

**Burlington GT B5 and B100 Biodiesel Conversion  
Analysis**

**RFP# 017-22**

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**INDEX**

I. Request for Proposal.....1

II. Project locations .....1

III. Detailed Requirements.....1

    Project .....2

    Project Location.....2

    Scope of Work .....2

    Site walk Information.....

    Proposal Format.....

IV. Proposed Time Table .....5

V. Evaluation of Proposal.....5

VI. Rights of the Department.....

VII. Contract Provisions.....9

VIII. Attachments .....  
    Certificate of Insurance requirements.  
    Livable Wage  
    Outsourcing Ordinance  
    Union Deterrence

## **I. Request for Proposal**

The City of Burlington Electric Department (the "Department") in Burlington, Vermont, invites two proposals for a consultant to conduct a Biodiesel Conversion Analysis on our Gas Turbine facility.

## **II. Project Locations**

Burlington Electric Department – Gas Turbine 1 Penny Lane, Burlington VT

## **III. Detailed Requirements**

### **1. Project**

create specifications and cost analysis for Biodiesel Conversion for our turbine generator facility

### **2. Scope of Work**

Burlington Electric Department (BED) owns and operates an electric power generating facility on Penny Lane in the city of Burlington, Vermont. Electric power is generated at the facility with two Rolls Royce Avon liquid fueled, ultra-low sulfur dyed diesel, gas turbine (GT) engines that drive a single 25 MW electric generator. Fuel for the turbines is stored in a nominal 95,000 gallon above-ground storage tank located indoors and both of the turbines are fueled from the tank by a common fuel system. The facility was constructed in 1971 and is currently operated as an electric power generation peaking facility when called into service by ISO New England in accordance with the fast-start Claim 10/30 Reserve Program. Reliability is critically important to the operation of the asset as is renewably sourced power generation to the organization as a whole. The desire is to take a small step to convert the asset to a renewable power generation resource with the intent to fully convert the asset to B100 biodiesel in the near future after due diligence is performed.

BED is seeking a biodiesel conversion analysis for the GT with an initial biodiesel conversion in the near term followed by a full biodiesel conversion pending identification of conversion requirements. An analysis shall address

## Burlington GT B5 and B100 Biodiesel Conversion Analysis

two phases of conversion, an initial B5 conversion which we would hope to have occur in 4Q2021 if the existing equipment supports such a conversion and a B100 conversion which would be expected to occur over the next 1-3 years depending on funding and required modifications. The hope is to consult with the same entity for both conversion options. After data collection and analysis of the asset and biodiesel conversion considerations occur, a report shall be submitted to BED with a detailed description of the analysis and findings related to two phases of biodiesel conversion.

The purpose of this RFP is to get technical support for a potential biodiesel conversion in multiple phases. The goal is to start to use a low level blend of biodiesel as fuel for electric generation in the near future limiting the requirement for capital expenditures for phase one yet still initiating a conversion to a renewable fuel option. For an initial B5 conversion, the Bidder shall identify the compatibility of 5% biodiesel blended fuel with the existing equipment and identify any modification to either hardware or control software that would be required for safe and reliable operations of the GT using this fuel blend. The Bidder shall identify if there are any risks associated with a B5 conversion such as but not limited to increased maintenance requirements, reduced output, changes to any operations, reduced fuel storage capabilities, and consistency concerns of B5 fuel available in the region. Any fuel specifications that are required for reliable and consistent B5 fuel procurement shall be identified. The goal would be to operate the asset on B5 with no modifications to the asset and realize little to no risk by doing so. If significant risk could be realized by operating on B5 based on as-is conditions of the asset, the Bidder shall identify the requirements to convert to B5 that will minimize the risk of operating on B5 to include any hardware, operating, maintenance, and/or software modifications and activities pertinent to the conversion. Additionally, consideration should be taken to identify if a heavier concentration of biodiesel blend could be used on the first phase of the conversion with limited operational risk and capital outlay required.

For a B100 conversion, the Bidder shall identify the compatibility of B100 with the existing equipment and identify the necessary modifications to hardware, controls software, operating practices, and maintenance practices that would be required for safe and reliable operations of the GT on B100. The Bidder shall identify the risks and requirements associated with a B100 conversion such as but not limited to required modifications to the asset ranging from the fuel storage system to the fuel injection system to controls modifications that would be required to attain similar full load output on B100. Consideration to additional maintenance requirements, potential reduced output, reduced fuel storage capabilities, consistency concerns of B100 fuel available in the region, fuel availability risks, related forced downtime risks, and changes to operations shall be identified. Any fuel specifications that are required for reliable and consistent B5 fuel procurement shall be identified. The consideration of any ability to operate on ultra-low sulfur dyed diesel after a biodiesel conversion shall be addressed. The latest understanding and recommendations for B100 storage

## Burlington GT B5 and B100 Biodiesel Conversion Analysis

requirements and duration that B100 can be stored before degradation occurs along with any recommended fuel treatment practices shall be explicitly identified in the report findings.

All cost associated with this project must be itemized when submitting your estimates.

References must be submitted with proposals that demonstrate you have performed this type of work in the past. All sub contractors that are working on this project must be pre-approved by Burlington Electric Department. All Sub contractors that are going to be used must submit evidence that they have performed this type of work in the past.

Vendor must receive prior written authorization from Burlington Electric Departments before making any changes from this RFP and technical specifications attached. Change orders involving revisions to quoted price shall receive prior written authorization from Burlington Electric Departments project engineer.

### **5. Proposal Format:**

#### **Part I -- Summary**

This section should contain the name of the contact person, the address and telephone number of the firm submitting the proposal. A brief summary of the company and the service it will provide.

#### **Part II -- Technical Proposal**

This section should describe the proposer's approach and plans for accomplishing the Specifications. This section should contain but is not limited to the following:

All technical questions should be directed to Burlington Electric Departments Purchasing office at [jturner@burlingtonelectric.com](mailto:jturner@burlingtonelectric.com). Any contact with any employee that is not authorized by the Purchasing Department could be considered a violation of the RFP process and could make your submission null and void.

**Part III- Date, Time and Location of RFP Site Walk Thru.**

Burlington Electric Department at this time does not anticipate a formal RFP site walk.

**Part IV -- Cost Proposal**

This section should show the following:

- Fixed cost to complete the project as outlined in the RFP.
- Payment will be made on successful completion of the project. Successful completion is defined as the full acceptance by Burlington Electric Department that the work was done in accordance to this RFP. Burlington Electric Department will not progressively pay any portion of this project.
- Upon receipt and acceptance (as stated above) of invoice from vendor, Burlington Electric Department agrees to release all funds within 30 business days.

