work, including concept, materials used, and project budget (1,000 characters max each image).

NOTE: Artist(s) 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 \$500 each for detailed proposals that will include drawings.

2) Materials Requested, Finalist Round, Due Oct 31, 2023

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

- a) Written proposal describing the concept, per prompt described section IV.
- b) To-scale drawing(s) **or** a 3-dimensional rendering of the proposed artwork.
- c) Proposed artwork rendered into perspective drawings, including surroundings from multiple vantage points.
- d) Detailed project timeline, including the projected date when the artwork will be completed and ready for installation.
- e) Description of installation plan, including travel and housing needs for the duration.
- f) Description of a maintenance plan or recommendations for upkeep of the art.
- g) Detailed Budget.

Finalists will give a roughly 10-minute Zoom-based presentation, followed by a Q&A session with the selection panel, during the week of November 7 through 10 (estimated) per schedule above. This presentation will be recorded.

IV. RESPONSE PROMPTS:

- a. Explain how your proposal aligns with the themes of vibrant culture, innovation, community, and sustainability, and how it contributes to the airport's tradition of developing public artwork that creates a welcoming portal into Vermont.
- b. Describe your intended medium/materials and the techniques you intend to use for the artwork. How will your chosen medium withstand the environmental conditions in the airport while maintaining its visual appeal?
- c. Describe how your art will engage passengers and visitors at the airport. Consider the scale and impact of the work and how it can create an inviting and memorable experience for travelers. How does your proposal connect with the local community and reflect the unique aspects of Burlington and its surroundings? How will it resonate with both frequent flyers and first-time visitors?
- d. Describe other factors that make your proposal an ideal choice.

V. SELECTION PROCESS

The selection process will take place in 2 phases:

BTV Hallway Project – Call to Artist

Phase 1 consists of responses to this Call to Artists by the due date. Applicants will be reviewed by a Public Art Review Panel (PARP) comprised of airport personnel, community stakeholders, art and design professionals, and BTV project team members. Up to 5 applicants will be selected to create and submit full proposals for Phase 2 per the schedule outlined above.

Phase 2 will request full proposals from applicants selected in Phase 1. Artists/artist teams selected in Phase 1 will receive additional materials outlining submission requirements and criteria for selection, and draft construction plans. Selected artists/artist teams will be required to submit a proposal consisting of narrative text, engineerable plans and images, and a proposed budget that includes all costs for the artists' time, fabrication, materials, installation, and any other costs associated with the project. The same PARP from Phase 1 will review all proposals. Phase 2 applicants will be required to give a Zoom presentation of their proposals to the PARP, which will be recorded. Phase 2 applicants will receive a \$500 honorarium toward research, administrative, and logistical costs related to proposal development.

The final artists/artist teams selected will be required to enter into a contract with the City of Burlington (see attached draft Attachment B, recognizing that reasonable revisions, additions, and/or alterations to this draft shall be expected at the time of contracting). The final artists/artist teams selected will be required to work closely with the project team on further engagement and refinement of plans that can be engineered and executed to the unique requirements of an airport.

Questions related to any stage of this Call to Artists must be emailed to Jessica Manley at jmanley@burlingtoncityarts.org.

Selection Criteria:

Criteria for Phase 1 selection will include:

- Quality of public art portfolio
- Skill sets offered by the artist/artist team in relation to project opportunities
- Professionalism of submission materials
- The artist/artist team's portfolio indicates that they will contribute to the City's goal of commissioning and promoting artwork that is reflective of a range of cultural, racial, ethnic, and other identities
- Previous experience that demonstrates the ability of the artist/artist team to carry out a public art project within budget and on time
- Previous experience that demonstrates the ability of the artist/artist team to collaborate with professionals from other disciplines

Generally, criteria for Phase 2 selection will be based on creativity, artistic merit, conceptual approach, technical proficiency, flexibility to work within a dynamic project schedule, appropriateness of budget, and relationship of the artwork to the proposed site. Long-term maintenance, durability, and public safety concerns will also be major selection criteria. The final selected artwork will endeavor to reflect the themes indicated in Section I and IV.

Eligibility

This Call to Artists is open to artists and artist teams who reside in the United States and who can submit a W9. Regular employees of BCA and BCA Board members are not eligible to apply. Concepts will not be eligible that incorporate hate speech, hate symbols, or profanity.

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

VI. SUBMISSIONS

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

Additional submission requirements are:

- Responses to this Request for Qualifications must be received per the schedule outlined on Page 3 to be considered.
- Applicants are solely responsible for ensuring that proposals arrive on time.
- Each applicant MUST provide their submittal electronically.
- Applicants will receive a confirmation email once their proposal is received.
- Faxed proposals WILL NOT be accepted.
- Late replies WILL NOT be considered.

VII. ELIGIBILITY

1. Artists must be based in the United States, over the age of 18 years old, and have a US-based tax ID to be eligible to submit.
2. Artists must be able to travel to Burlington as necessary to complete the work.
3. BCA Board of Advisors, The BTV Board of Airport Commissioners, BCA and BTV Regular staff members are not eligible to apply.