**Part V -- Professional Experience**

This section should contain all pertinent information relating to proposer's organization, personnel and experience that would substantiate its qualifications to perform the services required by the RFP and all Sub Contractors that are going to be utilized to complete this project.

- Experience of the firm.

**Part VI -- Additional Information**

This section should contain any additional information that the proposer feels is pertinent information that has not been mentioned anywhere else in the RFP.

- A. Proof of Insurance (see attached form)
- B. Individual names and bios of employee(s) who will be working on this project on behalf of your company.
- C. How long will it take to develop the specifications if awarded the project

#### IV. Proposed Timetable

	<u>Date</u>
Release of Formal RFP	09/10/2021
Date of RFP site walk	NA
Last Date to Submit Written Proposal	09/30/2021 10:00 am
Evaluation of Proposals	TBD
Selection of contractor	TBD
Date Project can begin	Once PO is Issued
<b>Date Project must be completed</b>	<b>TBD</b>

#### V. Evaluation of Proposal

Proposal evaluation criteria will include but are not limited to:

- Quality of the proposal
- Quality of the proposed methodology
- Qualifications and experience of personnel
- The general approach and plans to meet the requirements of the RFP
- Prior performance of the proposer on projects of similar scope and size
- Compliance with the terms, conditions, and other provisions of the RFP
- Cost of the proposal
- Proof of insurance

##### A. Amendment or Cancellation of RFP

The Department reserves the right to amend or cancel this RFP at any time if the best interest of the Department requires such action. The Department also reserves the right to award all or partial parts of the RFP to any or several contractors or what ever is in the best interest of the Department.

**B. Proposal Modifications**

No additions or changes to any vendor's proposal will be allowed after the proposal due date unless such modification is specifically requested by the Department.

**C. RFP Events and Timing**

The timing and sequence of events from this RFP will be determined by the Department. The schedule is planned as follows; vendor contacts will be notified of any amendment to this schedule during the RFP Process.

See section **IV. Proposed Timetable**

**D. Proposal Expenses**

The Department assumes no liability for payment of any expenses incurred by any vendor in responding to this RFP.

**E. Acceptance or Rejection of Proposals**

The Department reserves the right to accept or reject any or all proposals submitted for consideration in whole or in part; and to waive technical defects, irregularities or omissions, if in its sole judgement the best interests of the Department will be served. The Department further reserves the right to accept a proposal for a contract other than that with the lowest cost, and to negotiate separately with any source whatsoever in any manner necessary to serve the best interests of the Department. The Department also reserves the right to award all or partial parts of the RFP to any or several contractors that are in the best interest of the Department.

**F. Ownership of Proposals**

All proposals submitted in response to this RFP shall become the sole property of the Department.

**G. Oral Agreements and Arrangements**

Any alleged oral agreement or arrangement made by a vendor with the Department or any Department employee will be disregarded in any Department proposal evaluation or associated award.

**H. Vendor Presentation of Supporting Evidence/Surety**



Vendors must be prepared to provide any evidence of experience, performance ability, and/or financial surety that the Department deems necessary to fully establish the performance capabilities represented in their proposals.

**I. Vendor Demonstration of Proposed Services**

Vendors may be asked to demonstrate specific proposed services or products including program components, software and hardware included in their response. Any requested demonstration will be provided at a site approved by the Department and without cost to the Department.

**J. Vendor Misrepresentation or Default**

The Department reserves the right to reject the proposal of any vendor and void any award resulting from this RFP to a vendor who materially misrepresents any product or defaults on any Department contract.

**K. Erroneous Awards**

The Department reserves the right to correct inaccurate awards resulting from its clerical errors.

**L. Public Records**

Due regard will be given for the protection of proprietary information contained in all proposals received; however, vendors should be aware that all materials associated with the procurement are subject to the terms of the Vermont Access to Public Records Act (1 V.S.A. Chapter 5, Subchapter 3) and all rules, regulations and interpretations resulting from, and any other applicable rules, regulations or judicial decisions regarding access to the records of government.

It will not be sufficient for vendors to merely state generally that the proposal is proprietary in nature and not therefore subject to release to third parties. Those particular pages or sections which a vendor believes to be proprietary and of a trade secret nature must be specifically identified as such and must be separated from other sections or pages of their proposal. Convincing explanation and rationale sufficient to justify each exemption from release consistent with Section 316 of Title 1 of the Vermont Statutes Annotated must accompany the proposal. The rationale and

explanation must be stated in terms of the prospective harm to the competitive position of the vendor that would result if the material were to be released and the reasons why the materials are legally exempt from release pursuant to the above cited statute. Between a vendor and the Department, the final administrative authority to release or exempt any or all material so identified, rests with the Department. **All such materials should be submitted in a separate sealed envelope and marked "CONFIDENTIAL".**

**M. Offer of Gratuities**

The vendor warrants, represents and certifies that no elected or appointed official or employee of the Department has or will benefit financially or materially from this procurement. Any Contract and/or award arising from this RFP may be terminated by the Department if it is determined that gratuities of any kind were either offered to, or received by any of the aforementioned officials or employees from the vendor, the vendor's agent of the vendor's employees.

**N. Inspection of Work Performed**

During and after the commencement of this project, the Department, and its authorized representatives, shall be allowed access to inspect all Contractor materials, documents, work papers, equipment or products, deliverables, or any such other items which pertain to the scope of work for this RFP and contract. This requirement also applies to any subcontractors who may be engaged by the vendor.

**O. Collusion**

By responding, the vendors implicitly state that the proposal is not made in conjunction with any competing vendor submitting a separate response to this RFP and that it is in all respects fair and without collusion or fraud.

**VII. Contract Provisions**

The contract to be entered into between the Department and the successful proposer shall contain negotiated provisions based on the specific requirements set forth in this RFP and the successful proposer's treatment thereof as contained in this proposal, as well as general Department contract provisions.

The final award of this contract will be subject to your firm's execution of such a contract and the contract's approval

## Burlington GT B5 and B100 Biodiesel Conversion Analysis

by the issuance of a formal Purchase Order by BED's Purchasing Office. Proposals should include an acknowledgment that the standard provisions included in Department contracts are comprehended by your firm.

### 1. Termination

The contract to be entered into between Burlington Electric Department and the successful proposer shall contain the following provisions dealing with termination. If the Contractor fails to fulfill any of the terms of the agreement on time, the Department shall have the right to terminate the said agreement immediately and award a new contract to another Proposer and the Contractor shall be responsible for damages and for additional costs incurred in reletting the contract.