VIII. AGREEMENT REQUIREMENTS

The selected party 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 (Exhibit [B]) and the attached Draft Agreement. No proposal will be considered accepted until all necessary City authorizations—including those required by Board of Finance and City Council if necessary—have been received and an agreement is executed by both parties.

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 the \$500 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. DUTY TO INFORM CITY OF BID DOCUMENT ERRORS

If a bidder knows, suspects, or has reasonable cause to believe, that an error or omission exists in any bid documents, including but not limited to unit prices and rate calculations, the bidder shall immediately give the City written notice thereof. A contractor shall not cause or permit any work to be conducted that may be related to the error or omission without first receiving written acknowledgment from the City that City representatives understand the possible error or omission and have approved the requested modifications to the bid or contract documents or that the contractor may proceed without any modification being made to the bid or contract documents.

XV. 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.

XVI. PUBLIC HEALTH EMERGENCIES

Bidders are advised that public health emergencies, as declared by the City, the State of Vermont, or the Federal Government, including 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.

XVII. ATTACHMENTS

1. Attachment A: Additional Images and Plans of Location
2. Attachment B: Example Artist Agreement

Attachment A
ADDITIONAL IMAGES AND PLANS OF SPACE

Image A: View of project wall (the left-hand)



Image B: Project wall is

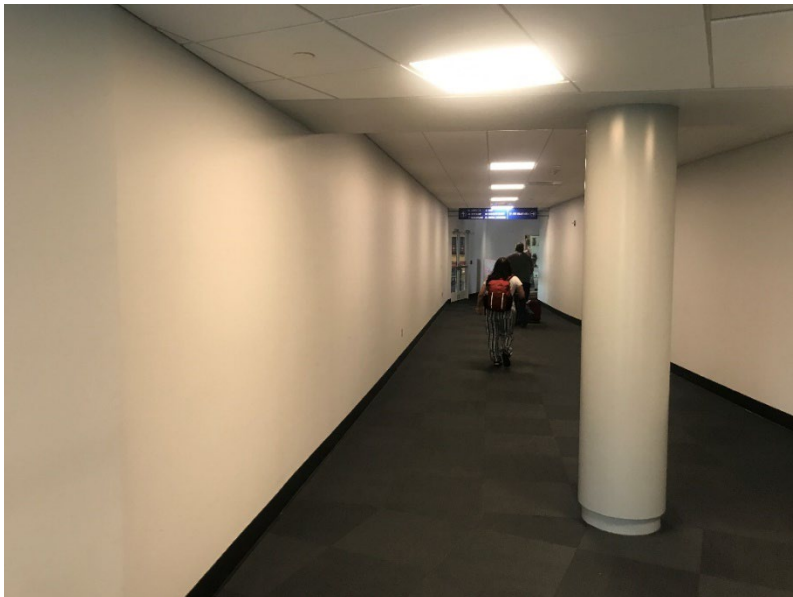


Image C: Project wall is highlighted in Teal

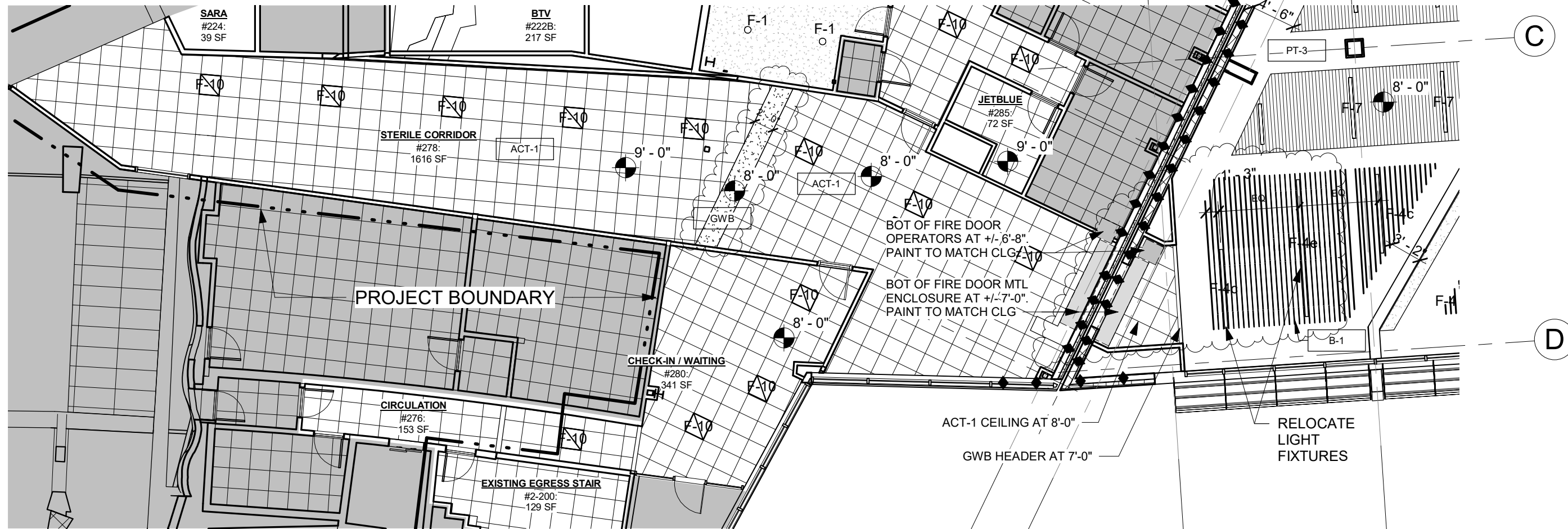


Image D: Project wall is on the right, this view is coming from the opposite direction