### 2. Disclaimer

The Burlington Electric Department is not liable for any costs incurred by proposers in the preparation of proposals or for any work performed prior to the approval of an executed contract.

### 3. Notification of Selection

Award of this bid will be by "Letter of Award" issued by Purchasing and the issuance of a purchase order. The contract document shall include this Bid Document, any associated Addenda, and the signed Bid Proposal Form as signed by the successful Bidder.

**There will be no formal RFP opening.** All RFP's are to be delivered to Purchasing in a sealed envelope with two copies of all information being submitted.

### 4.

Upon selection, the Department and the successful proposer will negotiate a contract. The selected proposal in whole or in part as well as content from this RFP may be incorporated into and made a part of the final contract. Should negotiations fail to result in agreement within two weeks from the commencement of negotiations, the Department reserves the right to terminate negotiations and select another proposal, issue a new RFP, or take other action consistent with the best interest of the Department.  
By issuing this RFP the Department is not obligated to award a contract.

## 5. Delivery of Proposals

**There will be no formal RFP opening.** All RFP's are to be uploaded to our secure web site using your unique login. We will not accept any mailed or emailed responses. In order to be accepted they must be updated to the website by the specified date and time. Sending the response to anyone other than this method will make your submission void and will not be accepted.

## 6. RFP Opening:

There will be no formal RFP opening. All information in the RFP's will not be released until such is award by Burlington Electric and acceptance by the winning contractor. If you would like to receive the RFP overview results after the award you may do so only in writing (email) to our Purchasing Department. If you would like to review the RFP's that were submitted, you must submit a letter to our Purchasing Department requesting a meeting to review the files in person.

## 7. RIGHT TO SUBMIT A PROPOSAL ON BED PROJECTS.

Any contractor that is in good standings with all city departments within the city of Burlington Vermont may submit a proposal for work described above. If a contractor is found to owe funds or has been removed from any RFP lists within any city department, their RFP will not be considered. Contractor must comply with all provisions as outlined in this RFP in order to be considered.

8. The contractor 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). (Livable Wage, Outsourcing Ordinance, Union Deterrence)

## 9. BED Rights:

BED reserves the right to accept or reject any or all proposals received in response to this RFP or to take other action

Burlington GT B5 and B100 Biodiesel Conversion Analysis

consistent with the best interest of BED. BED reserves the right to negotiate separately with any source to serve the best interest of BED. EXCEPTIONS TO THIS RFP SHALL BE BY WRITTEN NOTIFICATION ON THE AWARDED P.O. IN ORDER TO BE BINDING. ALL SUBMITTED BIDS BECOME THE PROPERTY OF BURLINGTON

ELECTRIC DEPARTMENT. AFTER THE AWARDING OF THE CONTRACT TO THE SUCCESSFUL BIDDER, ALL BIDS ARE OPEN FOR PUBLIC VIEWING.

## ARTICLE VI. LIVABLE WAGES<sup>1</sup>

### 21-80 Findings and purpose.

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In enacting this article, the city council states the following findings and purposes:

- (a) Income from full-time work should be sufficient to meet an individual's basic needs;
- (b) The City of Burlington is committed to ensuring that its employees have an opportunity for a decent quality of life and are compensated such that they are not dependent on public assistance to meet their basic needs;
- (c) The City of Burlington is committed, through its contracts with vendors and provision of financial assistance, to encourage the private sector to pay its employees a livable wage and contribute to employee health care benefits;
- (d) The creation of jobs that pay livable wages promotes the prosperity and general welfare of the City of Burlington and its residents, increases consumer spending with local businesses, improves the economic welfare and security of affected employees and reduces expenditures for public assistance;
- (e) It is the intention of the city council in passing this article to provide a minimum level of compensation for employees of the City of Burlington and employees of entities that enter into service contracts or receive financial assistance from the City of Burlington.

(Ord. of 11-19-01; Ord. of 10-21-13)

### 21-81 Definitions.

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As used in this article, the following terms shall be defined as follows:

- (a) *Contractor or vendor* is a person or entity that has a service contract with the City of Burlington where the total amount of the service contract or service contracts exceeds fifteen thousand dollars (\$15,000.00) for any twelve (12) month period, including any subcontractors of such contractor or vendor.
- (b) *Grantee* is a person or entity that is the recipient of financial assistance from the City of Burlington in the form of grants, including any contractors or subgrantees of the grantee, that exceed fifteen thousand dollars (\$15,000.00) for any twelve (12) month period.

(c) *Covered employer* means the City of Burlington, a contractor or vendor or a grantee as defined above. The primary contractor, vendor, or grantee shall be responsible for the compliance of each of its subcontractors (or of each subgrantee) that is a covered employer.

(d) *Covered employee* means an "employee" as defined below, who is employed by a "covered employer," subject to the following:

(1) An employee who is employed by a contractor or vendor is a "covered employee" during the period of time he or she expends on furnishing services under a service contract with the City of Burlington, notwithstanding that the employee may be a temporary or seasonal employee;

(2) An employee who is employed by a grantee who expends at least half of his or her time on activities funded by the City of Burlington is a "covered employee."

(e) *Designated accountability monitor* shall mean a nonprofit corporation which has established and maintains valid nonprofit status under Section [501\(c\)\(3\)](#) of the United States Internal Revenue Code of 1986, as amended, and that is independent of the parties it is monitoring.

(f) *Employee* means a person who is employed on a full-time or part-time regular basis. In addition, commencing with the next fiscal year, a seasonal or temporary employee of the City of Burlington who works ten (10) or more hours per week and has been employed by the City of Burlington for a period of four (4) years shall be considered a covered employee commencing in the fifth year of employment. "Employee" shall not refer to volunteers working without pay or for a nominal stipend, persons working in an approved apprenticeship program, persons who are hired for a prescribed period of six (6) months or less to fulfill the requirements to obtain a professional license as an attorney, persons who are hired through youth employment programs or student workers or interns participating in established educational internship programs.

(g) *Employer-assisted health care* means health care benefits provided by employers for employees (or employees and their dependents) at the employer's cost or at an employer contribution towards the purchase of such health care benefits, provided that the employer cost or contribution consists of at least one dollar and twenty cents (\$1.20) per hour. (Said amount shall be adjusted every two (2) years for inflation, by the chief administrative officer of the city.)

(h) *Livable wage* has the meaning set forth in Section [21-82](#).

(i) *Retaliation* shall mean the denial of any right guaranteed under this article, and any threat, discipline, discharge, demotion, suspension, reduction of hours, or any other adverse action against an employee for exercising any right guaranteed under this article. Retaliation shall also include coercion, intimidation, threat, harassment, or interference in any manner with any investigation, proceeding, or hearing under this article.

(j) *Service contract* means a contract primarily for the furnishing of services to the City of Burlington (as opposed to the purchasing or leasing of goods or property). A contract involving the furnishing of financial products, insurance products, or software, even if that contract also includes some support or other services related to the provision of the products, shall not be considered a service contract.

(Ord. of 11-19-01; Ord. of 10-21-13)

### **21-82 Livable wages required.**

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(a) Every covered employer shall pay each and every covered employee at least a livable wage no less than:

(1) For a covered employer that provides employer assisted health care, the livable wage shall be at least thirteen dollars and ninety-four cents (\$13.94) per hour on the effective date of the amendments to this article.

(2) For a covered employer that does not provide employer assisted health care, the livable wage shall be at least fifteen dollars and eighty-three cents (\$15.83) per hour on the effective date of the amendments to this article.

(3) Covered employees whose wage compensation consists of more or other than hourly wages, including, but not limited to, tips, commissions, flat fees or bonuses, shall be paid so that the total of all wage compensation will at least equal the livable wage as established under this article.

(b) The amount of the livable wage established in this section shall be adjusted by the chief administrative officer of the city as of July 1 of each year based upon a report of the Joint Fiscal Office of the State of Vermont that describes the basic needs budget for a single person but utilizes a model of two (2) adults residing in a two (2) bedroom living unit in an urban area with the moderate cost food plan. Should there be no such report from the Joint Fiscal Office, the chief administrative officer shall obtain and utilize a basic needs budget that applies a similar methodology. The livable wage rates derived from utilizing a model of two (2) adults residing in a two (2) bedroom living unit in an urban area with a moderate cost food plan shall not become effective until rates meet or exceed the 2010 posted livable wage rates. Prior to May 1 preceding any such adjustment and prior to



May 1 of each calendar year thereafter, the chief administrative officer will provide public notice of this adjustment by posting a written notice in a prominent place in City Hall by sending written notice to the city council and, in the case of covered employers that have requested individual notice and provided contact information to the chief administrative officer, by notice to each such covered employer. However, once a livable wage is applied to an individual employee, no reduction in that employee's pay rate is permissible due to this annual adjustment.

(c) Covered employers shall provide at least twelve (12) compensated days off per year for full-time covered employees, and a proportionate amount for part-time covered employees, for sick leave, vacation, personal, or combined time off leave.

(Ord. of 11-19-01; Ord. of 5-2-11; Ord. of 6-13-11; Ord. of 10-21-13)

### **21-83 Applicability.**

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(a) This article shall apply to any service contract or grant, as provided by this article that is awarded or entered into after the effective date of the article. After the effective date of the article, entering into any agreement or an extension, renewal or amendment of any contract or grant as defined herein shall be subject to compliance with this article.

(b) The requirements of this article shall apply during the term of any service contract subject to the article. Covered employers who receive grants shall comply with this article during the period of time the funds awarded by the City of Burlington are being expended by the covered employer.

(Ord. of 11-19-01; Ord. of 10-21-13)

### **21-84 Enforcement.**

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(a) Each service contract or grant covered by this article shall contain provisions requiring that the covered employer or grantee submit a written certification, under oath, during each year during the term of the service contract or grant, that the covered employer or grantee (including all of its subcontractors and subgrantees, if any) is in compliance with this article. The failure of a contract to contain such provisions does not excuse a covered employer from its obligations under this article. The covered employer shall agree to post a notice regarding the applicability of this section in any workplace or other location where employees or other persons contracted for employment are working. The covered employer shall agree to provide payroll records or other documentation for itself and any subcontractors or subgrantees, as deemed necessary by the chief

administrative officer of the City of Burlington, within ten (10) business days from receipt of the City of Burlington's request.

(b) The chief administrative officer of the City of Burlington may require that a covered employer submit proof of compliance with this article at any time, including but not limited to:

- (1) Verification of an individual employee's compensation;
- (2) Production of payroll, health insurance enrollment records, or other relevant documentation; or
- (3) Evidence of proper posting of notice.

If a covered employer is not able to provide that information within ten (10) business days of the request, the chief administrative officer may turn the matter over to the city attorney's office for further enforcement proceedings.

(c) The City of Burlington shall appoint a designated accountability monitor that shall have the authority:

- (1) To inform and educate employees of all applicable provisions of this article and other applicable laws, codes, and regulations;
- (2) To create a telephonic and electronic accountability system under this article that shall be available at all times to receive complaints under this article;
- (3) To establish and implement a system for processing employees' complaints under this article, including a system for investigating complaints and determining their initial credibility; and
- (4) To refer credible complaints to the city attorney's office for potential enforcement action under this article.

The designated accountability monitor shall forward to the City of Burlington all credible complaints of violations within ten (10) days of their receipt.

(d) Any covered employee who believes his or her covered employer is not complying with this article may file a complaint in writing with the city attorney's office within one (1) year after the alleged violation. The city attorney's office shall conduct an investigation of the complaint, during which it may require from the covered employer evidence such as may be required to determine whether the covered employer has been compliant, and shall make a finding of compliance or noncompliance within a reasonable time after receiving the

complaint. Prior to ordering any penalty provided in subsection (e), (f), or (g) of this section, the city attorney's office shall give notice to the covered employer. The covered employer may request a hearing within thirty (30) days of receipt of such notice. The hearing shall be conducted by a hearing officer appointed by the city attorney's office, who shall affirm or reverse the finding or the penalty based upon evidence presented by the city attorney's office and the covered employer.

(e) The City of Burlington shall have the right to modify, terminate and/or seek specific performance of any contract or grant with a covered employer from any court of competent jurisdiction, if the covered employer has not complied with this article.

(f) Any covered employer who violates this article may be barred from receiving a contract or grant from the city for a period up to two (2) years from the date of the finding of violation.

(g) A violation of this article shall be a civil offense subject to a civil penalty of from two hundred dollars (\$200.00) to five hundred dollars (\$500.00). All law enforcement officers and any other duly authorized municipal officials are authorized to issue a municipal complaint for a violation of this article. Each day any covered employee is not compensated as required by this article shall constitute a separate violation.

(h) If a complaint is received that implicates any City of Burlington employee in a possible violation of this article, that complaint will be handled through the City's personnel procedures, not through the process outlined in this article.