Image E: Image shows the corner of the project wall. If desired, proposals may include the wall wrapping around the corner to the window





1 REVISED STERILE CORRIDOR RCP
3/32" = 1'-0"



project name:
**BURLINGTON INTERNATIONAL
 AIRPORT TERMINAL INTEGRATION
 PROJECT**
 1200 AIRPORT DRIVE, SOUTH
 BURLINGTON, VT 05403

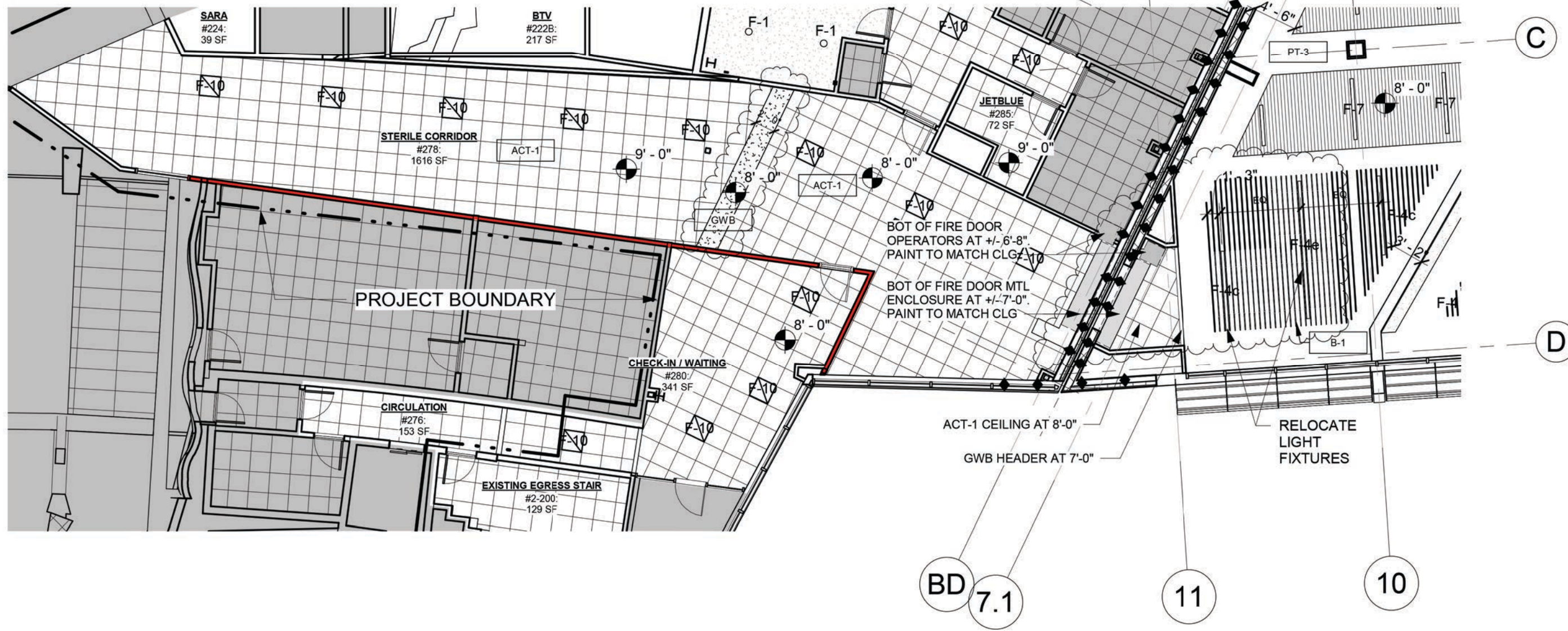
scale: 3/32" = 1'-0"
 project no. 20-1411
 checked by: KT
 drawn by: AS
 date:

issue sketch date: 04/05/2022

Date	Revisions
10/06/21	RCP Revisions
11/05/21	BTV Review Comments
03/30/22	Sterile Corridor Revisions

sketch title:
**STERILE
 CORRIDOR
 REVISIONS**

sketch no.
ASK-24.2



1 REVISED STERILE CORRIDOR RCP
3/32" = 1'-0"



project name:
**BURLINGTON INTERNATIONAL
 AIRPORT TERMINAL INTEGRATION
 PROJECT**
 1200 AIRPORT DRIVE, SOUTH
 BURLINGTON, VT 05403

scale: 3/32" = 1'-0"
 project no. 20-1411
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sketch title:
**STERILE
 CORRIDOR
 REVISIONS**

sketch no.
ASK-24.2

Attachment B

**EXAMPLE ARTIST AGREEMENT
City of Burlington**

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 Burlington City Arts (the “City”) and ARTIST, of ADDRESS Vermont, (“the Artist(s)”) (together, “the Parties”). Now, therefore, the City and the Artists, 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.** To create and oversee the fabrication and installation of the artwork for BTV as set forth in this Agreement and the Call to Artists Requests for Qualifications (Exhibit A) and Artist Response and Scope of Work (Exhibit B).