(i) Any covered employee aggrieved by a violation of this article may bring a civil action in a court of competent jurisdiction against the covered employer within two (2) years after discovery of the alleged violation. The court may award any covered employee who files suit pursuant to this section, as to the relevant period of time, the following:

(1) The difference between the livable wage required under this article and the amount actually paid to the covered employee;

(2) Equitable payment for any compensated days off that were unlawfully denied or were not properly compensated;

(3) Liquidated damages in an amount equal to the amount of back wages and/or compensated days off unlawfully withheld or fifty dollars (\$50.00) for each employee or person whose rights under this article were violated for each day that the violation occurred or continued, whichever is greater;

(4) Reinstatement in employment and/or injunctive relief; and

(5) Reasonable attorneys' fees and costs.

(j) It shall be unlawful for an employer or any other person to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this article. No person shall engage in retaliation against an employee or threaten to do so because such employee has exercised rights or is planning to exercise rights protected under this article or has cooperated in any investigation conducted pursuant to this article.

(Ord. of 11-19-01; Ord. of 2-17-04; Ord. of 5-2-11; Ord. of 10-21-13)

### **21-85 Other provisions.**

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(a) No covered employer shall reduce the compensation, wages, fringe benefits or leave available to any covered employee in order to pay the livable wage required by this article. Any action in violation of this subsection shall be deemed a violation of this article subject to the remedies of Section [21-84](#).

(b) No covered employer with a current contract, as of the effective date of this provision, with the City of Burlington for the use of property located at the Burlington International Airport may reduce, during the term of that contract, the wages of a covered employee below the livable wage as a result of amendments to this article.

(c) Where pursuant to a contract for services with the city, the contractor or subcontractor incurs a contractual obligation to pay its employees certain wage rates, in no case except as stated in subsection (d) of this section, shall the wage rates paid pursuant to that contract be less than the minimum livable wage paid pursuant to this article.

(d) Notwithstanding subsection (c) of this section, where employees are represented by a bargaining unit or labor union pursuant to rights conferred by state or federal law and a collective bargaining labor agreement is in effect governing the terms and conditions of employment of those employees, this chapter shall not apply to those employees, and the collective bargaining labor agreement shall control.

(e) Covered employers shall inform employees making less than twelve dollars (\$12.00) per hour of their possible right to the Earned Income Tax Credit under federal and state law.

(f) The chief administrative officer of the city shall have the authority to promulgate rules as necessary to administer the provisions of this article, which shall become effective upon approval by the city council.

(Ord. of 11-19-01; Ord. of 10-21-13)

### **21-86 Exemptions.**

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An exemption from any requirement of this article may be requested for a period not to exceed two (2) years:

- (a) By a covered employer where payment of the livable wage would cause substantial economic hardship;  
and
- (b) By the City of Burlington where application of this article to a particular contract or grant is found to violate specific state or federal statutory, regulatory or constitutional provisions or where granting the exemption would be in the best interests of the City.

A covered employer or grantee granted an exemption under this section may reapply for an exemption upon the expiration of the exemption. Requests for exemption may be granted by majority vote of the city council. All requests for exemption shall be submitted to the chief administrative officer. The finance committee of the City of Burlington shall first consider such request and make a recommendation to the city council. The decision of the city council shall be final.

(Ord. of 11-19-01; Ord. of 10-21-13)

### **21-87 Severability.**

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If any part or parts or application of any part of this article is held invalid, such holding shall not affect the validity of the remaining parts of this article.

(Ord. of 11-19-01; Ord. of 10-21-13)

### **21-88 Annual reporting.**

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On or before April 15 of each year, the city attorney's office shall submit a report to the city council that provides the following information:

- (a) A list of all covered employers broken down by department;
- (b) A list of all covered employers whose service contract did not contain the language required by this article;  
and
- (c) All complaints filed and investigated by the city attorney's office and the results of such investigation.

(Ord. of 10-21-13)

**21-89 Effective date.**

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The amendments to this article shall take effect on January 1, 2014, and shall not be retroactively applied.

(Ord. of 10-21-13)

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

I, \_\_\_\_\_, on behalf of \_\_\_\_\_ ("the Contractor") in connection with a contract for \_\_\_\_\_ services that we provide to the City, hereby certify under oath that the Contractor (and any subcontractors under this contract) is and will remain in compliance with the City of Burlington's Livable Wage Ordinance, B.C.O. 21-80 et seq., and that

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

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

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

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

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

Date \_\_\_\_\_ By: Contractor \_\_\_\_\_

Subscribed and sworn to before me:

Date \_\_\_\_\_ Notary \_\_\_\_\_

## ARTICLE VII. OUTSOURCING

### **21-90 Policy.**

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It is the policy of the City of Burlington to let service contracts to contractors, subcontractors and vendors who perform work in the United States.

(Ord. of 11-21-05/12-21-05)

### **21-91 Definitions.**

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(a) *Contractor or vendor.* A person or entity that has a contract with the City of Burlington primarily for the furnishing of services (as opposed to the purchasing of goods), including any subcontractors of such contractor or vendor.

(b) *Government funded project.* Any contract for services which involves any city funds and the total amount of the contract is fifty thousand dollars (\$50,000.00) or more. Burlington School Department contracts shall not be considered government funded projects under this article.

(c) *Outsourcing.* The assigning or reassigning, directly, or indirectly through subcontracting, of services under a government funded project to workers performing the work outside of the United States.

(Ord. of 11-21-05/12-21-05)

### **21-92 Implementation.**

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(a) No contract for a government funded project shall be let to any contractor, subcontractor, or vendor who is outsourcing, or causing the work to be performed outside of the United States or Canada.

(b) Prior to the commencement of work on a government funded project a contractor, subcontractor or vendor shall provide written certification that the services provided under the contract will be performed in the United States or Canada.

(Ord. of 11-21-05/12-21-05)

### **21-93 Exemption.**

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An exemption from requirements of this article may be authorized by the chief administrative officer based upon a determination that the services to be performed for the government funded project are not available in the United States or Canada at a reasonable cost. Any such exemption decision by the chief administrative officer



shall be reported to the board of finance in writing within five (5) days. The board of finance may, if it should vote to do so, override the exemption decision if such vote occurs within fourteen (14) days of the date of the chief administrative officer's communication to such board.

(Ord. of 11-21-05/12-21-05)

#### **21-94 Enforcement.**

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(a) Any contractor, subcontractor or vendor who files false or materially misleading information in connection with an application, certification or request for information pursuant to the provisions of this article or outsources work on a government funded project shall be deemed to be in violation of this article.

(b) A violation of this article shall be a civil offense subject to a civil penalty of from one hundred dollars (\$100.00) to five hundred (\$500.00). All law enforcement officers and any other duly authorized municipal officials are authorized to issue a municipal complaint for a violation of this article. Each day any violation of any provision of this article shall continue shall constitute a separate violation.

(c) The City of Burlington shall have the right to modify, terminate and or seek specific performance of any contract for a government funded project if the contractor, subcontractor or vendor has not complied with this article.

(Ord. of 11-21-05/12-21-05)

#### **21-95—21-99 Reserved.**

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

I, \_\_\_\_\_, on behalf of

\_\_\_\_\_ (Contractor) and in connection with the

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

Dated at \_\_\_\_\_, Vermont this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

By: \_\_\_\_\_  
Duly Authorized Agent

Subscribed and sworn to before me: \_\_\_\_\_  
Notary

## ARTICLE VIII. UNION DETERRENCE

### 21-100 Policy.

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It is the policy of the City of Burlington to limit letting contracts to organizations that provide union deterrence services to other companies.

(Ord. of 3-27-06/4-26-06)

### 21-101 Definitions.

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(a) *Contractor or vendor.* A person or entity that has a contract with the City of Burlington primarily for the furnishing of services (as opposed to the purchasing of goods), including any subcontractors of such contractor or vendor.

(b) *Government funded project.* Any contract for services which involves any City funds and the total amount of the contract is fifteen thousand dollars (\$15,000.00) or more. Burlington School Department contracts shall not be considered government funded projects under this article.

(c) *Union deterrence services.* Services provided by a contractor, subcontractor or vendor that are not restricted to advice concerning what activities by an employer are prohibited and permitted by applicable laws and regulations, but extend beyond such legal advice to encouraging an employer to do any of the following:

- 1) Hold captive audience, (i.e., mandatory) meetings with employees encouraging employees to vote against the union;
- 2) Have supervisors force workers to meet individually with them to discuss the union;
- 3) Imply to employees, whether through written or oral communication, that their employer may have to shut down or lay people off if the union wins the election;
- 4) Discipline or fire workers for union activity;
- 5) Train managers on how to dissuade employees from supporting the union.

(d) *Substantial portion of income.* For the purposes of this article, substantial portion of income shall mean greater than ten (10) percent of annual gross revenues or one hundred thousand dollars (\$100,000.00), whichever is less.

(Ord. of 3-27-06/4-26-06)

### **21-102 Implementation.**

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- (a) No contract for a government funded project shall be let to any contractor, subcontractor, or vendor who
- 1) Advises or has advised an employer to conduct any illegal activity in its dealings with a union.
  - 2) Advertises union deterrence services as specialty services;
  - 3) Earns a substantial portion of its income by providing union deterrence services to other companies in order to defeat union organizing efforts.
- (b) Prior to the commencement of work on a government funded project a contractor, subcontractor or vendor shall provide written certification that it has not advised the conduct of any illegal activity, it does not currently, nor will it over the life of the contract provide union deterrence services in violation of this article.

(Ord. of 3-27-06/4-26-06)

### **21-103 Enforcement.**

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- (a) Any contractor, subcontractor or vendor who files false or materially misleading information in connection with an application, certification or request for information pursuant to the provisions of this article or provided union deterrence services during the life of a contract for a government funded project shall be deemed to be in violation of this article.
- (b) The City of Burlington shall have the right to modify, terminate and or seek specific performance of any contract for a government funded project if the contractor, subcontractor or vendor has not complied with this article.

(Ord. of 3-27-06/4-26-06)

### **21-104—21-110 Reserved.**

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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

## ATTACHMENT C

### **BURLINGTON CONSULTANT CONDITIONS**

- 1. RELATIONSHIP:** The Consultant is an independent consultant and shall act in an independent capacity and not as officers or employees of the City. To that end, the Consultant shall determine the method, details, and means of performing the work, but will comply with all legal requirements in doing so. The Consultant shall provide its own tools, materials or equipment. The Parties agree that neither the Consultant nor its Principal(s) or employees is entitled to any employee benefits from the City. Consultant 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 Consultant agrees to execute any certifications or other documents and provide any certificates of insurance required by the City and understands that this Agreement is conditioned on its doing so, if requested.

The Consultant 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.

- 2. INDEMNIFICATION:** The Consultant 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 as a result of the Consultant's acts and/or omissions in the performance of this Agreement. 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 Consultant in writing that a claim to which the indemnification provision may apply has been filed. Consultant 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. Under no conditions shall the City be obligated to indemnify the Consultant 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 Consultant or any third party.
- 3. INSURANCE:** Prior to beginning any work, the Consultant 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](http://www.ambest.com)). The certificate of insurance coverage shall be documented on forms acceptable to the City. Compliance with minimum limits and coverage, evidenced by a certificate of insurance showing policies and carriers that are acceptable to the City, must be received prior to the Effective Date of the Agreement. The insurance policies shall provide that insurance coverage cannot be canceled or revised without thirty (30) days prior notice to the City. In the event that this Agreement extends to greater than one year, evidence of continuing coverage must be submitted to the City on an annual basis. Certified copies of any insurance policies may be required. Each policy (with

the exception of professional liability and worker's compensation) shall name the City as an additional insured for the possible liabilities resulting from the Consultant's actions or omissions. It is agreed that the liability insurance furnished by the Consultant is primary and non-contributory for all the additional insured.

The Consultant is responsible to verify and confirm in writing to the City that: (i) all sub-consultants must comply with the same insurance requirements as the Consultant; (ii) all coverage shall include adequate protection for activities involving hazardous materials; and (iii) all work activities related to the Agreement 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 Consultant for the Consultant'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 Consultant, sub-consultants, agents or workers, it is the Consultant's responsibility to insure that general liability insurance coverage, on an occurrence form, provides all major divisions of coverage including, but not limited to and with limits not less than:

1. Premises Operations
2. Independent Contractors' Protective
3. Products and Completed Operations
4. Personal Injury Liability
5. Contractual Liability
6. Broad Form Property Damage
7. Medical Expenses
8. Collapse, Underground and Explosion Hazards

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. Fire Damage (Any one fire)	\$ 250,000
6. Legal/Liability	\$ 50,000
7. Med. Expense (Any one person)	\$ 5,000

**B. WORKERS' COMPENSATION:** With respect to all operations performed, the Consultant shall carry workers' compensation insurance in accordance with the laws of the State of Vermont and ensure that all sub-consultants carry the same workers' compensation insurance for all work performed by them under this Agreement. Minimum limits for Employer's Liability:

1. Bodily Injury by Accident: \$500,000 each accident

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

**C. PROFESSIONAL LIABILITY INSURANCE:**

1. General. The Consultant shall carry \_\_\_\_\_ professional liability insurance covering errors and omissions made during their performance of contractual duties with the following minimum limits:
  - (a) \$3,000,000 - Annual Aggregate
  - (b) \$2,000,000 - Per Occurrence
2. Deductibles. The Consultant is responsible for any and all deductibles.
3. Coverage. Prior to performing any work, the Consultant shall provide evidence of professional liability insurance coverage defined under this section. In addition, the Consultant shall maintain continuous professional liability coverage for the period of the Agreement and for a period of five years following substantial completion of construction.