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 Artists 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.

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
- Exhibit C: Burlington Standard Contract Conditions
- Exhibit D: Burlington Livable Wage Ordinance Certification
- Exhibit E: Burlington Union Deterrence Ordinance Certification
- Exhibit F: Burlington Outsourcing Ordinance Certification
- Exhibit G: Artist’s Certificate of Insurance

To the extent a conflict or inconsistency exists between the Contract Documents, or provisions therein, then this Contract takes precedent. Any Invitation for Bids, Additional Contract Provisions, and the City Ordinance Certifications shall prevail over any inconsistency with the Contractor’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 Qualifications (Exhibit A) and Artist Response and Scope of Work (Exhibit B).

The Artist shall provide all labor and materials necessary to perform the work as set forth in the Specifications of Work, based on specifications provided by the Artist.

7. CONFORMANCE TO SPECIFICATIONS

The Artists shall execute the work of art (hereinafter referred to as the “Work”) in accordance with the attached Artist Proposal (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 Artists represent and warrant that the Work is the original product of the Artists’ own creative effort. The Artists 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 Artists shall not sell or reproduce the Work without the prior written consent of the City.

By signing this Agreement the Artists certify that the Work is not subject to any copyright held by or in violation of any intellectual property rights of any other party. The Artists 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

The City agrees to pay the Artists as compensation for the creation and installation of the artwork a maximum price of \$_____. 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 installation of the work as described in the Specifications of Work, The City will in no event be liable to the Artist for any amount above the maximum price.

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 Artists may have contracted.

Payments shall be made at the agreed-upon intervals, in proportion to services performed, as follows:

- Within 3 weeks of the effective date, 70% \$ _____
- Upon fabrication completion, 10% \$ _____
- Within 2 weeks of delivery, assembly, installation completed on site, and submission of maintenance documents, 20% \$ _____

Each Artist shall submit one copy of each invoice, which includes a breakdown of expenses to the following:

Colin Storrs
 Burlington City Arts
 135 Church St
 Burlington, VT 05401
cstorrs@burlingtoncityarts.org
 802-540-8376

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

The Artists shall be entirely responsible for cost control. No extra payments above the maximum price will be allowed as a result of cost overruns related to the creation of the Work outlined in the Artists’ Proposal.

10. TIME FOR PERFORMANCE OF THE WORK

The Artists and the City agree that time is an essential and important element of this Agreement and further agree 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 Artists are delayed by the City in the performance of the Work, through no fault of the Artists, an appropriate time extension for completion shall be granted by mutual agreement.

12. INDEPENDENT CONTRACTOR STATUS OF THE ARTIST

The Artists acknowledge that they are an independent contractor and not an employee or agent of the City. The Artists 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 Artists may make.

13. ASSIGNMENT OF CREATIVE WORK PROHIBITED

The Artists agree that an essential element of this Agreement is the skill and creativeness of the Artists. The Artists 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 Artists shall immediately return to the City any payment that has already been made.

14. 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 Artists with written notice of the termination. The Artists 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 Artists 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 Artists 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 Artists fail to complete the Work or otherwise defaults under this Agreement, the City may terminate this Agreement for cause by providing the Artists with written notice of termination that includes an explanation of the cause. The Artists 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 Artists will be entitled to no further compensation.

C. Inability or Other Failure to Complete

If either the City or the Artists determine at any point that the Artists are unable to complete the fabrication and installation of the Work to the satisfaction of both the Artists and the City, due to disability, death, or other reason beyond the Artists' 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 Artists 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, give reasonable notice and have access to the Artists' work for the purposes of inspection, accounting, and auditing, and the Artists shall provide whatever access is considered necessary to accomplish such inspections. The actual performance of Work and superintendence shall be performed by the Artists, 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 Artists 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 Artists remain 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 Artists until final acceptance of the Work by the City, and the Artists shall take such measures as necessary to protect the Work from loss or damage until final acceptance of the Work. The decision for final acceptance of the Work shall be made within five (5) business days of the Artists giving notice to the City that the work is installed and completed.

16. **INSTALLATION OF WORK**

Installation of the Work shall be carried out by the City. The Artist is responsible for being present during installation, for providing installation instructions, onsite supervision for the

Work, 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 Artists and the City.

17. INSTALLATION DRAWINGS AND MAINTENANCE INSTRUCTIONS

The Artists 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 specifications for installation, and a written set of instructions for the permanent maintenance and recommended care and upkeep of the Work.

18. FINAL ACCEPTANCE AND RELEASE OF CLAIMS

- A. The Artists agree to deliver the Work on site at BTV and install it free and clear of any liens and claims arising from any source whatsoever. The City shall withhold final acceptance until the Artists furnishes the City with a signed and sworn statement stating that all bills, wages, claims, etc., including those of any approved subcontractor, 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 and within five (5) business days of the Artists giving notice of completion, the City shall provide the Artists 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 Artists 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 Artists or the Artists’ 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 Artists agree that the ownership of all drawings, tracings, estimates, specifications, proposals, diagrams, calculations, electronic data

media, and other material prepared or collected by the Artists, 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 Artists agree 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 Artists to the City, the Artists 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 Artists shall not make any exact duplicate reproductions of the Work, nor shall the Artists grant permission to others to do so except with the written permission of the City.
- B. The Artists grant 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, stationery, media publicity, and catalogues or other similar publications. All reproductions by the City shall contain a credit to the Artists.
- C. The Artists further grant to the City the right to photograph, reprint, use, post or display the Artwork, in whole or in part, on any City-owned internet format and by any means or medium including, but not limited to, posting, displaying, publishing and/or reprinting on the internet. All reproductions by the City shall contain a credit to the Artists.
- D. The Artists shall provide written notice to the Executive Director of City Arts of all intellectual property registrations of the Work (copyright, trademark, etc.). If the Artists have copyrighted the Work, all reproductions by the City shall contain a credit to the Artists and a copyright notice substantially in the following form: Copyright, Artists' name, all rights reserved, date, in such manner and location as shall comply with the U.S. Copyright laws. The Artists agree 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

The Work may be considered to be a "work of visual art" subject to the provisions of the 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.

- A. If the City wishes to change, modify, destroy, remove, relocate, move, replace, transport, repair, or restore the Work, in whole or in part, the City will contact the Artists in writing and notify the Artists of the intended action.
- B. The Artists agree to promptly notify the City of changes to the Artists' address.
- C. For any change, modification, destruction, removal, relocation, move, replacement, transportation, repair, or restoration of the Work, in whole or in part, which is made during the lifetime of the Artists, the City will attempt in good faith to obtain the mutual agreement of the Artists. If the City and the Artists cannot agree after a reasonable period of negotiation, the City may proceed with its intended action after providing the Artists with written notice that it intends to proceed without agreement and that the Artists may request that the Work no longer be attributed to the Artists.
- D. Should the Artists fail to notify the City of a change of address or fail to respond within thirty days of receipt to written notice from the City as described above, the Artists hereby agree 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. By signing this agreement the Artists further agree that failure to respond within thirty days of receiving written notice from the City shall constitute waiver of the following rights conferred by VARA:
 - 1. All rights to prevent any intentional distortion, mutilation, or other modification of that work which would be prejudicial to his or her honor or reputation, pursuant to 17 U.S.C. §106A(a)(3)(A);
 - 2. The right to prevent any destruction of a work of recognized stature pursuant 17 U.S.C. §106A(a)(3)(B) if the artists are given notice and an opportunity to recover the Work from the City for a cost not to exceed the cost of destruction of the Work as determined by the City.
- E. Nothing in this section shall limit the right of the Artists at any time to request that the Artists' name be removed from the Work and that the Work no longer be represented as the Artists', pursuant to 17 U.S.C. § 106A(a)(1) or 17 U.S.C. § 106A(a)(2).

22. IDENTIFICATION OF THE ARTWORK

A plaque identifying the Artists, 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.

23. CONTRACT ADMINISTRATOR

The Contract Administrator for this Agreement shall be the Executive Director of Burlington City Arts 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 Executive Director or representative shall represent and act for the City.

24. ENTIRE AGREEMENT

The Agreement Documents 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.

SIGNATURE PAGE TO FOLLOW

For the Artist:

Date

For the City:

[DULY AUTHORIZED]

Date

Exhibit A:
Call to Artists Request for Proposals

Exhibit B:
Artist Response to Request for Proposals

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

1. DEFINITIONS:

- A. The “Contract” shall mean the Contract between Contractor and the City to which these conditions apply and includes this Attachment C.
 - B. The “Contractor” shall mean _____.
 - C. The “City” shall mean the City of Burlington, Vermont or any of its departments.
 - D. The “Effective Date” shall mean the date on which the Contract becomes effective according to its terms, or if no effective date is stated, the date that all parties to it have signed.
 - E. The “Parties” shall mean the parties to this Contract.
 - F. The “Work” shall mean the services being provided by the Contractor, as provided in the Contract.
- 2. REGISTRATION:** The Contractor 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.
- 3. INSURANCE:** Prior to beginning any work, the Contractor 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 Contractor’s actions or omissions. The liability insurance furnished by the Contractor is primary and non-contributory for all the additional insured.