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

**E. VALUABLE PAPERS AND RECORDS INSURANCE:** The Consultant shall carry valuable papers insurance in a form and amount sufficient to ensure the restoration or replacement of any plans, drawings, field notes, or other information or data relating to the work, whether supplied by the City or developed by the Consultant, sub-consultant, worker, or agent, in the event of loss, impairment, or destruction. Such coverage shall remain in force until the final plans as well as all related materials have been delivered by the consultant to, and accepted by, the City. Unless otherwise provided, Valuable Papers and Records Insurance shall provide coverage on an “individual occurrence” basis with limits in the amount of one hundred and fifty thousand dollars (\$150,000) when the insured items are in the Consultant’s possession, and in the amount of forty thousand dollars (\$40,000) regardless of the physical location of the insured items.

**F. UMBRELLA LIABILITY:**

1. \$1,000,000 Each Event Limit
2. \$1,000,000 General Aggregate Limit

**4. GENERAL COMPLIANCE WITH LAWS:** The Consultant 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 Agreement shall be interpreted and implemented in a manner consistent with each other and using procedures that will achieve the intent of both Parties. If, for any reason, a provision in the Agreement is unenforceable or invalid, that provision shall be deemed severed from the Agreement, and the remaining provisions shall be carried out with the same force and effect as if the severed provisions had never been a part of the Agreement.

- 5. CIVIL RIGHTS AND EQUAL EMPLOYMENT OPPORTUNITY:** During performance of the Agreement, the Consultant will not discriminate against any employee or applicant for employment because of race, age, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status. Consultant, 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.
- 6. CHILD SUPPORT PAYMENTS:** By signing the Agreement, the Consultant certifies, as of the date of signing the Agreement, that the Consultant (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 Consultant is a sole proprietorship, the Consultant's statement applies only to the proprietor. If the Consultant is a partnership, the Consultant's statement applies to all general partners with a permanent residence in Vermont. If the Consultant is a corporation, this provision does not apply.
- 7. TAX REQUIREMENTS:** By signing the Agreement, the Consultant certifies, as required by law under 32 VSA, Section 3113, that under the pains and penalties of perjury, that the Consultant 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 Agreement.
- 8. REGISTRATION:** The Consultant 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 Agreement is effective. This registration must be complete prior to Agreement execution.
- 9. PERSONNEL REQUIREMENTS AND CONDITIONS:** The Consultant 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 Agreement.

Except with the approval of the City, during the life of the Agreement, the Consultant shall not employ:

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

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

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

**10. TRANSFERS, SUBLETTING, ETC:** The Consultant shall not assign, sublet, or transfer any interest in the work, covered by this Agreement, without prior written consent of the City, and further, if any sub-consultant 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 Consultant of responsibility for the performance of that portion of the work so transferred. The form of the sub-consultant's agreement shall be as developed by the Consultant and approved by the City. The Consultant shall ensure that insurance coverage exists for any operations to be performed by any sub-consultant as specified in the insurance requirements section of this Agreement.

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

**11. CONTINUING OBLIGATIONS:** The Consultant agrees that if because of death, disability, or other occurrences, it becomes impossible to effectively perform its services in compliance with the Agreement, neither the Consultant nor its surviving members shall be relieved of their obligations to complete the Agreement unless the City agrees to terminate the Agreement because it determines that the Consultant is unable to satisfactorily execute the Agreement.

**12. OWNERSHIP OF THE WORK:** The Consultant 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 Consultant, 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 Agreement. The Consultant agrees to allow the City access to all “instruments of professional service” at any time. The Consultant shall not copyright any material originating under the Agreement 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 Consultant may in general terms use previously developed instruments of professional service to describe its abilities for a project in promotional materials.

**13. PROPRIETARY RIGHTS:** The Parties under the Agreement hereby mutually agree that, if patentable discoveries or inventions should result from work performed under the Agreement, all rights accruing from such discoveries or inventions shall be the sole property of the Consultant. The Consultant, 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 each such discovery or invention that may be developed as a part of the work under the Agreement.

**14. PUBLIC RECORDS:** The Consultant 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 Consultant 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.

**15. RECORDS RETENTION:** The Consultant 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 consultant in the performance of this agreement which are related to the City, at any time during this Agreement 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 Consultant further agrees that the City shall have access to all the above information for the purpose of reviewing and audit during the Agreement 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. Consultant, sub-consultants, or any representatives performing work related to the Agreement, are responsible to insure that all data and information created or stored on EDM is secure and can be duplicated if the EDM mechanism is subjected to power outage or damage.

**16. APPEARANCES:**

**A. Hearings and Conferences.** The Consultant shall provide professional services required by the City and necessary for furtherance of any work covered under the Agreement. Professional 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 Agreement.

The Consultant 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 Agreement.

The Consultant 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 Agreement.

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

**B. Appearance as Witness.** If and when required by the City, the Consultant, or an appropriate representative, shall prepare and appear for any litigation concerning any relevant project or related contract, on behalf of the City. The Consultant 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 Agreement.

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

**18. APPENDICES:** The City may attach to these conditions appendices containing various forms and typical sample sheets for guidance and assistance to the Consultant 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 Consultant to ensure that they have the latest versions applicable to the Agreement.

**19. EXTENSION OF TIME:** The Consultant agrees to prosecute the work continuously and diligently and no charges or claims for damages shall be made by the Consultant for delays or hindrances, from any cause whatsoever, during the progress of any portion of services specified in the Agreement. Such delays or hindrances, if any, may be compensated for by an extension of time for such reasonable period as the City may decide. Time extensions shall be granted by amendment, only for excusable delays, such as delays beyond the control of the Consultant and without the fault or negligence of the Consultant.