The Contractor is responsible to verify and confirm in writing to the City that: (i) all subcontractors must comply with the same insurance requirements as the Contractor; (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 Contractor for the Contractor'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 Contractor, subcontractors, agents or workers, it is the Contractor'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. Premises Operations
 2. Independent Contractors'/Contractors' Protective
 3. Products and Completed Operations
 4. Personal Injury Liability
 5. Medical Expenses

Coverage limits shall not be less than:

1. General Aggregate	\$2,000,000
2. Products-Completed/Operations	\$2,000,000
3. Personal & Advertising Injury	\$1,000,000
4. Each Occurrence	\$1,000,000
5. Damage to Rented Premises	\$ 250,000
6. Med. Expense (Any one person)	\$ 5,000

- b. Workers' Compensation: With respect to all operations performed, the Contractor 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

Or Contractor shall complete and submit [form 29](#) Application for Exclusion from Provision of Worker's Comp Act rev 11-22, provided that there are no individuals that could be considered employees by the State of Vermont, including volunteers.

- c. Automobile Liability: The Contractor 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.
Or Contractors may provide a certificate of insurance 30 days in advance of obtaining a vehicle, owned, non-owned, and hired, used in connection with the Contract if one will not be needed until the need arises. Each policy shall provide coverage with a limit not less than: \$1,000,000 Combined Single Limit for each occurrence.
 - d. Umbrella Liability:
 - i. \$1,000,000 Each Event Limit
 - ii. \$1,000,000 General Aggregate Limit
4. **CONFLICT OF INTEREST:** The Contractor shall disclose in writing to the City any actual or potential conflicts of interest or any appearance of a conflict of interest by the Contractor, its employees or agents, or its subcontractors, if any.
5. **PLANS, RECORDS, AND AVAILABLE DATA:** The City agrees to make available, at no charge, for the Contractor'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.
6. **PERSONNEL REQUIREMENTS AND CONDITIONS:** The Contractor 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 Contractor 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 Contractor warrants that no company or person has been employed or retained, other than a bona fide employee working solely for the Contractor, to solicit or secure this Contract, and that no company or person has been paid or has a contract with the Contractor to be paid, other than a bona fide employee working solely for the Contractor, 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 Contractor, from work related to the Contract, for misconduct, incompetence, or negligence as determined by the City, in the due and proper performance of Contractor's duties, or for neglecting or refusing to comply with the requirements of the Contract.

7. **PERFORMANCE:** Contractor warrants that performance of Work will conform to the requirements of this Contract. Contractor 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 Contractor for its own business.
8. **DESIGN STANDARDS:** Unless otherwise specifically provided for in the Contract, or directed in writing, Contractor 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 Contractor is responsible to identify and follow any course of direction provided by the City.

9. **RESPONSIBILITY FOR SUPERVISION:** The Contractor shall assume primary responsibility for general supervision of Contractor 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 Contractor shall be responsible to the City for all acts or omissions of its subcontractors and any other person performing work under this Contract.
10. **UTILITIES & ACCESS:** Whenever a facility or component of a private, public, or cooperatively-owned utility will be affected by any proposed construction, the Contractor 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 Contractor 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 Contractor 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 Contractor shall provide at the Contractor's cost and expense any additional land required.

11. PROTECTION OF PROPERTY:

- A. In General: Contractor 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 contractors, and the property of the City and others. Contractor shall, at its own expense, repair any damage to any property caused by Contractor's operations.
- B. Underpinning and Shoring: Contractor 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 Contractor 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: Contractor 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 contractor 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 Contractor.

12. **INSPECTION OF WORK:** The City shall, at all times, have access to the Contractor's work for the purposes of inspection, accounting, and auditing, and the Contractor shall provide whatever access is considered necessary to accomplish such inspections. At any time, the Contractor 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 Contractor 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.

13. **REVIEWS AND ACCEPTANCES:** All preliminary and detailed designs, plans, specifications, estimates or other documents prepared by the Contractor, 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 Contractor shall respond to all official comments regardless of their source. The Contractor shall supply the City with written copies of all correspondence relating to formal and informal reviews.

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

14. **PUBLIC RELATIONS:** Whenever it is necessary to perform work in the field, particularly with respect to reconnaissance, the Contractor will endeavor to maintain good relations with the public and any affected property owners. Personnel employed by or representing the Contractor shall conduct themselves with propriety. The Contractor 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 Contractor agrees that any work will be done with minimum damage to the land and disturbance to the owner. Upon request of the Contractor, the City shall furnish a letter of introduction to property owners soliciting their cooperation and explaining that the Contractor is acting as an agent of the City.

15. **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.

16. **APPEARANCES:**

A. Hearings and Conferences: The Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor, or an appropriate representative, shall prepare and appear for any litigation concerning any relevant project or related contract, on behalf of the City. The Contractor 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.

17. **RESPONSIBILITY OF COST**: The Contractor 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 Contractor shall perform all the Work required for the construction of all items listed and itemized under Attachment A (Request for Proposals) and Attachment B (Contractor'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 Contractor 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.

18. **PAYMENT PROCEDURES**: The City shall pay, or cause to be paid, to the Contractor or the Contractor'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 Contractor, 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 Contractor and the Contractor 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.