**20. FAILURE TO COMPLY WITH TIME SCHEDULE:** It is mutually understood and

agreed to, that neither Party hereto shall be held responsible for delay in performing the work encompassed herein, when such delay is due to unforeseeable causes such as acts of God, or a public enemy, fire, strikes, floods, or legal acts of public authorities. In the event that any such causes for delay are of such magnitude as to prevent the complete performance of the Agreement within two (2) years of the originally scheduled completion date, either Party may by written notice request to amend or terminate the Agreement.

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

1. Breach of Agreement. Administrative remedies - the City may terminate this Agreement due to a breach by Consultant. Termination for breach of Agreement will be without further compensation to the Consultant.
2. Termination for Cause. The City may, upon written notice to the Consultant, terminate the Agreement, as of a date to be specified by the City, if the Consultant fails to complete the designated work to the satisfaction of the City, within the time schedule agreed upon. The Consultant shall be compensated on the basis of the work performed and accepted by the City at the date of final acceptance of the Work.
3. Termination for Convenience. In addition to its rights and options to terminate this Agreement as provided herein, the City may, at any time prior to completion of services specified under the Agreement, terminate the Agreement by submitting written notice to Consultant, within not less than fifteen (15) days prior to the termination date, via certified or registered mail, of its intention to do so. If the termination is for the City's convenience, payment to the Consultant will be made promptly for the amount of any fees earned to the date of the notice of termination, less any payments previously made. However, if a notice of termination is given to a Consultant prior to completion of twenty (20) percent of the estimated services, as set forth in the approved Work Schedule and Progress Report, the Consultant 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 Consultant shall make no claim for additional compensation against the City by reason of such termination.
4. Contract Disputes. In the event of a dispute between the parties to this agreement each party will continue to perform its obligations unless the Agreement is terminated in accordance with these terms.

**22. 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 Agreement.

- 23. RESPONSIBILITY FOR SUPERVISION:** The Consultant shall assume primary responsibility for general supervision of Consultant employees and their sub-consultants for all work performed under the Agreement and shall be solely responsible for all procedures, methods of analysis, interpretation, conclusions and contents of work performed under the Agreement. The Consultant shall be responsible to the City for all acts or omissions of its subcontractors and any other person performing work under this Agreement.
- 24. PERFORMANCE IN ACCORD WITH PROFESSIONAL STANDARDS:** Consultant shall perform the Work in the best and most workmanlike manner consistent with professional standards. If any of the Work is rejected by the City as failing to meet professional standards, Consultant will remove and replace the defective portions to the satisfaction and approval of the City, at the cost and expense of Consultant.
- 25. UTILITIES:** Whenever a facility or component of a private, public, or cooperatively-owned utility will be affected by any proposed construction, the Consultant will counsel with the City, plus achieve 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 Consultant shall inform the City, in writing, of any such contacts and the results thereof.
- 26. PUBLIC RELATIONS:** Whenever it is necessary to perform work in the field, particularly with respect to reconnaissance, the Consultant will endeavor to maintain good relations with the public and any affected property owners. Personnel employed by or representing the Consultant shall conduct themselves with propriety. The Consultant 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 Agreement. The Consultant agrees that any work will be done with minimum damage to the land and disturbance to the owner. Upon request of the Consultant, the City shall furnish a letter of introduction to property owners soliciting their cooperation and explaining that the Consultant is acting as an agent of the City.
- 27. INSPECTION OF WORK:** The City shall, at all times, have access to the Consultant's work for the purposes of inspection, accounting, and auditing, and the Consultant shall provide whatever access is considered necessary to accomplish such inspections. At any time, the Consultant 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 Consultant pursuant to the Agreement.
- 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.
- 28. RETURN OF MATERIALS:** Consultant agrees that at the expiration or termination of this Agreement, it shall return to City all materials provided to it during its engagement on behalf of City.

**29. PLANS, RECORDS, AND AVAILABLE DATA:** The City agrees to make available, at no charge, for the Consultant's use all available data related to the Agreement 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.

**30. DESIGN STANDARDS:** Unless otherwise specifically provided for in the Agreement, or directed in writing, Consultant 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 Agreement. In case of any conflict with the guidelines referenced, the Consultant is responsible to identify and follow any course of direction provided by the City.

**31. REVIEWS AND ACCEPTANCES:** All preliminary and detailed designs, plans, specifications, estimates or other documents prepared by the Consultant, 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 Agreement. Informal reviews, conducted by the City will be performed as deemed necessary. The Consultant shall respond to all official comments regardless of their source. The Consultant shall supply the City with written copies of all correspondence relating to formal and informal reviews.

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

**32. PAYMENT PROCEDURES:** The City shall pay, or cause to be paid, to the Consultant or the Consultant's legal representative payments in accordance with the Agreement. All payments will be made in reliance upon the accuracy of all representations made by the Consultant, whether in invoices, progress reports, emails, or other proof of work. When applicable, for the type of payment specified in the Agreement, 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 Agreement number. When relevant, the invoice shall further be broken down in detail between projects.

When applicable, for the type of payment specified in the Agreement, 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 an agreement, shall be conclusive evidence of the performance of said agreement, 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 Consultant and the Consultant agrees to accept, as full compensation, for performance of all services rendered and expenses incurred, the fee specified in the Agreement.

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

**33. PAYMENT FOR EXTRA WORK, ADDITIONAL SERVICES OR CHANGES:** The City may, upon written notice, and without invalidating the Agreement, require changes resulting from revision or abandonment of work already performed by the Consultant or changes in the scope of work.

The value of such changes, to the extent not reflected in other payments to the Consultant, 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 Agreement, 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 Consultant agrees to maintain complete and accurate records, in a form satisfactory to the City for all time devoted directly to same by Consultant employees. The City reserves the right to audit the records of the Consultant related to any extra work or additional services. Any such services rendered shall be subject, in all other respects, to the terms of the Agreement. When changes are so ordered, no additional work shall be performed by the Consultant until an Agreement 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.

**34. CONFLICT OF INTEREST:** The Consultant shall disclose in writing to the City any actual or potential conflicts of interest or any appearance of a conflict of interest by the Consultant, its employees or agents, or its subcontractors, if any.

**35. NO GIFTS OR GRATUITIES:** The Consultant shall not make any payment or gift or donation of substantial value to any elected official, officer, employee, or agent of the City during the term of this Agreement.

**36. ACCEPTANCE OF FINAL PAYMENT; RELEASE:** Consultant'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.