19. **DUTY TO INFORM CITY OF CONTRACT DOCUMENT ERRORS:** If Contractor 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, Contractor shall immediately give the City written notice thereof. Contractor 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 Contractor may proceed without any modification being made to Contract Documents.
20. **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 Contractor as soon as practicable of any non-appropriation, and Contractor 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.
21. **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 Contractor.

22. **EXTENSION OF TIME:** The Contractor agrees to prosecute the work continuously and diligently, and no charges or claims for damages shall be made by the Contractor for delays or hindrances, from any cause whatsoever, during the progress of any portion of services specified in the Contract. The Contractor 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 Contractor and without the fault or negligence of the Contractor.

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 Contractor. The Contractor will be allowed an extension of contract time directly attributable to any suspension.

23. **PUBLIC HEALTH EMERGENCY:**

- A. Compliance with Mandates and Guidance: The Contractor 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 Contractor must comply with all local, state, federal orders, directives, regulations, guidance, advisories during a public health emergency. Contractor 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 Contractor shall create a public health emergency plan acceptable to the City. The Contractor 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 Contractor’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. Contractor 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: Contractor 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 Contractor has adequately corrected its failure to comply with the above.
- If Contractor'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.

24. **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.

25. 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 Contractor or changes in the scope of work.

The value of such changes, to the extent not reflected in other payments to the Contractor, 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 Contractor agrees to maintain complete and accurate records, in a form satisfactory to the City for all time devoted directly to same by Contractor employees. The City reserves the right to audit the records of the Contractor 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 Contractor 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.

- 26. FAILURE TO COMPLY WITH TIME SCHEDULE:** If the City is dissatisfied because of slow progress or incompetence in the performance of the Work in accordance with the schedule for completion of the various aspects of construction, the City shall give the Contractor written notice in which the City shall specify in detail the cause of dissatisfaction. Should the Contractor fail or refuse to remedy the matters complained of within five days after the written notice is received by the Contractor, the City shall have the right to take control of the Work and either make good the deficiencies of the Contractor itself or direct the activities of the Contractor in doing so, employing such additional help as the City deems advisable. In such events, the City shall be entitled to collect from the Contractor any expenses in completing the Work. In addition, the City may withhold from the amount payable to the Contractor an amount approximately equal

to any interest lost or charges incurred by the City for each calendar day that the Contractor is in default after the time of completion stipulated in the Contract Documents.

27. **RETURN OF MATERIALS:** Contractor 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.
28. **ACCEPTANCE OF FINAL PAYMENT; RELEASE:** Contractor'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 Contractor or their sureties from any obligations under the Contract Documents or any performance or payment bond.
29. **OWNERSHIP OF THE WORK:** The Contractor 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 Contractor, 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 Contractor agrees to allow the City access to all "instruments of professional service" at any time. The Contractor 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 Contractor may in general terms use previously developed instruments of professional service to describe its abilities for a project in promotional materials.
30. **PROPRIETARY RIGHTS:** The Parties under the Contract hereby mutually agree that, if patentable discoveries or inventions should result from work performed by the Contractors under the Contract, all rights accruing from such discoveries or inventions shall be the sole property of the Contractor. The Contractor, 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.
31. **PUBLIC RECORDS:** The Contractor 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 Contractor 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.

32. **RECORDS RETENTION AND ACCESS:** The Contractor 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 Contractor 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 Contractor 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. Contractor, sub-contractors, 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.
33. **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.
34. **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.

35. **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 Contractor, 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 Contractor 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 Contractor prior to completion of twenty (20) percent of the estimated services, as set forth in the approved Work Schedule and Progress Report, the Contractor 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 Contractor shall make no claim for additional compensation against the City by reason of such termination.

B. Termination for Cause:

- a. Breach: Contractor shall be in default if Contractor fails in any manner to fully perform and carry out each and all conditions of this Contract, including, but not limited to, Contractor'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. Contractor will not be in default for any excusable delays as provided in Sections 19-21.

The City may give Contractor written notice of such default. If Contractor 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.

- b. Proceedings for Relief of Debtors: If a federal or state proceeding for relief of debtors is undertaken by or against Contractor, or if Contractor makes an

assignment for the benefit of creditors, then the City may immediately terminate this contract.

- c. Dishonest Conduct: If Contractor engages in any dishonest conduct related to the performance or administration of this Contract then the City may immediately terminate this contract.
 - d. 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 Contractor 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.
 - e. 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.
36. **GENERAL COMPLIANCE WITH LAWS**: The Contractor and any subcontractor 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.

37. **CIVIL RIGHTS AND EQUAL EMPLOYMENT OPPORTUNITY**: During performance of the Contract, the Contractor 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.

Contractor, 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.

38. **CHILD SUPPORT PAYMENTS:** By signing the Contract, the Contractor certifies, as of the date of signing the Contract, that the Contractor (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 Contractor is a sole proprietorship, the Contractor's statement applies only to the proprietor. If the Contractor is a partnership, the Contractor's statement applies to all general partners with a permanent residence in Vermont. If the Contractor is a corporation, this provision does not apply.
39. **TAX REQUIREMENTS:** By signing the Contract, the Contractor certifies, as required by law under 32 VSA, Section 3113, that under the pains and penalties of perjury, that the Contractor 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.
40. **INDEMNIFICATION:**
- A. Indemnification by Contractor: Except for the active negligence or willful misconduct of the City, or any of its boards, officers, agents, employees, assigns and successors in interest, Contractor 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 Contractors), damages or liability of any nature whatsoever, for death or injury to any person, including Contractor'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 Contractor 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 Contractor in writing that a claim to which the indemnification provision may apply has been filed. Contractor 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 Contractor 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 Contractor or any third party.
41. **NO GIFTS OR GRATUITIES**: The Contractor 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.
42. **ASSIGNMENT**: Contractor shall not sublet or assign this Work, or any part of it, without the written consent of the City. If any subcontractor is approved, Contractor shall be responsible and liable for all acts or omissions of that subcontractor for any Work performed. If any subcontractor is approved, Contractor shall be responsible to ensure that the subcontractor is paid as agreed and that no lien is placed on any City property.
43. **TRANSFERS, SUBLETTING, ETC**: The Contractor 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 subcontractor 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 Contractor of responsibility for the performance of that portion of the work so transferred. The form of the subcontractor's contract shall be as developed by the Contractor and approved by the City. The Contractor shall ensure that insurance coverage exists for any operations to be performed by any subcontractor as

specified in the insurance requirements section of this Contract.

The services of the Contractor, 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.

44. **CONTINUING OBLIGATIONS:** The Contractor 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 Contractor 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 Contractor is unable to satisfactorily execute the Contract.
45. **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.
46. **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 Contractor.
47. **RELATIONSHIP:** The Contractor is an independent Contractor and shall act in an independent capacity and not as officers or employees of the City. To that end, the Contractor shall determine the method, details, and means of performing the work, but will comply with all legal requirements in doing so. The Contractor shall provide its own tools, materials, or equipment. The Parties agree that neither the Contractor nor its principal(s) or employees are entitled to any employee benefits from the City. Contractor 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 Contractor 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 Contractor 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.

48. **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.
49. **JURISDICTION:** All suits or actions related to this Contract shall be filed and proceedings held in the State of Vermont.
50. **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.
51. **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.
52. **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.
53. **APPENDICES:** The City may attach to these conditions appendices containing various forms and typical sample sheets for guidance and assistance to the Contractor 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 Contractor to ensure that they have the latest versions applicable to the Contract.
54. **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.

55. **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.

Exhibit D:

Burlington Livable Wage Ordinance Certification

Certification of Agreement to Comply with the City of Burlington’s Livable Wage Ordinance

I, _____, on behalf of _____ (“the Contractor”), in connection with a contract for _____ services to be provided to the City of Burlington (“the City”), hereby certify, under oath, that the Contractor (and any of its subcontractors or subgrantees under this contract) shall comply with the City’s Livable Wage Ordinance (“LWO”), B.C.O. 21-80 et seq., and that:

- (1) The Contractor shall pay all “covered employees” as defined by the LWO (including covered employees of subcontractors or subgrantees) a livable wage (as determined, or adjusted, annually by the City’s chief administrative officer), and shall provide required paid time off for the term of the contract (*or the duration of the contracted project*);
 - (a) Full-time employees are entitled to 12 days of paid time off per year; and
 - (b) Part-time employees are entitled to 12 days of paid time off per year on a prorated basis; (c) For a covered employer that provides employer assisted health care, the livable wage shall be at least \$17.44 per hour; and
 - (d) For a covered employer that does not provide employer assisted health care, the livable wage shall be at least \$18.59 per hour.
- (2) The Contractor shall post a notice regarding the applicability of the LWO in the workplace or in other locations where covered employees normally work, and where such notice can be readily seen;
- (3) Upon request of the City’s chief administrative officer, the Contractor, for itself and, as applicable, for any of its subcontractors or subgrantees, shall provide payroll records, health insurance enrollment records, and other relevant documentation, as deemed necessary by the chief administrative officer, within ten (10) business days from receipt of the City’s request;
- (4) The Contractor shall cooperate in any investigation conducted pursuant to the LWO by the City’s designated accountability monitors or the City’s Office of City Attorney & Corporate Counsel;
- (5) The Contractor shall not retaliate, nor allow any of its subcontractors or subgrantees to retaliate, against an employee or other person because such employee or person has exercised rights or is planning to exercise rights protected under the LWO, or has cooperated in an investigation conducted pursuant to the LWO;
- (6) The Contractor is required to insert in all subcontracts the requirements of the LWO. The Contractor is liable for violations of the LWO committed by its covered subcontractors.

Date: _____ By: _____ Contractor, or its duly authorized agent

Subscribed and sworn to before me:

Date: _____

Notary Public

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 _____, 2018.

By: _____
Duly Authorized Agent

Subscribed and sworn to before me: _____

Exhibit G:
Artist's Certificate of Insurance